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MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

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SUBJECT- INDEX

PART-II
(NOTES ON IMPORTANT JUDGMENTS)

(i) **एकल चक्षुदर्शी साक्षी - साक्ष्यिक मूल्य।**

(ii) **अंधेरी रात (अमावस्या) में अभियुक्त की पहचान।**

(iii) **एकल चक्षुदर्शी साक्षी की साक्ष्य के आधार पर मूल हमलावर की दोषसिद्धि - अन्य सह-अभियुक्तगण के मामले पर प्रभाव।** 33 33

CIVIL PROCEDURE CODE, 1908

सिविल प्रक्रिया संहिता, 1908

Section 11 – Decision operates as *res judicata* and not the reasons given in support of finding by the Court.

– Any finding given by a Reference Court in a land acquisition case about apportionment of compensation cannot be binding on the parties in a suit for possession based on title.

धारा 11 - **निर्णय, पूर्व न्याय के रूप में प्रवर्तित होता है न कि विनिश्चय के समर्थन में न्यायालय द्वारा दिये गये कारण।**

- निर्देश न्यायालय द्वारा भू-अर्जन प्रकरण में प्रतिकर के प्रभाजन के बारे में दिया गया निष्कर्ष, स्वामित्व पर आधारित वाद में पक्षकारों पर बाध्यकारी नहीं हो सकता है। **2 (i) & (ii)** **2**

Section 96 – (i) Appeal against decree – Persons who can file appeal – Right of stranger.
(ii) "Aggrieved person" – Meaning of.

धारा 96 - (i) **मूल आज्ञप्ति के विरुद्ध अपील - व्यक्ति जो अपील प्रस्तुत कर सकते हैं - अपरिचित व्यक्ति का अधिकार।**

(ii) **''व्यथित व्यक्ति ' ' - तात्पर्य।** **3** **3**

Order 3 Rule 1 – Power of cross-examination – Any handwriting expert holding power of attorney from plaintiff can cross-examine any other handwriting expert, who is a witness of the opposite party.

आदेश 3 नियम 1 - प्रतिपरीक्षण की शक्ति - वादी की ओर से मुख्तारनामा धारक कोई हस्तलेख विशेषज्ञ किसी अन्य हस्तलेख विशेषज्ञ, जो कि विरोधी पक्ष का एक साक्षी है, का प्रतिपरीक्षण कर सकता है। **4** **5**

Order 7 Rules 10 and 10A – After return of plaint for presentation in court of competent jurisdiction, proceeding has to commence *de novo*.

आदेश 7 नियम 10 एवं 10क - सक्षम क्षेत्राधिकार के न्यायालय में प्रस्तुति के लिए वादपत्र के लौटाये जाने की दशा में, कार्यवाही नए सिरे से प्रारंभ होगी। **5** **6**

Order 7 Rule 11 – Professional misconduct of a lawyer – Jurisdiction of Civil Court – It is within the exclusive domain of the Bar Council to consider the question of professional misconduct.

CRIMINAL PROCEDURE CODE, 1973

दण्ड प्रक्रिया संहिता, 1973

Section 190 – See Section 28(1) of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

धारा 190 - देखें गर्भधारण पूर्व और प्रसवपूर्व निदान तकनीक (लिंग चयन प्रतिषेध) अधिनियम, 1994 **की धारा** 28(1)। **18*** **18**

Sections 195 and 340 – Offences against lawful authority of public servants and offences against public justice – Composite offences for some of which Section 195 CrPC is not attracted – Procedure to be followed.

धाराएं 195 एवं 340 - लोक सेवकों के विधिपूर्ण प्राधिकार एवं लोक न्याय के विरुद्ध अपराध - समग्र अपराध जिनमें कुछ के लिए धारा 195 **द.प्र.सं. के प्रावधान आकर्षित नहीं होते हैं - अपनाई जाने वाली प्रक्रिया।**

19 (i) **18**

Section 197 – Sanction for prosecution – When material.

धारा 197 - अभियोजन के लिए स्वीकृति - कब महत्वपूर्ण ह। **20*** **21**

Sections 227 and 228 – Framing of charges – Only on the basis of memorandum of co-accused.

धाराएं 227 एवं 228 - आरोप की विरचना - केवल सह - अभियुक्त के ज्ञापन के आधार पर।

21 **21**

Sections 372 and 377 – Maintainability – Appeal for enhancement of sentence by victim.

धाराएं 372 एवं 377 - पोषणीयता - पीड़ित द्वारा दण्डादेश में वृद्धि करने हेतु अपील।

22 **22**

Section 427 – (i) Direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.
(ii) Purpose of imprisonment.

धारा 427 - (i) **विचारण न्यायालय, अपीलीय न्यायालय और पुनरीक्षण न्यायालय दण्डादेश के समवर्ती चलने के निर्देश दे सकते हैं।**

(ii) **दण्डादेश का उद्देश्य।** **23** **23**

Section 438 – Anticipatory bail – Where police authority has declared award or prepared Farari Panchnama.

धारा 438 - अग्रिम जमानत - जब पुलिस द्वारा पुरस्कार घोषित किया गया हो अथवा फरारी पंचनामा तय्यार किया गया हो। **24*** **24**

CRIMINAL TRIAL:

आपराधिक विचारणः

– Criminal trial – Duty of prosecution.

- **आपराधिक विचारण - अभियोजन का कर्तव्य।** **14 (iii) 12**

– See appreciation of evidence.

- **देखें साक्ष्य का मूल्यांकन।** **33 33**

(i) Criminal Trial – Appreciation of evidence – Related witness.

(ii) Benefit of doubt – If a wrong relief is given to one accused, does not mean that same should be given to co-accused against whom clinching evidence has come on record.

(i) **आपराधिक विचारण - साक्ष्य का मूल्यांकन - सम्बद्ध साक्षी।**

(ii) **संदेह का लाभ - यदि एक अभियुक्त को त्रुटिपूर्ण अनुतोष दिया जाता ह तो इसका अर्थ यह नहीं ह कि सह-अभियुक्त जिसके विरूद्ध अभिलेख पर सुदृढ़ साक्ष्य आई हो, को भी वही अनुतोष दिया जाना चाहिए।**

25* (i) 25

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

Section 3 – See Sections 302 and 304 of the Indian Penal Code, 1860.

धारा 3 - देखें भारतीय दण्ड संहिता, 1860 **की धाराएं** 302 **एवं** 304**।** **34 36**

Sections 45 and 73 – Expert evidence – Application filed by the defendant for comparison of signature by handwriting expert was rejected by Trial Court on the ground that there is no admitted document on record – The plaintiff had produced their own handwriting expert's opinion based upon the admitted signature – Effect.

धाराएं 45 एवं 73 - विशेषज्ञ साक्षी - हस्तलेख विशेषज्ञ से हस्ताक्षर की तुलना करने हेतु प्रतिवादी द्वारा प्रस्तुत आवेदन इस आधार पर विचारण न्यायालय द्वारा खारिज किया गया कि अभिलेख पर कोई स्वीकृत दस्तावेज नहीं था - वादी ने स्वयं की ओर से स्वीकृत हस्ताक्षर पर आधारित हस्तलेख विशेषज्ञ की राय प्रस्तुत की - प्रभाव। **26* 26**

Section 68 – See Order 41 Rules 23-A and 24 of the Civil Procedure Code, 1908 and Sections 59, 63(b) and 68 of the Succession Act, 1925.

धारा 68 - देखें सिविल प्रक्रिया संहिता, 1908 **का आदेश** 41 **नियम** 23-**क एवं** 24 **तथा उत्तराधिकार अधिनियम**, 1925 **की धाराएं** 59, 63(**ख**) **एवं** 68**।** **58 60**

Sections 65 and 68 – (i) Secondary evidence – Where execution of will was not disputed by the plaintiff and sufficient ground for leading of secondary evidence has been made out.

(ii) Secondary evidence – Requirement to file application – A party to the *lis* may choose to file an application but if foundation of leading of secondary evidence is laid, application for permission to lead secondary evidence is not necessary.

(iii) Proof of Will – At least one of the attesting witnesses is required to be examined to prove attestation.

धाराएं 65 **एवं** 68 - (i) **द्वितीयक साक्ष्य - जहां वसीयत का निष्पादन वादी द्वारा विवादित नहीं था और द्वितीयक साक्ष्य प्रस्तुत करने के लिए पर्याप्त आधार बताया गया ह।**

(ii) **द्वितीयक साक्ष्य - आवेदन प्रस्तुत करने की आवश्यकता - वाद का कोई पक्ष आवेदन प्रस्तुत करने के विकल्प का चयन कर सकता ह।लेकिन यदि द्वितीयक साक्ष्य प्रस्तुत करने का आधार स्थापित कर दिया जाता ह।तब द्वितीयक साक्ष्य प्रस्तुत करने की अनुमति के लिए आवेदन प्रस्तुत किया जाना आवश्यक नहीं ह।**

(iii) **वसीयत का प्रमाण - अनुप्रमाणन को प्रमाणित करने के लिये कम से कम एक अनुप्रमाणक साक्षी का परीक्षण किया जाना आवश्यक ह।** **27** **26**

Section 65-B – Admissibility of electronic record – objection with regard to mode of proof cannot be raised at a later stage, however, where the document itself is not admissible, then it has to be excluded though it might have been brought without any objection.

धारा 65-ख - इलेक्ट्रॉनिक रिकॉर्ड की ग्राह्यता - प्रमाण की रीति के संबंध में आपत्ति पश्चातवर्ती प्रक्रम पर नहीं उठाई जा सकती ह। हालांकि, जहां दस्तावेज स्वतः अग्राह्य ह।वहां उसे अपवर्जित कर देना चाहिए यद्यपि उसे किसी आपत्ति के बिना लिया गया हो। **28*** **29**

Section 119 – (i) Dumb witness – The obligation of videography of the statement is mandatory.

(ii) Effect of non-compliance – Fatal to the prosecution case.

धारा 119 - (i) **मूक साक्षी - कथनों की वीडियोग्राफी अनिवार्य ह।**

(ii) **अननुपालन का प्रभाव - अभियोजन के मामले के लिए घातक ह।** **29*** **30**

GENERAL CLAUSES ACT, 1897

साधारण खण्ड अधिनियम, 1897

Section 6 – See Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2015

धारा 6 - देखें किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 **की धारा** 25।

39 **40**

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

हिन्दू दत्तक एवं भरण-पोषण अधिनियम, 1956

Section 20(3) – See section 125 of the Criminal Procedure Code, 1973.

धारा 20(3) - देखें दण्ड प्रक्रिया संहिता, 1973 **की धारा** 125। **13*** **11**

HINDU SUCCESSION ACT, 1956

हिन्दू उत्तराधिकार अधिनियम, 1956

– Joint Property – alienation by co-sharer.

- संयुक्त संपत्ति - सह अंशधारी द्वारा अंतरण। **30*** **30**

Section 6 – Devolution of interest in coparcenary property – Right of a daughter.

धारा 6 - सहदायिकी सम्पत्ति में हित का न्यागमन - पुत्री का अधिकार। **31*** **30**

INDIAN PENAL CODE, 1860

भारतीय दण्ड संहिता, 1860

Sections 120B and 420 – Charge u/s 420 IPC – It is not an isolated offence.

धाराएं 120ख एवं 420 - भारतीय दण्ड संहिता की धारा 420 **के अंतर्गत आरोप - यह एक एकाकी अपराध नहीं ह।** **32** **32**

Sections 149 and 302 – See appreciation of evidence.

धाराएं 149 एवं 302 - देखें साक्ष्य का मूल्यांकन। **33** **33**

Sections 192, 193, 463 and 464 – Fabricating false evidence and making false document – Constitution of – Explained.

धाराएं 192, 193, 463 एवं 464 - मिथ्या साक्ष्य गढ़ना और मिथ्या दस्तावेज रचना - गठन - समझाया गया। **19 (ii)** **18**

Sections 302 and 304 – (i) Murder – Single injury.

(ii) Motive; absence of – Effect

धाराएं 302 **एवं** 304 - (i) **हत्या - एकल चोट।**

(ii) **हेतुक का अभाव - प्रभाव।** **34** **36**

Sections 302 and 304 Part-II – (i) Murder or culpable homicide not amounting to murder. – Single assault on head with lathi.

(ii) Lathi – Nature of – Discussed.

धाराएं 302 **एवं** 304 **भाग-दो** - (i) **हत्या अथवा आपराधिक मानव वध जो हत्या नहीं ह- लाठी से सिर पर एकल प्रहार।**

(ii) **लाठी की प्रकृति - व्याख्या की गई।** **35*** **37**

LIMITATION ACT, 1963

परिसीमा अधिनियम, 1963

Article 65 – Plea of title and adverse possession.

अनुच्छेद 65 - स्वत्व और प्रतिकूल कब्जे का अभिवाक। **41** **43**

Article 67 – Suit for possession from the tenant after determination of the lease, falls within Article 67 of the Limitation Act.

अनुच्छेद 67 - किरायेदार से पट्टे का पर्यावसान हो जाने के पश्चात कब्जे के लिए वाद परिसीमा अधिनियम के अनुच्छेद 67 **की परिधि में आता है।** **2 (iii)** **2**

Section 18, Articles 62 and 137 – (i) Limitation to file Application u/s 7 of the Insolvency and Bankruptcy Code, 2016

(ii) Extension or enlargement of the period of limitation - Facts are required to be pleaded and proved.

धारा 18, **अनुच्छेद** 62 **एवं** 137 -(i) **दिवाला और शोधन अक्षमता संहिता**, 2016 **की धारा** 7 **के अंतर्गत आवेदन प्रस्तुत करने की समयावधि।**

(ii) **परिसीमा अवधि में विस्तार अथवा वृद्धि - तथ्यों को अभिवचनित एवं साबित किया जाना आवश्यक है।**

38 **39**

Section 65 – See Sections 58 and 60 of the Transfer of Property Act, 1882.

धारा 65 - देखें संपत्ति अंतरण अधिनियम, 1882 **की धाराएं** 58 **एवं** 60। **59** **62**

MOTOR VEHICLES ACT, 1988

मोटर यान अधिनियम, 1988

Section 50 – Transfer of hypothecated vehicle – When become complete.

धारा 50 - वित्तपोषित वाहन का अंतरण - कब पूर्ण होता है। **42** **44**

Section 147(1) – Fitness certificate – Vehicle driven without fitness certificate – Insurance company should be exonerated from its liability – Principle of "Pay and recover" should be applied.

धारा 147(1) - ठीक हालत में होने का प्रमाण पत्र (फिटनेस सर्टिफिकेट) - वाहन ठीक हालत में होने के प्रमाण पत्र (फिटनेस सर्टिफिकेट) के बिना चलाया गया - बीमा कंपनी को उसके दायित्व से उन्मुक्त किया जाना चाहिए - ''भुगतान करे और वसूले' ' का सिद्धांत लागू किया जाना चाहिए।

43* **45**

Section 149(2)(a)(ii) – Liability of owner – Driver has a fake or invalid driving licence.

धारा 149(2)(क)(ii) - स्वामी का दायित्व - चालक के पास फर्जी या अवैध अनुज्ञप्ति का होना।

44 **45**

N.D.P.S. ACT, 1985

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985

Section 20 – Seizure of contraband – Non-recovery of vehicle and failure to establish ownership of vehicle – Effect.

धारा 20 - प्रतिषिद्ध सामग्री की जप्ती - वाहन की बरामदगी न होना और वाहन के स्वामित्व को स्थापित करने में विफलता - प्रभाव। **51 (iii) 54**

POWERS OF ATTORNEY ACT, 1882

मुख्तारनामा अधिनियम, 1882

Section 1A – See Order 3 Rule 1 of the Civil Procedure Code, 1908.

धारा 1क - देखें सिविल प्रक्रिया संहिता, 1908 **का आदेश** 3 **नियम** 1। **4 5**

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994

गर्भधारण पूर्व और प्रसवपूर्व निदान तकनीक (लिंग चयन प्रतिषेध) अधिनियम, 1994

Section 28(1) – Cognizance of offence – Unless the complaint is signed and presented by the officer authorized or appropriate authority, the Court cannot take cognizance.

धारा 28(1) - अपराध का संज्ञान - जब तक समुचित अथवा प्राधिकृत अधिकारी द्वारा हस्ताक्षर कर परिवाद प्रस्तुत नहीं किया जाता न्यायालय ऐसे परिवाद पर संज्ञान नहीं ले सकता ह।

18* 18

PREVENTION OF CORRUPTION ACT, 1988

भ्रष्टाचार निवारण अधिनियम, 1988

Section 13(1)(d) – See Sections 7 and 13 of the Prevention of Corruption (Amendment) Act, 2018.

धाराएं 13(1)(घ) - देखें भ्रष्टाचार निवारण (**संशोधन**) **अधिनियम**, 2018 **की धाराएं** 7 **एवं** 13।

52 56

Sections 13(1)(d), (2) and 19 – Sanction for prosecution – Where investigation has been completed and charge sheet has been filed.

धाराएं 13(1)(घ), (2) एवं 19 - अभियोजन के लिए स्वीकृति - जब अन्वेषण पूर्ण हो गया हो और अभियोगपत्र प्रस्तुत किया जा चुका हो। **20* 21**

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018

भ्रष्टाचार निवारण (संशोधन) अधिनियम, 2018

Sections 7 and 13 – Operation – Purely prospective and not retrospective.

धाराएं 7 एवं 13 - प्रवर्तन - शुद्ध रूप से भविष्यलक्षी हैं न कि भूतलक्षी। **52** **56**

PREVENTION OF FOOD ADULTERATION ACT, 1954

खाद्य अपमिश्रण निवारण अधिनियम, 1954

Section 16 – Compliance of Rule 32(e) – When product has barcode there is sufficient compliance.

धारा 16 - नियम 32(ई) **का अनुपालन - जहां वस्तु में बारकोड ह वहां पर्याप्त अनुपालन ह।**

53* **56**

PREVENTION OF FOOD ADULTERATION RULES, 1955

खाद्य अपमिश्रण निवारण नियम, 1955

Rule 32(e) – See Section 16 of the Prevention of Food Adulteration Act, 1954.

नियम 32(ई) - देखें खाद्य अपमिश्रण निवारण अधिनियम, 1954 **की धारा** 16।

53* **56**

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Section 17 – See Section 6 of the Hindu Succession Act, 1956.

धारा 17 - देखें हिन्दू उत्तराधिकार अधिनियम, 1956 **की धारा** 6। **31*** **30**

Sections 17(1) and 17(2) – Compromise decree; registration of.

धाराएं 17(1) एवं 17(2) - समझौता आज्ञप्ति का रजिस्ट्रीकरण। **7*** **7**

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

वित्तीय आस्तियों का प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित प्रवर्तन अधिनियम, 2002

Section 18 – Debt – Status of guarantor or mortgagor who has mortgaged his property to secure repayment of loan.

धारा 18 - ऋण - प्रत्याभूतिदाता या बंधककर्ता, जिसने ऋण के पुनर्भुगतान को सुरक्षित करने हेतु अपनी संपत्ति को गिरवी रखा ह की प्रास्थिति। **54** **57**

SERVICE LAW:

सेवा विधि:

– (i) Departmental enquiry – Whether enquiry officer can put his own questions to the witnesses or cross-examine them?

(ii) Departmental enquiry and criminal proceedings – Whether delinquent employee should be exonerated-where after investigation, investigating agency do not find adequate material to launch criminal prosecution?

- (i) **विभागीय जाँच - क्या जाँच अधिकारी साक्षियों से स्वयं प्रश्न पूछ सकता ह अथवा उनका प्रतिपरीक्षण कर सकता ह?**

- (ii) **विभागीय जाँच और आपराधिक कार्यवाही - क्या जहाँ अन्वेषण उपरांत अनुसंधान एजेंसी को आपराधिक प्रकरण चलाने के लिए पर्याप्त सामग्री नहीं मिलती हो, वहां अपचारी कर्मचारी को उन्मुक्त कर दिया जाना चाहिए?** **55 57**

SPECIFIC RELIEF ACT, 1963

विनिर्दिष्ट अनुतोष अधिनियम, 1963

Sections 20, 16(c) and 22(1)(b) – Proof of readiness and willingness – Necessary even in the absence of the defence.

धाराएं 20, 16(ग) एवं 22(1)(ख) - इच्छुक एवं तत्पर होना प्रमाणित किया जाना - प्रतिरक्षा प्रस्तुत न किये जाने पर भी आवश्यक ह। **56 59**

Section 38 – Relevance of possession in a bare suit for injunction.

धारा 38 - मात्र व्यादेश के वाद में कब्जे की सुसंगतता। **57* 60**

Section 38 – See Order 7 Rule 11 of the Civil Procedure Code, 1908.

धारा 38 - देखें सिविल प्रक्रिया संहिता, 1908 **का आदेश** 7 **नियम** 11**।** **6* 7**

SUCCESSION ACT, 1925

उत्तराधिकार अधिनियम, 1925

Sections 59, 63(b) and 68 – Will – Relevant circumstance – Unexplained, unusual and abnormal features about the document – Inferences.

धाराएं 59, 63(ख) एवं 68 - वसीयत - सुसंगत परिस्थिति - दस्तावेज से संबंधित अस्पष्टीकृत, अस्वाभाविक एवं असामान्य लक्षण - अनुमान। **58 (i) 60**

Section 63 – See Sections 65 and 68 of the Evidence Act, 1872.

धारा 63 - देखें साक्ष्य अधिनियम, 1872 **की धाराएं** 65 **एवं** 68**।** **27 26**

TRANSFER OF PROPERTY ACT, 1882

संपत्ति अंतरण अधिनियम, 1882

Sections 58 and 60 – (i) Permissive possession of the suit property cannot be termed as "adverse possession".

(ii) Title cannot be acquired on the basis of unregistered sale deed.

(iii) Right to redeem the suit property.

धाराएं 58 **एवं** 60 - (i) **वादग्रस्त संपत्ति पर अनुमत आधिपत्य ''प्रतिकूल-आधिपत्य ' ' नहीं हो सकता ह।**

(ii) **अपंजीकृत विक्रय विलेख के आधार पर स्वत्व अर्जित नहीं किया जा सकता ह।**

(iii) **संपत्ति के मोचन कराने का अधिकार।** **59** **62**

PART – IV

(IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS)

EDITORIAL

Esteemed Readers,

Despite 2020 being a terrible year, it turned us into a better person. It taught us how to fight when we are threatened even by the course of nature, our strength and opportunities and how to stand in times of crises. We applied new methods of learning, adopted technology we thought were difficult to adapt. In contrast to the grimness of last year, let us hope this year brings a healthier time.

The Academy started this year with the patronage of Hon'ble the Chief Justice Shri Mohammad Rafiq. Soon after taking over charge, His Lordship was very keen to give new identity to the Academy and work in this direction began swiftly. The Governing Council of Madhya Pradesh State Judicial Academy was thus, constituted with Hon'ble the Chief Justice being the Patron. We are sure, the Academy will touch new heights in the path that lies ahead.

In its pedantic intensification, the Academy is now equipped with the new "Scheme for Judicial Education and Training" which became effective from the first day of 2021. It is a very distinctive and comprehensive Scheme and may set a new benchmark for other State Judicial Academies of the country as well. The "Scheme for Self-Appraisal, Impact Assessment and Performance Evaluation" also became effective from 2021 itself which makes the Induction Training and Orientation Training more objective and purposeful. These Schemes will bring a change in the mode of imparting judicial education which will encompass the whole training process of Field as well as Institutional Trainings.

The concept of judicial education and training, if introduced in its nascent stage of legal education, will certainly make a difference. The Academy has created an opportunity for law students to associate themselves with the Judicial Education and Training system while pursuing LL.B courses. Thus, in order to give the law students exposure to engage in the activities of this institution, for the first time, we came up with "Scheme for Internship of Law Students" in our Academy.

Tapping into the greatest potential that Information Technology can offer, the conduction of training course through online modes of communication has now become a permanent feature of the Academy. Carrying this feature in the new year and beyond, the same is reflecting in our Annual Academic Calendar for the year 2021. It contains 66 educational and training courses and programmes for the judges of the district judiciary as well as other stakeholders of the justice dispensation system out of which half of the

programmes are to be conducted online. After almost a year of being confined to the small screen of computer and rigorously following all safety protocols and measures, the Academy conducted a very important event with physical attendance; "Colloquium for the District & Sessions Judges" on 6th and 7th February of this year. Hon'ble the Chief Justice graced the programme and deeply interacted with the participant District & Sessions Judges to get their perspective towards the issues faced by them in their district as well as allowing them to share their experiences that made the Colloquium successful.

Besides, in the months of January and February, the Academy conducted Foundation Course, Advance Course and Refresher Courses for District Judges (Entry Level), Workshops on – Motor Accident Claim Cases for Judges dealing with Motor Accident Claim Cases and Key issues relating to cases of Dishonour of Cheque under the Negotiable Instruments Act, 1881 for Judges dealing with these cases. Another programme was "Interactive Sessions on Identified Legal Issues" for Judges of all cadre which was one of the highlights of the educational programmes. Training programmes for creating Master Trainers amongst Advocates under e-Courts Project, Supreme Court were also conducted online by the Academy.

A new Software of this bi-monthly is developed by the Academy which was launched by Hon'ble the Chief Justice on 21st January, 2021. All the articles and head notes of around 10,000 cases right from the origin of the Journal has been included in the database. Considering the world is currently moving towards an internet-first method of information consumption, we expect this software to bridge the gap between a pious learner and the diverse information available at our humble behest.

The JOTI Journal has always been a collaborative effort not just between the editor and the writers but also this institution and your valuable feedback. Thus, we can continue sailing on this voyage of improvement with your response.

Lastly, despite the tough times, we held onto optimism and hope during this period which helped us sail through the difficult phase last year and this is something that will continue to help us navigate through these uncertain times, they become our anchor that ground us to reality and assure us that when everything goes wrong, there will always be a light at the end of this dark tunnel that will make everything right.

Ramkumar Choubey
Director

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WELCOME TO HON'BLE THE CHIEF JUSTICE SHRI MOHAMMAD RAFIQ

Hon'ble Shri Justice Mohammad Rafiq has been appointed as the Chief Justice of High Court of Madhya Pradesh.

His Lordship was born on 25th May, 1960 at Sujangarh, District Churu (Rajasthan). After obtaining degrees of B.Com. LL.B and M.Com, His Lordship enrolled as an Advocate on 8th July, 1984.

His Lordship practised in Rajasthan High Court in all branches of law. His Lordship worked as Assistant Government Advocate for the State of Rajasthan from 15th July, 1986 to 21st December, 1987 and Deputy Government Advocate from 22nd December, 1987 to 29th June, 1990. His Lordship appeared for the State of Rajasthan from 1993 to 1998 and also represented the Union of India as Standing Counsel from 1992 to 2001. His Lordship also represented the Indian Railways, Rajasthan State Pollution Control Board, Rajasthan Board of Muslim Wakfs, Jaipur Development Authority, Rajasthan Housing Board and Jaipur Municipal Corporation before the Rajasthan High Court.

His Lordship was appointed as Additional Advocate General for the State of Rajasthan on 7th January, 1999 and worked as such till his Lordship's elevation. His Lordship was appointed as Judge of the Rajasthan High Court on 15th May, 2006. His Lordship also worked as Acting Chief Justice of Rajasthan High Court twice; from 7th April, 2019 to 4th May, 2019 and from 23rd September, 2019 to 5th October, 2019. His Lordship was also the Executive Chairman of the Rajasthan State Legal Services Authority and the Administrative Judge of the Rajasthan High Court prior to appointment as the Chief Justice. His Lordship was the Chief Justice of the High Court of Meghalaya from 13th November, 2019 to 26th April, 2020 and was Chief Justice of Orissa High Court from 27th April, 2020 to 2nd January, 2021.

On appointment as 26th Chief Justice of Madhya Pradesh High Court, His Lordship was administered oath of office at Raj Bhavan, Bhopal by the Governor of Madhya Pradesh on 3rd January, 2021. His Lordship was accorded welcome ovation on 4th January, 2021 in the Conference Hall of South Block of the High Court of Madhya Pradesh, Jabalpur.

We on behalf of JOTI Journal wish His Lordship a very happy and successful tenure.

●

TRANSFER OF HON'BLE SHRI JUSTICE SANJAY YADAV TO ALLAHABAD HIGH COURT

Hon'ble Shri Justice Sanjay Yadav, who occupied the august office of the Judge of the High Court of Madhya Pradesh for approximately thirteen years, has been transferred to High Court of Allahabad as Judge.

His Lordship was born on 26th June, 1959. His Lordship enrolled as an Advocate on 25th August,1986. His Lordship practised on Civil, Revenue and Constitutional sides in the High Court of Madhya Pradesh at Jabalpur. His Lordship was appointed as Deputy Advocate General of Madhya Pradesh.

His Lordship was appointed as an Additional Judge of the High Court of Madhya Pradesh on 2nd March, 2007 and as Permanent Judge on 15th January, 2010. His Lordship was appointed as Acting Chief Justice of the High Court of Madhya Pradesh from 6th October, 2019 to 2nd November, 2019 and again from 30th September to 2nd January, 2021.

During tenure in the High Court of Madhya Pradesh, His Lordship rendered invaluable services as Acting Chief Justice, Judge, Chairman/ Judge In-charge Judicial Education, Executive Chairman, Madhya Pradesh State Legal Services Authority and also Member of various Administrative Committees of the High Court.

His Lordship has been a constant source of inspiration for the Judges of Madhya Pradesh. His Lordship took keen interest in the academic activities of the Academy and provided wholesome motivation, support and guidance for diversifying the academic activities of the Academy. The Academy is deeply indebted for His Lordship's kind support and benevolent guidance.

His Lordship was accorded farewell ovation on 6th January, 2021 at the High Court of Madhya Pradesh, Jabalpur.

We on behalf of JOTI Journal, wish His Lordship a very happy and successful tenure at Allahabad.

●

TRANSFER OF HON'BLE SHRI JUSTICE SATISH CHANDRA SHARMA TO KARNATAKA HIGH COURT

Hon'ble Shri Justice Satish Chandra Sharma, Judge of the High Court of Madhya Pradesh has been transferred to the High Court of Karnataka as Judge.

His Lordship was born on 30th November, 1961. His Lordship passed Bachelor of Science in the year 1981 with distinction in three subjects. His Lordship obtained Bachelor of Law in the year 1984 securing first position and three Gold Medals. His Lordship was also awarded National Merit Scholarship for Post Graduate studies. His Lordship was enrolled as an Advocate on 1st September, 1984. His Lordship was appointed as Additional Central Government Counsel on 28th May, 1993 and as Senior Panel Counsel by Government of India on 28th June, 2004. His Lordship was designated as Senior Advocate by the High Court of Madhya Pradesh in 2003. His Lordship has specialization in Civil and Constitutional Law including service matters.

His Lordship was Standing Counsel for High Court of Madhya Pradesh, Lokayukta Organization, Central Bureau of Investigation, M.P. Financial Corporation, Indian Oil Corporation, Rani Durgawati Vishwavidyalaya, Jabalpur, Khadi Gramodyog Commission, Regional Provident Fund Commissioner, M.P. and other reputed Government/Private Undertakings. His Lordship was also appointed as Special Counsel for State of Madhya Pradesh for defending cases before Debts Recovery Tribunal and for M.P. State Electricity Board and Municipal Corporation, Jabalpur. His Lordship appeared for M.P. Audyogik Vikas Nigam Limited, Bhopal besides a large number of Public Sector Undertakings.

His Lordship was appointed as Additional Judge of High Court of Madhya Pradesh on 18th January, 2008 and permanent Judge on 15th January, 2010 and worked as such till His Lordship's transfer as Judge of Karnataka High Court on 4th January, 2021.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered valuable services as Judge, Administrative Judge and Member of various Administrative Committees of the High Court.

We on behalf of JOTI Journal wish His Lordship a very happy and successful tenure at Karnataka.

●

HON'BLE SHRI JUSTICE SUNIL KUMAR AWASTHI DEMITS OFFICE

Hon'ble Shri Justice Sunil Kumar Awasthi demitted office on His Lordship's appointment as President of Industrial Court.

His Lordship was born on 4th June, 1959 at Jashpur Nagar, District Raigarh, Chattisgarh. His Lordship after obtaining B.Com. from Jabalpur University in the year 1979 and LL.B. degree from Sagar University in the year 1982 with third position in the University, joined M.P. State Judicial Services on 15th October, 1985 as Civil Judge Class II and promoted to Higher Judicial Services on 9th June, 1997. His Lordship was granted Selection Grade Scale on 16th September, 2004 and thereafter, Super Time Sale on 15th January, 2013.

His Lordship worked in different capacities in Jabalpur, Mandla, Kavardha, Khandwa, Itarsi, Betul, Barwaha, Narsinghpr, Indore, Rewa and Dhar. His Lordship also served as President, Consumer Forum, Gwalior and District & Sessions Judge, Bhind and District Judge (Vig.), High Court of Madhya Pradesh, Jabalpur.

His Lordship was appointed as Additional Judge of High Court of Madhya Pradesh on 13th October, 2016 and Permanent Judge on 17th March, 2018 and worked as such till His Lordship's resignation on 2nd January, 2021.

During His Lordship's tenure in the High Court of Madhya Pradesh, rendered valuable services as Judge and Member of various Administrative Committees of the High Court.

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

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GLIMPSES OF THE 72nd REPUBLIC DAY CELEBRATION AT MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice, High Court of Madhya Pradesh unfurling the National Flag and receiving Guard of Honour

Hon'ble the Chief Justice visiting campus of Madhya Pradesh State Judicial Academy

Release of JOTI Journal Software by Hon'ble the Chief Justice,
High Court of Madhya Pradesh
(21.01.2021)

GLIMPSES OF COLLOQUIUM FOR THE DISTRICT & SESSIONS JUDGES (06.02.2021 & 07.02.2021)

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice, High Court of Madhya Pradesh, addressing the Inaugural Session of the programme

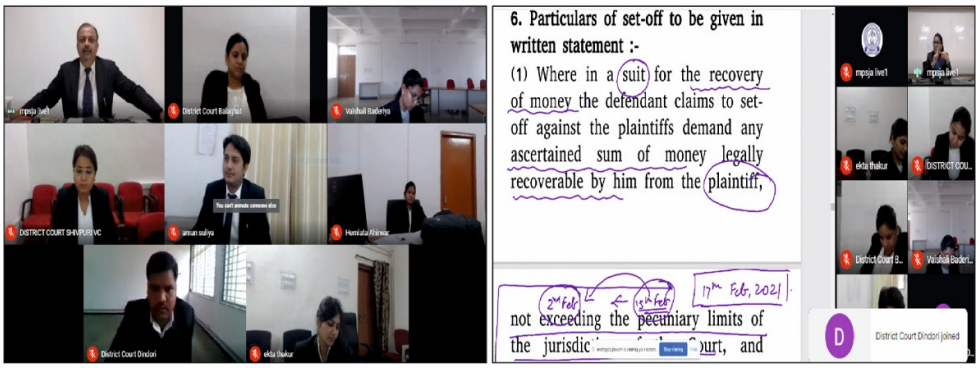
GLIMPSES OF COLLOQUIUM FOR THE DISTRICT & SESSIONS JUDGES (06.02.2021 & 07.02.2021)

Hon'ble Shri Justice Sujoy Paul, Hon'ble Shri Justice Atul Sreedharan and Hon'ble Shri Justice J.P. Gupta addressing the participants

GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

Refresher Course for District Judges (Entry Level) in 4 Groups
(18.01.2021 to 12.02.2021)

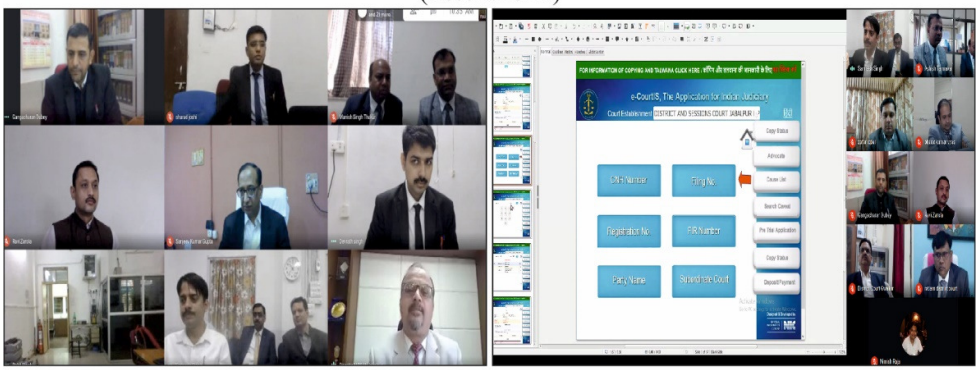
Workshop on – Motor Accident Claim Cases
(23.01.2021)



Induction Training Course for Civil Judges (Entry Level) of 2020 Batch
(15.02.2021 to 12.03.2021)

GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

Interactive Session on – Identified Legal Issues
(20.02.2021)



TOT Programme (Phase II) for Master Trainers (Judicial Officers)
(22.02.2021)

Interactive Session on – Key issues relating to cases of
Dishonour of Cheque under the Negotiable Instruments Act, 1881
(27.02.2021)

PART – I

JUST COMPENSATION: DUTY OF TRIBUNAL

Dhirendra Singh
Faculty (Sr.), MPSJA

The question of payment of compensation in respect of motor accidents has assumed great importance for public as well as for courts. The Indian Parliament, being conscious of the magnitude of the plight of the victims of the accidents, have introduced several beneficial provisions to protect the interest of the claimants and to enable them to claim compensation from the owner or the insurance company in connection with the accident.

The right of the victim of a road accident to claim compensation is a statutory one. He is a victim of an unforeseen situation. He would not ordinarily have a hand in it. The negligence on the part of the victim may, however, be contributory. He has suffered owing to the wrongdoing of others. An accident may ruin an entire family. It may take away the only earning member. An accident may result in the loss of her only son to a mother. An accident may take place for variety of reasons. The driver of a vehicle may not have a hand in it. He may not be found to be negligent in a given case. Other factors such as unforeseen situation, negligence of the victim, bad road or the action or inaction of any other person may lead to an accident.

The Motor Accident Claims Tribunals constituted u/s 165 of the Motor Vehicles Act, 1988 (in short the M.V. Act) make award in favour of claimant as the case may be and section 168 of the M.V. Act describes the nature of award and provides that:

> **Award of the Claims Tribunal**.– On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be;

It has been held in ***General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, (1994) 2 SCC 176*** that the tribunal has to determine a fair amount of compensation awardable to the victim of an accident which must be proportionate to the injury caused.

It has been held in ***Sarla Verma & ors. v. Delhi Transport Corporation & anr., 2009 ACJ 1298 (SC)*** that compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. Just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit. Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision making process and the decisions. While it may not be possible to have mathematical precision or identical awards, in assessing compensation, same or similar facts should lead to awards in the same range. When the factors/inputs are the same, and the formulae/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation.

In the case of ***National Insurance Company Ltd. v. Pranay Sethi and ors., (2017) 16 SCC 680***, the Constitution Bench held that the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated u/s 168 of the Act and the Constitution Bench also fixed the slab for computing the future prospects in this case.

In ***Pranay Sethi*** (supra), it was also held that section 168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of material brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression "just compensation". The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The tribunal and the Courts

have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency.

After the case of ***Pranay Sethi*** (supra), a doubt arose that future prospects cannot be awarded in a case where income has been calculated on the principle of notional income/guesswork but the above doubt has been cleared by the Apex Court in the case of ***Hemraj v. Oriental Insurance Company Ltd., (2018) 15 SCC 654*** and it was held that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guesswork in the facts and circumstances of a case. In a recent judgment of the Apex Court in ***Kirti and anr. v. Oriental Insurance Company Ltd., 2021 SCC Online SC 3*** it has been laid down that granting of future prospect on the notional income also is the component of just compensation. Hence, it is clear that future prospect which is a component of just compensation, must be awarded in case of notional income also.

It was further held in the case of ***Pranay Sethi*** (supra) that in a death case, compensation should be awarded under the head of loss of consortium also. In ***Magma General Insurance Company Ltd. v. Nanuram alias Chuhru Ram & ors, 2018 ACJ 2782***, the Apex Court was of the view that in legal parlance, consortium is the compendious term which encompasses spousal consortium, parental consortium and filial consortium and the amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under loss of consortium as laid down in ***Pranay Sethi*** (supra) i.e. ` 40,000 each (which should be increased by 10 percent after every three years from the date of judgment i.e. 31.10.2017).

The above view was endorsed by a Three-Judge Bench of the Apex Court in the case of ***United India Insurance Company Ltd. v. Satinder Kaur @ Satwinder Kaur & ors., 2020 ACJ 2131*** wherein it has been laid down that every tribunal should award compensation for loss of consortium which is a legitimate conventional head. So now it is established that this conventional head has also become an integral part of just compensation.

Sometimes the Tribunals hesitate to award compensation exceeding the claimed amount. The Apex Court in the case of ***Ramla and ors. v. National Insurance Company Ltd. & ors., 2019 ACJ 559***, clarifying this fact held that a tribunal

can award compensation exceeding the claimed amount because the tribunals are duty bound to award just compensation.

In the case of ***Ibrahim v. Raju and ors., (2011) 10 SCC 634***, the Apex Court laid down that there is no restriction that under the Motor Vehicles Act, the tribunal cannot award compensation amount exceeding the claimed amount as the tribunal is duty bound to award just compensation which is reasonable on the basis of evidence produced on record and tribunal should adopt a proactive approach to award just compensation to the victims/their legal representatives.

Similar view was held in a recent judgment of ***Kajal v. Jagdish Chandra, AIR 2020 SC 776*** wherein the Apex Court again laid down that it is well settled law that in Motor Accident Claim Petitions, the tribunal must award just compensation.

Thus, the Tribunals are duty bound to award not only compensation but just compensation and tribunal must adopt pro active approach to award just compensation based on evidence to the victims/their legal representatives.

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"The rights which the citizens cherish deeply, are fundamental – it is not the restrictions that are fundamental."

– S. Ravindra Bhat, J.

in Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, para 86

CONNOTATION OF "FORMAL ARREST" AND "CUSTODY"

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Personal liberty is one of the cherished objects of the Indian Constitution and the deprivation of the same can only be in accordance with the procedure established by law and in conformity with the provisions thereof, as stipulated in Article 21 of the Constitution of India. Article 22 (2) of the Constitution mandates that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. Similar provision is found in Section 57 of the Code of Criminal Procedure, 1973 (in short - "CrPC"), which mandates that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate u/s 167 CrPC, exceed twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. These two provisions came up for consideration on several occasions before Hon'ble the Supreme Court, as well as various High Courts and the Courts have held that without the authorisation of a Magistrate, no arrestee shall be detained in custody of the police beyond 24 hours from the time of arrest excluding the time taken for journey from the place of arrest to the Court.

Whether the terms "arrest" and "custody" are synonymous?

In ***Roshan Beevi & ors. v. Joint Secretary to the Government of Tamil Nadu, Public Department (Law and Order) and ors., 1983 MLW (Cri) 289***, the Full Bench of Madras High Court took the view that custody and arrest are not synonymous terms. The Bench further held that though custody may amount to arrest in certain circumstances, but not under all circumstances. While confirming the stand taken in ***Roshan Beevi's case*** (supra), Hon'ble the Supreme Court in ***Directorate of Enforcement v. Deepak Mahajan and anr., (1994) 3 SCC 440*** held that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms, though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. A perusal of the above proposition of law would make it clear that in every arrest there is custody and not vice versa.

When a person gets into the custody of the Court for the purpose of exercising the powers by the Magistrate under Section 167 (1) CrPC?

Hon'ble Supreme Court in ***Niranjan Singh & anr. v. Prabhakar Rajaram Kharote & ors., (1980) 2 SCC 559*** has held that a person can be in custody not merely when the police arrests him, produces him before a Magistrate and gets

a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its directions. After considering ***Roshan Beevi's case*** (supra) and ***Niranjan Singh's case*** (supra), Hon'ble the Supreme Court in ***State of Haryana & ors. v. Dinesh Kumar, (2008) 3 SCC 222*** held that unless a person accused of an offence is in custody, he cannot move the court for bail.

From the above judgments, we can easily understand that for a Magistrate to exercise his power u/s 167 (1) CrPC, the pre-requisite condition is that the accused must be in the custody of the Court and such custody may be had either by arrest by a competent officer and production before the Magistrate or on the surrender of the accused on his own volition before the learned Magistrate or on his appearance in pursuance of any process. Under these circumstances, the accused will be in the custody of the Court, and therefore, the Magistrate will be competent to pass further orders of detention, either in judicial custody or in police custody.

What if the accused is already in judicial custody in connection with some other case?

If an accused already is in judicial custody in connection with some other case, when the Investigating Officer wants to arrest him in connection with a different case, some confusion may surface regarding the mode of arrest because as provided in Section 46 (1) CrPC by effecting arrest in prison, the Police Officer cannot take him into custody at all, because the detention of such accused in judicial custody has already been authorized by the Magistrate in connection with some other case. Therefore, without the authority of the Magistrate, it is not possible in law for the police officer to remove the accused after effecting arrest in prison either to the Jurisdictional Magistrate or to the nearest Magistrate for the purpose of remand. It is only to meet such exigency, Hon'ble the Supreme Court in ***C.B.I., Special Investigation Cell-I v. Anupam J. Kulkarni, (1992) 3 SCC 141*** developed a concept known as formal arrest.

In a case where the police officer deems it necessary to arrest when the accused is already in judicial custody in connection with a different case, there are two modes available for him to adopt. The first one is that, instead of effecting formal arrest, he can very well make an application before the Jurisdictional Magistrate seeking a production warrant for the production of the accused from prison. If the conditions required u/s 267 CrPC, are satisfied, the Magistrate shall issue a production warrant for the production of the accused in Court. When the accused is so produced before the Court, in pursuance of the production warrant, the police officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) CrPC. At that time, the Magistrate shall consider the request of the police, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to

remand the accused. The other mode, which the police officer may adopt, is to effect a formal arrest in prison, as stated in ***Anupam J. Kulkarni's case*** (supra) and thereafter, to make a request to the Jurisdictional Magistrate for issuance of production warrant for the production of the accused. When the accused is so produced before the Magistrate, the police officer will be entitled to make a request for the remand of the accused, either in judicial custody or in police custody.

It is only after the said judgment in ***Anupam J. Kulkarni's case*** (supra), the concept of 'formal arrest in prison while the accused is already in prison in connection with some other case' came into being and thereafter, invariably in most of the cases, the police officials do effect formal arrest in prison and thereafter get the accused remanded to either judicial custody or police custody under Section 167 CrPC.

What if before the accused is produced before the Court in pursuance of a production warrant has been ordered to be released in connection with the former case?

Chapter XXII of the CrPC deals with the attendance of persons confined or detained in prisons. Section 267 Cr.PC empowers the Court to make an order requiring the Officer in-charge of the prison to produce the person confined or detained in prison, before the Court for answering the charge or for the purpose of such proceeding or, as the case may be, for giving evidence. The provisions of Section 267 CrPC are employed by the Court to secure the presence of a prisoner who is already facing the criminal proceedings including investigation, trial etc., in one criminal case, for the purpose of answering the charge of an offence, or for the purpose of any proceedings against him in another criminal case. The warrant issued pursuant to the order passed by the Court u/s 267 Cr.PC is generally called production warrant. On receiving the production warrant so issued by the Court, the officer in-charge of the jail is required to produce the said prisoner before the Court which has issued the production warrant.

The pendency of a production warrant cannot be equated to the order of remand and the same cannot be construed to be an authorization for detaining a person beyond the period. Before the accused is transmitted and produced before the Court in pursuance of a production warrant in connection with a latter case, if he has been ordered to be released in connection with the former case, it is obsearved in ***State by Inspector of Police v. K.N. Nehru, 2011 SCC OnLine MAD 1984*** that the jail authority shall set him at liberty and return the production warrant to the Magistrate making necessary endorsement and if only the accused continues to be in judicial custody, in connection with the former case, he can be transmitted in pursuance of production warrant in connection with the latter case. However, Section 269 CrPC and Sections 3 and 6 of the Prisoners (Attendance in Courts) Act, 1955 provide for certain contingencies where the officer in-charge of the prison may abstain from carrying out the Court's order passed u/s 267 CrPC and send to the said Court a statement of reasons for so abstaining.

When period of detention in police custody commences if formal arrest is effected?

In ***Anupam J. Kulkarni's case*** (supra), it is observed that if an arrest is made and the accused gets into physical custody of the police, surely, the said detention in police custody shall not exceed 24 hours and any such detention beyond 24 hours without the authorisation of the Magistrate shall be unconstitutional, as mandated in Article 22 (2) of the Constitution. But in a case where the accused is not actually arrested, as provided in Section 46 CrPC, and only a formal arrest is effected, the accused is not taken into the physical custody of the police. In other words, when formal arrest is effected, as stated in ***Anupam J. Kulkarni's case*** (supra), there is no custody, whereas, when there is actual arrest effected, there is custody. Thus, the law laid down in ***Deepak Mahajan's case*** (supra) stating that in every arrest there is custody and not vice versa, cannot be imported to a formal arrest. That law laid down by the Supreme Court is only with reference to the actual arrest and not with reference to the formal arrest.

Thus, the condition that the accused must be in the custody of the police cannot be taken as starting point for counting 15 days' police remand or 90 days or 60 days as the case may be. The whole purpose is that the accused should not be detained for more than 24 hours and subject to 15 days' police remand and it can further be extended up to 90/60 days as the case may be. But the custody of police for investigation purpose cannot be treated as judicial custody/detention in another case. The police custody herein means the police custody in a particular case for investigation and not judicial custody in another case. Therefore, it is clear that if formal arrest is effected period of detention in police custody commences from the date of production of accused in pursuance of production warrant.

Applicability of section 57 CrPC in case of formal arrest:

If formal arrest is effected in connection with the subsequent cases by the police, the Investigating Officer approaches the Jurisdictional Magistrate for issuance of Warrant for production of the accused. Accordingly, production warrant is issued and the accused is produced before the Jurisdictional Magistrate. This process takes a few days. Thus, the accused could not be produced before the Magistrate concerned within 24 hours from the time of formal arrest. In such a case the question arises whether the accused will be "in the custody of the police", as embodied in Section 57 CrPC and Article 22 (2) of the Constitution of India? In ***Manoj v. State of Madhya Pradesh, (1999) 3 SCC 715***, Hon'ble the Apex Court held that the Magistrate has no jurisdiction to remand the accused, if the accused is produced beyond 24 hours from the time of arrest excluding the time taken for the journey of the accused from the jail to the Court and such remand is illegal.

As is mandated under Article 22 (2) of the Constitution of India and u/s 57 CrPC, for getting the authorisation from the Court for detention, either in judicial custody or police custody, the accused has to be physically produced before the Magistrate u/s 167 CrPC. Section 167 (1) Cr.P.C. is the law which regulates and empowers a Magistrate to authorise the detention of the accused either in police custody or in judicial custody, as the case may be. It is too well settled that while passing an order of remand, either judicial custody or police custody, as mandated in Section 167 (1) CrPC, since the said detention deprives the personal liberty guaranteed under Article 21 of the Constitution of India, such order of remand shall not be passed in a mechanical manner. The Magistrate is required to apply his mind into the entries in the Case Diary, representation of the accused and other facts and circumstances, and only on satisfaction that such remand is justified, the Magistrate shall pass such order of remand. In a case where an accused is arrested and detained in physical custody of the police, as mandated in Article 22 (2) of the Constitution of India and Section 57 CrPC, undoubtedly the accused cannot be detained in police custody for more than 24 hours. But in the case where the accused is formally arrested, the same cannot be equated to an arrest as adumbrated u/s 46 CrPC when only a formal arrest is effected in prison, the accused does not get into the physical custody of the police, and therefore, there is no police custody either for 24 hours or beyond that.

Section 46 (1) CrPC, talks about the actual touch or confinement of the body of the person to be arrested by word or action. A reading of the provision of Section 46 would make it undoubtedly clear that the term “arrest” denotes confinement of the body of the person either by a physical act or by words or action. Section 46 does not indicate any other mode of arrest. Therefore, as per Section 46 (1), the arrest necessarily involves the taking of the accused into physical custody by the person who effects the arrest.

As far as the verdict of the Apex Court in ***Manoj*** (supra) is concerned, the Madras High Court distinguished the verdict of the Apex Court in. ***K.N. Nehru’s case*** (supra) and stated as:

> “It is needless to point out that the judgment of the Hon’ble Supreme Court laying down a law cannot be interpreted as though we have been called upon to interpret a statutory provision. The judgment of the Hon’ble Supreme Court laying down the law has to be fully understood in the factual scenario and in the light of the relevant statutory provisions. The above observations in Manoj’s case were made in a totally different context. To put it precisely, since the accused was never produced before the Magistrate after effecting formal arrest, the Hon’ble Supreme Court directed him to be released forthwith, since his continued custody

> in prison, without the authorization of the Jurisdictional Magistrate, was illegal. It was a case where the accused was not produced before the Magistrate in the second case and, therefore, was directed to be released. It was not a case where the person was produced before the learned Magistrate and remanded to custody and then directed to be released because there was infraction by the police."

It is clear from the above discussion that when formal arrest is effected in prison, the accused does not come into physical custody of the police at all, instead, he continues to be in judicial custody in connection with the other case. Therefore, there is no legal compulsion for the production of the accused before the Magistrate within 24 hours from the said formal arrest.

Conclusion:

When an accused is involved in more than one case and has been remanded to judicial custody in connection with another case, if the Investigating Officer in the latter case decides to arrest the accused, he can go over to the prison where the accused is already in judicial custody in connection with some other case and effect a formal arrest. When such a formal arrest is effected in prison, the accused does not come into the physical custody of the police at all, instead, he continues to be in judicial custody in connection with the other case. Therefore, there is no legal compulsion for the production of the accused before the Magistrate within 24 hours from the said formal arrest. After such formal arrest, the police officer shall make an application before the Jurisdictional Magistrate for issuance of production warrant without delay. If the conditions required in Section 267 CrPC are satisfied, the Magistrate shall issue production warrant for the production of the accused on or before a specified date before the Magistrate. When the accused is so transmitted from prison and produced before the Jurisdictional Magistrate in pursuance of the production warrant, it will be lawful for the police officer to make a request to the Magistrate for authorising the detention of the accused either in police custody or in judicial custody. After considering the said request, the representation of the accused and after perusing the case diary and other relevant materials, the Magistrate shall pass appropriate orders u/s 167 (1) CrPC.

If the police officer decides not to effect formal arrest, it will be lawful for him to straightaway make an application to the Jurisdictional Magistrate for issuance of production warrant. On such request, Magistrate shall issue production warrant for the production of the accused on or before a specified date. When the accused is so transmitted and produced, the Magistrate shall pass appropriate orders either remanding the accused either to judicial custody or police custody or dismissing the request after recording the reasons.

On receiving the production warrant so issued by the Court, the officer in-charge of the prison is required to produce the said prisoner before the Court which has issued the production warrant. Before the accused is transmitted and produced before the Court in pursuance of a production warrant in connection with a latter case, if he has been ordered to be released in connection with the former case, the jail authority shall set him at liberty and return the production warrant to the Magistrate making necessary endorsement. If there is certain contingencies officer in-charge of the prison may abstain from carrying out the Court's order passed u/s 267 CrPC and send to the said Court a statement of reasons for so abstaining u/s 269 CrPC.

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"A judgment must be read as a whole, so that conflicting parts may be harmonised to reveal the true ratio of the judgment. However, if this is not possible, and it is found that the internal conflicts within the judgment cannot be resolved, then the first endeavour that must be made is to see whether a *ratio decidendi* can be culled out without the conflicting portion. If not, then, the binding nature of the precedent on the point on which there is a conflict in a judgment, comes under a cloud."

— Rohinton Fali Nariman, J.

in BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234, para 43

EXTENSION OF PERIOD OF LIMITATION DURING LOCKDOWN: LEGAL PERSPECTIVE

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Introduction

Hon'ble the Supreme Court had taken suo motu cognizance of the situation arising out of the lockdown imposed by the government or competent authority on account of Covid-19 pandemic and resultant difficulties faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws.

Interim orders passed by Supreme Court

To obviate such difficulties and to ensure that lawyers/litigants do not become remedyless, Hon'ble Supreme Court vide order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No. 3 of 2020 ordered that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from 15th March 2020 till further order/s to be passed by it in *suo motu* proceedings. It was further clarified that such order was made in exercise of powers conferred by Articles 141 and 142 of the Constitution of India and that such order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

A clarification was again given by Hon'ble Supreme Court in its order dated 06.05.2020 in the above petition vide which it was ordered that all the periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and u/s 138 of the Negotiable Instruments Act, 1881 shall be extended with effect from 15.03.2020 till further orders to be passed it in such proceedings. It was further clarified that case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

Some questions were further raised in respect of time limit fixed to do certain acts or proceedings, though not periods of limitation, under special laws such as Arbitration and Conciliation Act, 1996, Commercial Courts Act, 2015 and Negotiable Instruments Act, 1881. The same were answered by order dated 10.07.2020 in the following terms :

> (i) Section 29A of the Arbitration and Conciliation Act, 1996 does not prescribe a period of limitation but fixes a time to do certain acts, i.e. making an arbitral award within a

prescribed time. We, accordingly, direct that the aforesaid orders shall also apply for extension of time limit for passing arbitral award under Section 29A of the said Act. Similarly, Section 23 (4) of the Arbitration and Conciliation Act, 1996 provides for a time period of 6 months for the completion of the statement of claim and defence. We, accordingly, direct that the aforesaid orders shall also apply for extension of the time limit prescribed under Section 23 (4) of the said Act.

(ii) U/s 12A of the Commercial Courts Act, 2015, time is prescribed for completing the process of compulsory pre-litigation, mediation and settlement. The said time is also liable to be extended. We, accordingly, direct that the said time shall stand extended from the time when the lockdown is lifted plus 45 days thereafter. That is to say that if the above period, i.e. the period of lockdown plus 45 days has expired, no further period shall be liable to be excluded.

(iii) We do not consider it appropriate to interfere with the period prescribed by the Reserve Bank of India for validity of a negotiable instrument, particularly, since the entire banking system functions on the basis of the period so prescribed.

Final Order dated 08.03.2021

The lockdown has been lifted and the country is returning to normalcy. Most of the courts have started physical functioning. Noticing considerable improvement in the situation, Hon'ble Supreme Court in its final order dated 08.03.2021, ordered that the extension of limitation ordered on 15.03.2020 comes to an end. Further, following directions are issued in respect of extension of period of limitation :

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state:

"Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements."

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Fraud and Justice never dwell together. Fraud is anathema to all equitable principles.

- S.B Sinha, J.

in Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319, para 15

विधिक समस्याएँ एवं समाधान

(इस स्तम्भ के अन्तर्गत मध्यप्रदेश के अधीनस्थ न्यायालयों के न्यायाधीशों द्वारा अकादमी के संज्ञान में लाई गई विधिक समस्याओं का उपयुक्त हल प्रस्तुत करने का प्रयास किया जाता है। स्तम्भ के लिये न्यायिक अधिकारी अपनी विधिक समस्याएँ अकादमी क□भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंक□में प्रकाशित किये जाएंगे।)

1. क्या आवश्यक वस्तु अधिनियम के अन्तर्गत अपराध जमानतीय प्रकृति के है?

आवश्यक वस्तु अधिनियम, 1955 के अधीन अपराधों के जमानतीय अथवा अजमानतीय ह□ने के संबंध में अधिनियम में क□ई उपबंध नहीं है। विभिन्न न्यायदृष्टांतों संत□ष सहारे विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी 2914/2015 निर्णय दिनांक 07.05.2015, मुमताज खान विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी 13374/2015 निर्णय दिनांक 18.12.2015, कमलेश धाकड़ विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी 6754/2016 निर्णय दिनांक 02.08.2016, एवं राकेश कुमार विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी 26957/2020 निर्णय दिनांक 05.09.2020 में आवश्यक वस्तु अधिनियम के अन्तर्गत अपराधों क□जमानतीय अपराध कहा गया है किन्तु बलवंत साहेब लाल विरूद्ध मध्यप्रदेश राज्य, 2002 क्रि.एल.जे. 335 तथा हरिओम विरूद्ध मध्यप्रदेश राज्य आई.एल.आर. (2010) एमपी 764 में माननीय मध्यप्रदेश उच्च न्यायालय ने प्रतिपादित किया है कि आवश्यक वस्तु अधिनियम के अधीन अपराधों के जमानतीय अथवा अजमानतीय ह□ने के सबंध में द.प्र.सं., 1973 की प्रथम अनुसूची लागू ह□गी।

हाल ही में मध्यप्रदेश उच्च न्यायालय द्वारा अरूण भारती विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी 20337/2020 निर्णय दिनांक 01.07.2020 में न्यायदृष्टांत कमलेश धाकड़ (पूर्वोक्त) तथा मुमताज खान (पूर्वोक्त) क□विचार में लेते हुये अभिमत दिया गया है कि सर्वप्रथम बलवंत साहेब (पूर्वोक्त) के मामले में आवश्यक वस्तु अधिनियम के अपराधों के जमानतीय अथवा अजमानतीय ह□ने के सबंध में द.प्र.सं. की प्रथम अनुसूची के लागू ह□ने का मत दिया गया था और उसके पश्चातवर्ती उपर□क्त सभी मामलों में बलवंत साहेब (पूर्वोक्त) क□विचार में नहीं लिया गया है। इस कारण उक्त न्यायदृष्टांतों क□''ला ऑफ प्रिसीडेन्ट'' के रूप में मान्य नहीं किया जा सकता है।

उपर□क्तानुसार, वर्तमान विधिक स्थिति यह है कि आवश्यक वस्तु अधिनियम के अधीन क□ई अपराध जमानतीय है अथवा अजमानतीय यह द.प्र.सं. की प्रथम अनुसूची के अनुसार निर्धारित किया जाएगा।

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2. क्या आदेशिका शुल्क के अभाव में परिवाद खारिज करने के आदेश के विरूद्ध पुनरीक्षण प्रचलन यो□य है?

द□ प्रक्रिया संहिता, 1973 की धारा 204 के अन्तर्गत परिवाद पर संस्थित मामले में किसी अपराध का संज्ञान करने वाले मजिस्ट्रेट क□ यदि कार्यवाही के लिए पर्याप्त आधार दर्शित हो□ता है त□ वह अभियुक्त के विरूद्ध आदेशिका जारी करता है। सिवाय तब जबकि इससे छूट प्राप्त हो□ परिवादी क□ आदेशिका शुल्क प्रस्तुत करना हो□ता है। यदि निर्दिष्ट समय में परिवादी द्वारा आदेशिका शुल्क प्रस्तुत नहीं किया जाता है तब मजिस्ट्रेट परिवाद खारिज कर सकता है। न्यायदृष्टांत भगवती स्टो□न क्रेशर विरूद्ध शेख निजाम, आई.एल.आर. 2020 एमपी 14 में अवधारित किया गया है कि आदेशिका शुल्क अदायगी में व्यतिक्रम पर परिवाद खारिज करने का आदेश अभियुक्त की दो□षमुक्ति के आदेश की को□टि में नहीं आता है। अतः ऐसे आदेश के विरूद्ध द.प्र.सं. की धारा 378 (4) के अन्तर्गत अपील पो□षणीय नहीं है। न्यायदृष्टांत भूपेन्द्र सिंह विरूद्ध साकेत कुमार, 2016(1) एम.पी.एल.जे. 209 में अभिमत दिया गया है कि यदि विधायिका का आशय यह हो□ता कि आदेशिका शुल्क अदायगी में व्यतिक्रम पर परिवाद खारिज करने का आदेश अभियुक्त की दो□षमुक्ति का आदेश माना जावेगा और धारा 378 द.प्र.सं. के अधीन अपील यो□य हो□गा तब धारा 204(4) में खारिज शब्द के स्थान पर दो□षमुक्ति शब्द इस्तेमाल करने में को□ई कठिनाई नहीं थी। ऐसे आदेश के विरूद्ध अपील प्रचलन यो□य नहीं है। किन्तु ऐसे आदेश क□ पुनरीक्षण याचिका द्वारा चुनौती दी जा सकती है। अतः उपरो□क्त न्यायदृष्टातों के आलो□क में स्पष्ट है कि आदेशिका शुल्क के अभाव में परिवाद की खारिजी के आदेश के विरूद्ध पुनरीक्षण प्रचलन यो□य है।

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3. क्या वरिष्ठ न्यायालय द्वारा प्रतिभूति पर मुक्त व्यक्ति क□ उसी घटनाक्रम में प्रकट हो□ने वाले अधिक गंभीर अपराध में पुलिस द्वारा गिरफ्तार किया जा सकता है अथवा मजिस्ट्रेट द्वारा अभिरक्षा में लिया जा सकता है?

माननीय सर्वोच्च न्यायालय ने प्रहलाद सिंह भाटी विरूद्ध एन.सी.टी. दिल्ली एवं अक्षय, ए.आई.आर. 2001 सुप्रीम को□र्ट 1444 में यह प्रतिपादित किया कि जहां प्रारंभिक अवस्था में अभियुक्त क□ किसी छो□टे मामले में जमानत दी गई हो□ और बाद में उसी मामले में अभियुक्त क□ गंभीर अपराध कारित करने के अपराध में शामिल पाया जाए वहां द.प्र.सं., 1973 की धारा 437 की उपधारा (5) एवं धारा 439 (1) के उपबंध आकर्षित नहीं हो□ते हैं और अपराध की प्रकृति में परिवर्तन हो□ने मात्र से अभियुक्त क□ पूर्व में लघु अपराध में दी गई जमानत क□ रदद् करने का को□ई प्रश्न ही उत्पन्न नहीं हो□ता है बल्कि अभियुक्त छो□टे अपराध में दी गई जमानत पर स्वतंत्र रहने के लिए अर्नह हो□ जाता है यदि अपराध किसी गंभीर अपराध में परिवर्तित हो□ जाए अर्थात यदि अपराध पश्चातवर्ती दशा में किसी गंभीर मामले में परिवर्तित हो□ जाता है त□ पूर्व में दी गयी जमानत का को□ई अस्तित्व एवं प्रभाव ही नहीं रहेगा और अभियुक्त पुनः गंभीर अपराध के मामले में गिरफ्तार किया जा सकेगा।

न्याय दृष्टांत प्रदीपराम विरूद्ध झारखण्ड राज्य, 2019(3) क्राइम्स 110 (सुप्रीम कोर्ट) के मामले में उच्चतम न्यायालय द्वारा अभिमत दिया गया है कि - (अ) अभियुक्त न्यायालय में समर्पण कर सकता है और परिवर्तित संज्ञेय एवं अजमानतीय अपराध के सम्बंध में जमानत याचिका प्रस्तुत कर सकता है। यदि जमानत याचिका खारिज होती है तो निश्चित रूप से अभियुक्त को गिरफ्तार किया जा सकता है; (ब) अन्वेषणकर्ता अधिकारी अभियुक्त की जमानत निरस्त करने हेतु एवं उसे पुनः गिरफ्तार करने हेतु धारा 437(5) या 439(2) द.प्र.सं. के अन्तर्गत न्यायालय के समक्ष आवेदन प्रस्तुत कर सकता है; (स) न्यायालय ऐसे अभियुक्त की पूर्व में स्वीकार जमानत को निरस्त करते हुए या बिना ऐसा किए, उसे अभिरक्षा में लेने का आदेश कर सकता है। अन्वेषणकर्ता अधिकारी ऐसे अभियुक्त को न्यायालय के आदेश के बिना गिरफ्तार नहीं कर सकता है।

अतः प्रदीपराम (पूर्वोक्त) के मामले में दिए गए अभिमत के प्रकाश में वर्तमान विधिक स्थिति यह है कि यदि किसी छोटे अपराध में किसी अभियुक्त को पूर्व में जमानत का लाभ प्रदान किया जा चुका हो तो बाद में उसी घटनाक्रम से प्रकट होने वाले गंभीर अपराध के लिये अभियुक्त न केवल पुलिस द्वारा पुनः गिरफ्तार किया जा सकता है बल्कि मजिस्ट्रेट द्वारा भी अभिरक्षा में लिया जा सकता है किन्तु यदि पुलिस उस अभियुक्त को गिरफ्तार करना चाहती है तो उसे अभियुक्त की पूर्व प्रदत्त जमानत को निरस्त करने हेतु उस न्यायालय से आदेश प्राप्त करना होगा जिस न्यायालय ने पूर्व में जमानत प्रदत्त की थी।

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4. क्या पुनरीक्षण न्यायालय धारा 203 दण्ड प्रक्रिया संहिता के अन्तर्गत निरस्त परिवाद के विरुद्ध प्रस्तुत पुनरीक्षण याचिका में मजिस्ट्रेट को विनिर्दिष्ट अपराध में संज्ञान लेने हेतु निर्देशित कर सकता है?

मजिस्ट्रेट द्वारा धारा 203 दण्ड प्रक्रिया संहिता, 1973 के अन्तर्गत परिवाद खारिज करने के आदेश के विरुद्ध पुनरीक्षण प्रचलनशील है। धारा 397 दण्ड प्रक्रिया संहिता पुनरीक्षण न्यायालय को शक्ति देती है कि वह किसी अधीनस्थ न्यायालय के समक्ष लम्बित कार्यवाही के शुद्धता, वैधता या औचित्य के संबंध में अभिलेख बुलाकर उनकी परीक्षा कर सकता है तथा अपना समाधान कर सकता है। धारा 397 के साथ धाराएं 398, 399 तथा 400 के प्रावधान भी साथ में देखना है। धारा 398 जांच हेतु निर्देशित करने की पृथक शक्ति प्रदान करती है जिसके अनुसार पुनरीक्षण न्यायालय मुख्य न्यायिक मजिस्ट्रेट को अतिरिक्त जांच करने हेतु निर्देशित कर सकता है। यहां यह प्रश्न उत्पन्न होता है कि क्या पुनरीक्षण न्यायालय मजिस्ट्रेट को विनिर्दिष्ट अपराध में संज्ञान लेने हेतु निर्देशित कर सकता है?

न्यायदृष्टांत ***रेवा राम विरूद्ध मध्यप्रदेश राज्य, 2004 (4) एम.पी.एल.जे. 351*** के मामले में पुनरीक्षण में विशेष न्यायाधीश ने मजिस्ट्रेट को यह निर्देश दिये कि धारा 3(1)(10) अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 और धारा 506 भारतीय

दण संहिता के अपराध का संज्ञान लिया जाये। ऐसे निर्देश क अवैध और क्षेत्राधिकार से बाहर माना गया। धारा 398 द.प्र.सं. में उच्च न्यायालय अथवा सेशन जज जाँच के लिए निर्देश करते हुए प्रकरण प्रतिप्रेषित कर सकता है लेकिन न्यायदृष्टांत हंसराज शर्मा विरूद्ध शिवचरण शर्मा, 2004 (3) एम.पी.एल.जे. 485 के अनुसार धारा 398 और 399 द.प्र.सं. क एक साथ पढ़ना चाहिए। ऐसा करने पर पुनरीक्षण में ऐसे निर्देश दिये जा सकते हैं कि मजिस्ट्रेट किसी अपराध विशेष में प्रकरण पंजीबद्ध करे किंतु न्यायदृष्टांत राजेन्द्र राजरिया विरूद्ध जगत नारायण थापक, 2018 (2) जेटी 471 में माननीय उच्चतम न्यायालय द्वारा यह अभिमत दिया गया कि पुनरीक्षण न्यायालय द्वारा प्रकरण रिमाण करते समय रिमाण के समर्थन में कारण प्रदर्शित किया जाना त उचित हाना है किंतु मजिस्ट्रेट क पुनरीक्षण न्यायालय के निष्कर्षों क ध्यान में रखने का निर्देश देते हुए मजिस्ट्रेट क प्रभावित किया जाना उचित नहीं हाना है और मजिस्ट्रेट से संज्ञान लेते समय अपने स्वतंत्र मस्तिष्क का प्रयाग किया जाना अपेक्षित हाना है।

PART – II

NOTES ON IMPORTANT JUDGMENTS

1. ACCOMMODATION CONTROL ACT, 1961 (M.P.) – Section 12 (1)(f)

Death of plaintiff – Even after death of a plaintiff for whom the *bona fide* need has been established, the decree of eviction cannot be denied only on the ground that the person for whom the *bona fide* need established has died unless it is established that there is nobody in the family of the deceased person to run the business for which need has been established.

स्थान नियंत्रण अधिनियम, 1961 (म.प्र.) - धारा 12 (1)(च)

वादी की मृत्यु - एक वादी, जिसके लिए सद्भाविक आवश्यकता स्थापित की गई थी, की मृत्यु के पश्चात् भी निष्कासन की डिक्री से केवल इस आधार पर इंकार नहीं किया जा सकता कि वादी जिसके लिए सद्भाविक आवश्यकता स्थापित की गई थी, की मृत्यु हो चुकी है जब तक कि यह स्थापित नहीं किया जाता कि जिस व्यवसाय को चलाने के लिये आवश्यकता स्थापित की गई थी उसे चलाने के लिए मृतक के परिवार में कोई भी सदस्य नहीं है।

Ashok Kumar v. Babulal Sahu & ors.

Judgment dated 06.03.2020 passed by the High Court of Madhya Pradesh in Second Appeal No. 390 of 2005, reported in ILR (2020) MP 941

Relevant extracts from the judgment:

Here in this case plaintiff No. 2 died during pendency of second appeal and his legal heirs have already been brought on record. As per the legal representatives, the wife of the plaintiff No. 2 alongwith two sons can continue with the business of plaintiff No. 2 and, therefore, it is not proper to say that the decree passed under Section 12 (1)(f) of the Act of 1961 cannot be maintained. However, in view of the law laid down by the Supreme Court in ***Shakuntala Bai & ors. v. Narayan Das & ors., AIR 2004 SC 3484*** it is clear that even after death of a plaintiff for whom the *bona fide* need has been established, the decree of eviction cannot be denied only on the ground that the person for whom the *bona fide* need established has died. The legal representatives of the deceased plaintiff have been brought on record. Therefore, the *bona fide* need is already established before the courts below cannot be said to have lapsed unless it is established that there is nobody in the family of the deceased person to run the business for which need has been established. Here in this case, legal heirs of deceased plaintiff have already been brought on record and there is no additional evidence available showing that the family members of the deceased plaintiff cannot start the business for which the suit shop was needed.

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2. CIVIL PROCEDURE CODE, 1908 – Section 11
LIMITATION ACT, 1963 – Article 67

(i) *Res judicata* – The decision operates as *res judicata* and not the reasons given by the Court in support of the decisions.

(ii) *Res judicata* – Any finding made by a Reference Court in a land acquisition case about apportionment of compensation cannot be binding on the parties in a suit for possession based on title or as a lessor against a lessee.

(iii) Limitation – When plaintiff claims possession from the defendant alleging him to be the tenant and that he had not handed over the possession of the leased property after determination of the lease, then such suit falls within Article 67 of the Limitation Act.

सिविल प्रक्रिया संहिता, 1908 - धारा 11

परिसीमा अधिनियम, 1963 - अनुच्छेद 67

(i) पूर्व न्याय - निर्णय पूर्व न्याय के रूप में प्रवर्तित हुआ है न कि विनिश्चय के समर्थन में न्यायालय द्वारा दिये गये कारण।

(ii) पूर्व न्याय - न्यायालय द्वारा भू-अर्जन प्रकरण में प्रतिकर के प्रभाजन के बारे में दिया गया निष्कर्ष, स्वामित्व पर आधारित वाद में अथवा पट्टेदार के विरूद्ध पट्टाकर्ता के वाद में, पक्षकारों पर बाध्यकारी नहीं हो सकता।

(iii) परिसीमा - जब वादी, प्रतिवादी पर किरायेदार होने और पट्टे का पर्यावसान हो जाने के बाद पट्टाकृत संपत्ति हस्तांतरित न करने का आक्षेप करते हुए कब्जे का दावा करता है तब ऐसा वाद परिसीमा अधिनियम के अनुच्छेद 67 की परिधि में आता है।

Nand Ram (D) through L.Rs. and ors. v. Jagdish Prasad (D) through L.Rs.

Judgment dated 19.03.2020 passed by the Supreme Court in Civil Appeal No. 9918 of 2011, reported in AIR 2020 SC 1884

Relevant extracts from the judgment:

The suit for possession would not be covered by Article 65 since there is a specific article i.e. Article 67 dealing with right of the lessor to claim possession after determination of tenancy. The appellants-plaintiffs have claimed possession from the defendant alleging him to be the tenant and that he had not handed over the leased property after determination of the lease. Therefore, such suit would fall within Article 67 of the Limitation Act. Such suit having been filed on 13th March, 1981 within 12 years of the determination of lease by efflux of time on 23rd September, 1974, the same is within the period of limitation. Thus, the findings recorded by the High Court are clearly erroneous in law and the same cannot be sustained and are, thus, set aside.

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3. CIVIL PROCEDURE CODE, 1908 – Section 96

(i) Appeal against decree – Persons who can file appeal – Right of stranger – A stranger can file an appeal with the leave of appellate court if he satisfies that he falls within the category of "aggrieved persons".

(ii) "Aggrieved person" to file an appeal – Must be one whose right or interest has been adversely affected or jeopardised and that who suffers from a psychological or imaginary injury.

सिविल प्रक्रिया संहिता, 1908 - धारा 96

(i) व्यक्तियों आज्ञप्ति के विरूद्ध अपील - व्यक्ति ज अपील प्रस्तुत कर सकते हैं - मामले से अपरिचित व्यक्ति का अधिकार - मामले से अपरिचित व्यक्ति अपीलीय न्यायालय की अनुमति से अपील प्रस्तुत कर सकता है यदि वह यह समाधान कर देता है कि वह ''व्यथित व्यक्तियों'' की श्रेणी में आता है।

(ii) अपील प्रस्तुत करने के लिए ''व्यथित व्यक्ति'' - ऐसा ह ना चाहिए जिसका अधिकार या हित प्रतिकूल रूप से प्रभावित या खतरे में पड़ा ह - इसमें वह व्यक्ति सम्मिलित नहीं है जिसे मन वैज्ञानिक या काल्पनिक क्षति हुई ह।

V.N. Krishna Murthy and anr. v. Ravikumar and ors.

Judgment dated 21.08.2020 passed by the Supreme Court in Civil Appeal No. 2701 of 2020, reported in (2020) 9 SCC 501 (Three–Judge Bench)

Relevant extracts from the judgment:

Sections 96 and 100 of the Code of Civil Procedure provide for preferring an appeal from any original decree or from decree in appeal, respectively. The aforesaid provisions do not enumerate the categories of persons who can file an appeal. However, it is a settled legal proposition that a stranger cannot be permitted to file an appeal in any proceedings unless he satisfies the Court that he falls within the category of aggrieved persons. It is only where a judgment and decree prejudicially affects a person who is not party to the proceedings, he can prefer an appeal with the leave of the appellate court. Reference be made to the observation of this Court in ***Jatan Kumar Golcha v. Golcha Properties (P) Ltd., (1970) 3 SCC 573***:

> "3. ... It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment."

This Court in ***State of Punjab v. Amar Singh, (1974) 2 SCC 70*** while dealing with the maintainability of appeal by a person who is not party to a suit has observed thus:

> "83. Firstly, there is a catena of authorities which, following the dictum of ***Lindley, L.J., Securities Insurance Co., In re, (1894) 2 Ch 410 (CA)*** have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it."

In ***Baldev Singh v. Surinder Mohan Sharma, (2003) 1 SCC 34***, this Court held that an appeal under Section 96 of the Civil Procedure Code, 1908, would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of person aggrieved, it was observed in para 15 as under:

> "15. ... A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

In ***A. Subash Babu v. State of A.P., (2011) 7 SCC 616*** this Court held as under:

> "25. ... The expression "aggrieved person" denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and the extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised (vide ***Shanti Kumar R. Canji v. Home Insurance Co. of New York, (1974) 2 SCC 387*** and ***State of Rajasthan v. Union of India, (1977) 3 SCC 592***).

In ***K. Ponnalagu Ammani v. State of Madras, 1952 SCC OnLine Mad 300***, this Court laid down the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment passed in such proceedings in the following words:

> "Now, what is the test to find out when it would be proper to grant leave to appeal to a person not a party to a proceeding against the decree or judgment in such proceedings? We think it would be improper to grant leave to appeal to every person who may in some remote or indirect way be prejudicially affected by a decree or judgment. We think that ordinarily leave to appeal should be granted to persons who, though not parties to the proceedings, would be bound

by the decree or judgment in that proceeding and who would be precluded from attacking its correctness in other proceedings."

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4. CIVIL PROCEDURE CODE, 1908 – Order 3 Rule 1

POWERS OF ATTORNEY ACT, 1882 – Section 1A

Power of cross-examination – Plaintiff can cross-examine the witness in person and if he has given power of attorney to some person for cross-examination of such person, the power of attorney holder will step into the shoes of the plaintiff and he can cross-examine the witness as provided under Order 3 Rule 1 of the Code – Any handwriting expert holding power of attorney from plaintiff can cross-examine any other handwriting expert, who is a witness of the opposite party.

सिविल प्रक्रिया संहिता, 1908 - आदेश 3 नियम 1

मुख्तारनामा अधिनियम, 1882 - धारा 1क

प्रतिपरीक्षण की शक्ति - वादी साक्षी का प्रतिपरीक्षण स्वयं कर सकता है और यदि उसने किसी अन्य क□ऐसे व्यक्ति के प्रतिपरीक्षण हेतु मुख्तारनामा प्रदान किया है तब मुख्तारनामा धारक वादी का स्थान ले सकेगा और वह साक्षी का प्रतिपरीक्षण कर सकता है जैसा कि संहिता के आदेश 3 नियम 1 के अंतर्गत प्रावधानित है - वादी की ओर से मुख्तारनामा धारक काई हस्तलेख विशेषज्ञ किसी अन्य हस्तलेख विशेषज्ञ का ज□कि विराधी पक्ष का एक साक्षी है, प्रतिपरीक्षण कर सकता है।

Vinita Shukla (Smt.) v. Kamta Prasad & anr.

Order dated 20.02.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 3410 of 2019, reported in ILR (2020) MP 447

Relevant extracts from the order:

Section 1A of the Powers of Attorney Act, 1882 stipulates that "Power of Attorney" includes any instruments empowering a specified person to act for and in the name of the person executing it. By the power of attorney, the plaintiff can authorize any person to act on his behalf. Order 3 Rule 1 of the Code of Civil Procedure prescribes that 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. The word "except where otherwise expressly provided" means any other statute of C.P.C. has provided that such person can act in that way. Under the Powers of Attorney Act, 1882, when a power of attorney is given to a person

then such person can act on behalf of the executor of the power of attorney and do all acts, which are to be performed by him. Plaintiff can cross-examine the witness in person and if he has given power of attorney to some person for cross-examination of such person then such person will step into the shoes of the plaintiff and can cross-examine the witness as provided under Order III Rule 1 of the Code of Civil Procedure, therefore, the contention of the petitioner that the power of attorney holder cannot cross-examine the witness is incorrect invalid.

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5. CIVIL PROCEDURE CODE, 1908 – Order 7 Rules 10 and 10A

Return of plaint – In case of return of plaint for presentation in court of competent jurisdiction, proceeding has to commence *de novo*.

सिविल प्रक्रिया संहिता, 1908 - आदेश 7 नियम 10 एवं 10क

वादपत्र का लौटाया जाना - सक्षम क्षेत्राधिकार के न्यायालय में प्रस्तुति के लिए वादपत्र के लौटाये जाने की दशा में, कार्यवाही नए सिरे से प्रारंभ होगी।

M/s EXL Careers and anr. v. Frankfinn Aviation Services Private Limited

Judgment dated 05.08.2020 passed by the Supreme Court in Civil Appeal No. 2904 of 2020, reported in AIR 2020 SC 3670 (Three-Judge Bench)

Relevant extracts from the judgment:

It is no more *res integra* that in a dispute between parties where two or more courts may have jurisdiction, it is always open for them by agreement to confer exclusive jurisdiction by consent on one of the two courts. Jurisdictional Clause of the agreement leaves no doubt that the parties clearly indicated that it was only the court at Delhi which shall have exclusive jurisdiction with regard to any dispute concerning the franchise agreement and no other court would have jurisdiction over the same. In what view of the matter, the presentation of the plaint at Gurgaon was certainly not before a court having jurisdiction in the matter. Observations are very clear that the suit has to proceed afresh before the proper court. The directions came to be made more in the peculiar facts of the case in exercise of the discretionary jurisdiction under Article 136 of the Constitution. In cases dealing with transfer of proceedings from a Court having jurisdiction to another Court, the discretion vested in the Court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, is in marked contrast to the scheme under Order 7, Rule 10 r/w Rule 10A where no such discretion is given and the proceeding has to commence *de novo*.

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***6. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11**

ADVOCATES ACT, 1961 – Section 35

SPECIFIC RELIEF ACT, 1963 – Section 38

Professional misconduct of a lawyer – Jurisdiction of Civil Court – It is within the exclusive domain of the Bar Council to consider the question of professional misconduct – The Civil Court cannot consider as to whether any action of a Lawyer is a misconduct or not – Similarly, the Trial Court cannot pass a mandatory injunction against the Bar Council to initiate disciplinary proceedings against a Lawyer – Complete procedure is provided under the Advocates Act.

सिविल प्रक्रिया संहिता, 1908 - आदेश 7 नियम 11

अधिवक्ता अधिनियम, 1961 - धारा 35

विनिर्दिष्ट अनुतोष अधिनियम, 1963 - धारा 38

अधिवक्ता का व्यावसायिक कदाचार - व्यवहार न्यायालय का क्षेत्राधिकार - व्यावसायिक कदाचार के बिन्दु पर विचार करना अधिवक्ता परिषद के अनन्य क्षेत्राधिकार में है - व्यवहार न्यायालय इस बात पर विचार नहीं कर सकता है कि अधिवक्ता का कोई कृत्य कदाचार है या नहीं - इसी तरह विचारण न्यायालय अधिवक्ता के विरूद्ध अनुशासनात्मक कार्यवाही प्रारंभ करने के लिए अधिवक्ता परिषद के विरूद्ध आज्ञापक निषेधाज्ञा जारी नहीं कर सकता है - सम्पूर्ण प्रक्रिया अधिवक्ता अधिनियम के अन्तर्गत उपबंधित कीगई है।

Prakash Chandra Chandil v. Arun Singhal and ors.

Order dated 03.03.2020 passed by the High Court of M.P. (Gwalior Bench) in Civil Revision No. 31 of 2016, reported in AIR 2020 MP 157

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

REGISTRATION ACT, 1908 – Sections 17(1) and 17(2)

Compromise decree; registration of – Generally, "any decree or order of a court" does not require registration as per sub-clause (vi) of Section 17(2) – However, a compromise decree comprising immovable property other than that which is subject matter of the suit, compulsorily require registration. [*Mohd. Yusuf and ors. v. Rajkumar and ors., (2020) 10 SCC 264* followed]

सिविल प्रक्रिया संहिता, 1908 - आदेश 23 नियम 3

रजिस्ट्रीकरण अधिनियम, 1908 - धाराएं 17(1) एवं 17(2)

समझौता आज्ञप्ति का रजिस्ट्रीकरण - सामान्यतया, ''न्यायालय की किसी आज्ञप्ति अथवा आदेश'' क धारा 17(2) के उप-खं (vi) के अनुसार रजिस्ट्रेशन की आवश्यकता नहीं है - यद्यपि, एक समझौता आज्ञप्ति जिसमें वादग्रस्त संपत्ति के अलावा अन्य अचल संपत्ति भी सम्मिलित हों, अनिवार्य रूप से रजिस्ट्रीकरण या य है। [***मो यूसुफ एवं अन्य वि. राजकुमार एवं अन्य, (2020) 10 एससीसी 264 अनुसरित***]

Gurcharan Singh and ors. v. Angrez Kaur and anr.

Judgment dated 19.03.2020 passed by the Supreme Court in Civil Appeal No. 6835 of 2009, reported in (2020) 10 SCC 250

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8. CONSTITUTION OF INDIA, 1950 – Article 300-A

Right to property – Not fundamental right, but still is constitutional and human right – No person can be deprived of his property save by authority of law – Statutory authorities are bound to pay compensation to the person who is deprived of his property.

भारत का संविधान, 1950 - अनुच्छेद 300-ए

संपत्ति का अधिकार - मौलिक अधिकार नहीं है, परन्तु अभी भी संवैधानिक एवं मानवाधिकार है - किसी भी व्यक्ति क उसकी संपत्ति से विधिक प्राधिकार के बिना वंचित नहीं किया जा सकता है - सांविधिक प्राधिकरण उस व्यक्ति क प्रतिकर देने के लिए बाध्य हैं जिसे उसकी संपत्ति से वंचित किया गया ह।

Hari Krishna Mandir Trust v. State of Maharashtra and ors.

Judgment dated 07.08.2020 passed by the Supreme Court in Civil Appeal No. 6156 of 2013, reported in (2020) 9 SCC 356

Relevant extracts from the judgment:

The right to property may not be a fundamental right any longer, but it is still a constitutional right under Article 300-A and a human right as observed by this Court in ***Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649***. In view of the mandate of Article 300-A of the Constitution of India, no person is to be deprived of his property save by the authority of law. The appellant Trust cannot be deprived of its property save as in accordance with law.

Article 300-A of the Constitution of India embodies the doctrine of eminent domain which comprises two parts, (i) possession of property in the public interest; and (ii) payment of reasonable compensation. As held by this Court in a plethora of decisions, including ***State of Bihar v. Project Uchcha Vidya Sikshak Sangh, (2006) 2 SCC 545; Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; Bishambhar Dayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39***, the State possesses the power to take or control the property of the owner for the benefit of public. When, however, a State so acts it is obliged to compensate the injury by making just compensation as held by this Court in ***Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555***.

As observed by this Court in ***K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1***, even though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300-A of the Constitution, it is inbuilt in the Article. The State seeking to acquire private property for public purpose cannot say that no compensation shall be paid. The Regional and Town Planning Act also

does not contemplate deprivation of a landholder of his land, without compensation. Statutory authorities are bound to pay adequate compensation.

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9. COURT FEES ACT, 1870 – Section 7(iv)

Suit for declaring sale deed as void – Payment of court fees – A party to the sale deed alleging that the same was got executed by playing fraud – In that situation, *ad valorem* court fees has to be paid.

न्यायालय शुल्क अधिनियम, 1870 - धारा 7(iv)

विक्रय विलेख क शून्य घोषित करने के लिये वाद - न्यायालय शुल्क का संदाय - विक्रय विलेख के पक्षकार का अभिकथन कि वह कपट करते हुए निष्पादित किया गया था - ऐसी परिस्थिति में मूल्यानुसार न्यायालय शुल्क संदेय होगा।

Jagmohan Jadon v. State of M.P.

Order dated 10.08.2020 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 2127 of 2020, reported in AIR 2020 MP 163

Relevant extracts from the order:

If the facts of the present case are considered, then it is clear that the petitioner, who is a party to the transaction, is trying to avoid the sale deed by alleging that the same was got executed by playing fraud.

Thus, this Court is of the considered opinion, that the Trial Court did not commit any mistake by directing the petitioner to pay the ad valorem Court Fee.

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***10. COURT FEES ACT, 1870 – Sections 7 (iv)(c) and 7 (v)(a)**

***Ad valorem* Court fees – When the cancellation of sale deed is sought by the executant to avoid sale deed, *ad valorem* court fees should be paid u/s 7 (iv)(c).**

न्यायालय शुल्क अधिनियम, 1870 - धाराएं 7 (iv)(ग) एवं 7 (v)(क)

मूल्यानुसार न्यायालय शुल्क - जब निष्पादक द्वारा विक्रय विलेख से बचने हेतु विक्रय विलेख का निरस्तीकरण चाहा जाता है तब धारा 7 (iv)(ग) के अंतर्गत मूल्यानुसार न्यायालय शुल्क का भुगतान किया जाना चाहिए।

Godhan Singh & anr. v. Sanjay Kumar Singhai & ors.

Judgment dated 08.05.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 1049 of 2016, reported in ILR (2020) MP S.N. 4

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***11. CRIMINAL PRACTICE:**

Defence witness – Maintaining silence on a particular issue is right of accused but immunities are lost when accused himself appears as defence witness and then each and every circumstance should be explained by him.

आपराधिक प्रथा:

बचाव साक्षी - किसी विशिष्ट मुद्दे पर मौन बनाए रखना अभियुक्त का अधिकार है किंतु जब अभियुक्त स्वयं बचाव साक्षी के रूप में उपस्थित हाता है तब यह उन्मुक्ति समाप्त ह□जाती है और तब उसके द्वारा प्रत्येक परिस्थितियों क□स्पष्ट किया जाना चाहिए।

Ramjilal @ Munna & ors. v. State of M.P.

Judgment dated 14.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 1014 of 2015, reported in ILR (2020) MP S.N. 9

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12. CRIMINAL PRACTICE:

Scope and effect of defence suggestions – It is settled law that accused cannot be convicted on the basis of suggestions given by the defence counsel – Trial court ignored the settled law and convicted the appellant on the basis of suggestions given by defence counsel; while suggestions were also denied by all witnesses – Any accused can be convicted only on the basis of evidence produced by prosecution, to prove all ingredients of offence – Accused may take different types of plea in his defence – The same cannot be treated as acceptance of accused and cannot be made the basis of his conviction.

आपराधिक प्रथा:

बचाव पक्ष के सुझावों का विस्तार व प्रभाव - यह स्थापित विधि है कि बचाव पक्ष के अधिवक्ता द्वारा दिये गये सुझावों के आधार पर अभियुक्त दा□षसिद्ध नहीं किया जा सकता है - विचारण न्यायालय ने इस स्थापित विधि क□नजरअंदाज किया और अपीलार्थी क□बचाव पक्ष के अधिवक्ता द्वारा दिये गये सुझावों के आधार पर दा□षसिद्ध किया जबकि सभी साक्षियों द्वारा उन सुझावों से इंकार किया गया - किसी अभियुक्त क□केवल अपराध के सभी घटकों क□साबित करने हेतु अभिय□जन द्वारा प्रस्तुत की गई साक्ष्य के आधार पर दा□षसिद्ध किया जा सकता है - अभियुक्त अपनी प्रतिरक्षा में विभिन्न प्रकार के बचाव ले सकता है - उसे अभियुक्त की स्वीकार्यता के रूप में नहीं लिया जा सकता और उसकी दा□षसिद्धि का आधार नहीं बनाया जा सकता।

Anil Patel v. State of M.P.

Judgment dated 18.02.2020 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 514 of 2011, reported in ILR (2020) MP 482

Relevant extracts from the judgment:

It appears that the defence suggested the witnesses that the deceased was having some suspicion about the relationship of the accused with the friends of deceased. It is the settled law that the accused cannot be convicted upon the basis of suggestions given by the defence counsel. But the trial court ignored the settled law and convicted the appellant upon the basis of suggestions given by the defence counsel; while the suggestions were also denied by all witnesses. Any accused can be convicted only upon the basis of evidence produced by the prosecution, to prove all ingredients of the offence. The accused may take different types of plea in his defence. That cannot be treated as acceptance of the accused and cannot be made the basis of his conviction. But the aforesaid principle is ignored by the trial court, which appeared from Para 24 of the impugned judgment.

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

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 – Section 20(3)

Maintenance claimed by unmarried daughter – Major unmarried daughter who is not suffering from any physical or mental abnormality is not entitled to claim maintenance u/s 125 of CrPC, but an unmarried Hindu daughter unable to maintain herself even after attaining majority, can claim maintenance from her father till she is unmarried u/s 20 of the Act of 1956.

दण प्रक्रिया संहिता, 1973 - धारा 125

हिन्दू दत्तक एवं भरण-पाषण अधिनियम, 1956 - धारा 20(3)

अविवाहित पुत्री द्वारा भरण-पाषण का दावा - वयस्क अविवाहित पुत्री ज किसी भी शारीरिक या मानसिक अय ग्यता से पीड़ित नहीं है, द.प्र.सं. की धारा 125 के अन्तर्गत भरण-पाषण का दावा करने की अधिकारी नहीं है, लेकिन एक अविवाहित हिन्दू पुत्री, ज वयस्क हाने के पश्चात् भी स्वयं का भरण-पाषण करने में असमर्थ है, वह विवाह हाने तक 1956 के अधिनियम की धारा 20 के अंतर्गत अपने पिता से भरण-पाषण का दावा कर सकती है।

Abhilasha v. Parkash and ors.

Judgment dated 15.09.2020 passed by the Supreme Court in Criminal Appeal No. 615 of 2020, reported in AIR 2020 SC 4355 (Three-Judge Bench)

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14. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 313
INDIAN PENAL CODE, 1860 – Sections 366-A and 506
APPRECIATION OF EVIDENCE:
CRIMINAL TRIAL:

(i) Sexual offences – False implication – Parents would not ordinarily endanger reputation of their minor daughter merely to falsely implicate their opponents – This reasoning is generic which may not always be true and should not be the sole basis to discard defence of accused.

(ii) Delay in registration of FIR – Effect – Sexual offences – Sweeping assumptions concerning delay in FIRs for sexual offences create opportunity for abuse by miscreants – Facts of each case and behaviour of parties involved ought to be analyzed by Courts before reaching a conclusion on effect of delay in registration of FIR.

(iii) Criminal trial – Duty of prosecution – Held, it is duty of prosecution to lead best evidence in its possession – Failure to do so lead to an adverse inference – Instantly, spot map prepared by IO had glaring omissions and letters which accused got written from prosecutrix were not produced during trial, which could have shed light on relationship of parties prior to the incident – Adverse inference drawn against prosecution.

(iv) Examination of accused – Duty of trial Court – Once a plausible version is put forth by accused at the stage of examination u/s 313 Cr.P.C., it is for the prosecution to negate such defence.

(v) Criminal intimidation; ingredients of – Explained – Mere utterances of words is not enough – Intention of accused to cause alarm or compel doing/abstaining from some act is required to be proved – Separate analysis of evidence and finding is desirable from trial Court on this count.

दण□ प्रक्रिया संहिता, 1973 - धाराएं 154 एवं 313

भारतीय दण□ संहिता, 1860 - धाराएं 366-ए एवं 506

साक्ष्य का मूल्यांकनः

आपराधिक विचारणः

(i) लैंगिक अपराध - मिथ्या आर□पण - सामान्यतया, माता-पिता अपनी अवस्क पुत्री की प्रतिष्ठा क□ मात्र अपने विर□धियों क□ मिथ्या आर□पित करने के लिए खतरे में नहीं □ालेंगे - यह सामान्य तर्क है ज□ सदैव सत्य नहीं ह□ सकता और यह अभियुक्त के बचाव पर अविश्वास का एकमात्र आधार नहीं ह□ना चाहिए।

(ii) प्रथम सूचना रिप□र्ट के पंजीयन में विलंब - प्रभाव - लैंगिक अपराध - लैंगिक अपराधों की प्रथम सूचना रिप□र्ट में विलंब के संबंध में व्यापक धारणाएं अपकर्ताओं द्वारा दुष्प्रय□ग का अवसर पैदा करती हैं - प्रथम सूचना रिप□र्ट के

पंजीयन में हुए विलंब के प्रभाव के निष्कर्ष पर पहुंचने के पूर्व न्यायालयों द्वारा प्रत्येक मामले के तथ्य और शामिल पक्षकारों के व्यवहार का विश्लेषण किया जाना चाहिए।

(iii) आपराधिक विचारण - अभियोजन का कर्तव्य - अभिनिर्धारित, अभियोजन का कर्तव्य है कि वह अपने पास उपलब्ध सर्वोत्तम साक्ष्य प्रस्तुत करे - ऐसा न करने पर उसके विरुद्ध प्रतिकूल निष्कर्ष निकाला जा सकता है - हस्तगत मामले में, अनुसंधान अधिकारी द्वारा तैयार स्थल मानचित्र में स्पष्ट चूक थी और अभियुक्त ने ज□ अभियात्री द्वारा लिखे गए पत्र प्राप्त किए थे, उन्हें विचारण के दौरान प्रस्तुत नहीं किया गया था, ज□ पक्षकारों के घटना के पूर्व के संबंधों पर प्रकाश □ाल सकते थे - अभियोजन के विरुद्ध प्रतिकूल निष्कर्ष निकाला गया।

(iv) अभियुक्त का परीक्षण - विचारण न्यायालय का कर्तव्य - धारा 313 द.प्र.सं के अधीन परीक्षण के चरण पर जब अभियुक्त द्वारा एक संभाव्य वर्णन प्रकट किया जाता है, तब अभियोजन पर ऐसे बचाव क□ खण्ि□त करने का दायित्व हो□ता है।

(v) आपराधिक अभित्रास के आवश्यक तत्व - व्याख्या की गई - मात्र शब्दों का उच्चारण पर्याप्त नहीं है - अभियुक्त का आशय अभियार्थी क□ भय□परत करने अथवा कोई कार्य करने या उससे विरत रहने के लिए विवश करने के लिए साबित किया जाना आवश्यक है - इस तथ्य पर विचारण न्यायालय द्वारा साक्ष्य का पृथक विश्लेषण एवं निष्कर्ष वांछनीय है।

Parminder Kaur @ P.P. Kaur @ Soni v. State of Punjab

Judgment dated 28.07.2020 passed by the Supreme Court in Criminal Appeal No. 283 of 2011, reported in (2020) 8 SCC 811 (Three–Judge Bench)

Relevant extracts from the judgment:

The reasoning is generic and is premised upon generalisations which may not be necessarily true always. It is indisputable that parents would not ordinarily endanger the reputation of their minor daughter merely to falsely implicate their opponents, but such clichés ought not to be the sole basis of dismissing reasonable doubts created and/or defences set out by the accused.

Similarly, the five-day delay in registration of the FIR, in the facts and circumstances of this case, gains importance as the father of the victim is an eyewitness to a part of the occurrence. It is difficult to appreciate that a father would await a second incident to happen before moving the law into motion. Sweeping assumptions concerning delays in registration of FIRs for sexual offences, send a problematic signal to society and create opportunities for abuse by miscreants. Instead, the facts of each individual case and the behaviour of the parties involved ought to be analysed by courts before reaching a conclusion on the reason and effect of delay in registration of FIR. In the facts of the present case, neither is Section 366-A by itself a sexual offence in the strict sense nor do the inactions of the prosecutrix or her father inspire confidence on

genuineness of the prosecution story. No steps were taken to avail of medical examination of the victim, nor was the Panchayat or any social forum approached for any form of redress till the occurrence of the second alleged incident.

x x x

The spot map prepared by PW 3 also has glaring omissions. The location of Bhan Singh's house and the place where the appellant allegedly threatened the prosecutrix on 24-2-1996 are not even marked. Letters which the prosecutrix alleged in her examination-in-chief and police complaint that the appellant got written from her, have not been produced during trial. These could have shed light on the relationship between the accused, the prosecutrix and the male tenant prior to the incident. It is the duty of the prosecution to lead the best evidence in its possession, and failure to do so ought to lead to an adverse inference. [***Mussauddin Ahmed v. State of Assam, (2009) 14 SCC 541***]

x x x

Under the Code of Criminal Procedure, 1973, after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation offered by the accused must be carefully analysed and considered by the trial court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself. [***Reena Hazarika v. State of Assam, (2019) 13 SCC 289***] Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities. [***M. Abbas v. State of Kerala, (2001) 10 SCC 103***] Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea.

In the case at hand, the alternate version given by the appellant could not be lightly brushed aside. Her two-part defence, put succinctly, was that first there was no male tenant at all and no one except for her child and mother lived with her, and second, that she was being falsely implicated as vengeance for filing a rape complaint against one Bhola Singh with whom the prosecutrix's father used to work.

x x x

Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a prerequisite of successful conviction under Section 506 IPC. [***Manik Taneja v. State of Karnataka, (2015) 7 SCC 423***] The trial court has undertaken no such separate analysis or recorded any finding on this count, thus calling into question the conviction for criminal intimidation. Further, the nature of this charge is such that it is a derivative of the main charge of "procuration of minor girls". Given

the facts of this case where the common testimony of PW 1 on both charges has been doubted, it would be unwise to rely upon it as the sole piece of evidence to convict the appellant for criminal intimidation without any other corroboration. [***Kamij Shaikh v. Emperor, AIR 1948 Pat 73***]

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15. CRIMINAL PROCEDURE CODE, 1973 – Sections 164, 207 and 208

Filing of the charge-sheet by itself does not entitle an accused to copies of any of the relevant documents including statement u/s 164 of the Code but he is entitled only after taking of the cognizance and issuance of process in terms of Sections 207 and 208 of the Code.

दण्ड प्रक्रिया संहिता, 1973 - धाराएं 164, 207 एवं 208

अभियोग पत्र की प्रस्तुति मात्र से अभियुक्त को संहिता की धारा 164 के अंतर्गत अभिलिखित किये गये कथन सहित सुसंगत प्रलेखों की प्रतियाँ प्राप्त करने का अधिकार नहीं मिलता है किन्तु संज्ञान लिये जाने के पश्चात् एवं आदेशिकायें जारी किये जाने के पश्चात् अभियुक्त संहिता की धारा 207 एवं 208 के अनुसार प्रलेखों की प्रतिलिपियाँ प्राप्त करने का अधिकारी हुआ है।

Miss 'A' v. State of Uttar Pradesh and anr.

Judgment dated 08.10.2020 passed by the Supreme Court in Criminal Appeal No. 659 of 2020, reported in AIR 2020 SC 4903 (Three-Judge Bench)

Relevant extracts from the judgment:

The Scheme of the relevant provisions of Sections 167 and 173 the Code shows that after the conclusion of the investigation, an appropriate report u/s 173 of the Code is to be filed by the police giving information as required by Section 173. In terms of Section 190 of the Code, the concerned Magistrate may take cognizance of any offence *inter alia* upon a police report. At the stage of exercise of power u/s 190 of the Code, as laid down by this Court in number of decisions, the notable being the decision in ***Bhagwant Singh v. Commissioner of Police, (1985) 2 SCC 537***, the Magistrate may deem fit that the matter requires further investigation on certain aspects/issues and may pass appropriate direction. It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 of the Code, to copies of the documents referred to in said provisions.

The filing of the charge-sheet by itself, does not entitle an accused to copies of any of the relevant documents including statement u/s 164 of the Code, unless the stages indicated above are undertaken.

Thus, merely because the charge-sheet was filed by the time the High Court had passed the order in the present matter, did not entitle Respondent No. 2 to a copy of the statement u/s 164 of the Code.

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16. CRIMINAL PROCEDURE CODE, 1973 – Section 167(2)

Compulsory bail – Indefeasible right – Neither Supreme Court in its order can be held to have eclipsed the time prescribed u/s 167(2) of CrPC nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge-sheet within the time prescribed.

दण प्रक्रिया संहिता, 1973 - धारा 167(2)

अनिवार्य जमानत - अजेय अधिकार - न ही उच्चतम न्यायालय अपने आदेश में धारा 167 (2) द.प्र.सं. के अधीन विहित अवधि क आच्छादित करना अवधारित कर सकता है न ही सरकार द्वारा उदघषित लॉक ाउन के दौरान अधिरपित कई प्रतिबंध, अभियुक्त के धारा 167(2) के अधीन विहित अवधि में अभियग पत्र प्रस्तुत नहीं करने से अनिवार्य जमानत प्राप्त करने के अधिकार पर; किसी प्रतिबंध के रूप में लागू हाने हैं।

S. Kasi v. State through the Inspector of Police Samaynallur Police Station Madurai District

Judgment dated 19.06.2020 passed by the Supreme Court in Criminal Appeal No.452 of 2020, reported in AIR 2020 SC 2921 (Three-Judge Bench)

Relevant extracts from the judgment:

Order was passed by Supreme Court in ***AIR Online 2020 SC 524*** that period of limitation, irrespective of the limitation prescribed under the general law or Special Laws, whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by Supreme Court, on account of challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. The order cannot be read to mean that it ever intended to extend the period of filing charge-sheet by police as contemplated under Section 167(2) of the Cr.P.C. The Investigating Officer could have submitted/filed the charge-sheet before the (In-charge) Magistrate. Therefore, even during the lock down and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate. The provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognise the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of Supreme Court never meant to curtail any provision of Cr.P.C. or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge-sheet

even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge-sheet after 60 days/90 days but without filing a charge-sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge-sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge-sheet is not akin to right of liberty of a person enshrined under Art. 21 and reflected in other statutes including Section 167 Cr.P.C. Neither Supreme Court in its order can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction. Leaned Single Judge also erred in holding that the lock down announced by the Government of India is akin to the proclamation of Emergency.

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

Investigation during trial – For the ends of justice, in appropriate cases, the court can order further investigation at the stage of trial.

दण प्रक्रिया संहिता, 1973 - धारा 173(8)

विचारण के दौरान अन्वेषण - समुचित प्रकरणों में, न्याय के उद्देश्य के लिए, न्यायालय विचारण के प्रक्रम पर अतिरिक्त अन्वेषण का आदेश कर सकता है।

Lokesh Solanki v. State of M.P.

Order dated 20.02.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 51140 of 2019, reported in ILR (2020) MP 1212

Relevant extracts from the order:

As per the provisions of Criminal Procedure Code, after completion of investigation in cognizable offence, the police files final report under Section 173(8) of Criminal Procedure Code, commonly known as chargesheet. After such report has been forwarded to the Magistrate, at times, the police conducts further investigation as well, under Section 173(8) of Criminal Procedure Code. However, whether such exercise can be gone into at the post cognizance stage was a matter which needed to be thrashed out. The Hon'ble Apex Court in number of citations such as in the case of ***H.N. Rishbud v. State of Delhi, AIR 1955 SC 196*** paved the way for further investigation even after the Magistrate had taken the cognizance. In the case of ***Hemant Dhasmana v. CBI and anr., (2007) 1 SCC 536***, it was held that power of police to conduct further investigation can be triggered out at the instance of the Court. In the case of ***Randhir Singh Rana v. State (Delhi Administration), (1997) 1 SCC 361***, it was held that Magistrate cannot *suo motu* direct further investigation or direct reinvestigation but an application has to be filed before him. In the case of ***Amrutbhai Shambhubhai Patel v. Sumanbhai***

Kantibhai Patel, (2017) 4 SCC 177, it was held that after cognizance has been taken, further investigation under Section 173(8) of Criminal Procedure Code, cannot be directed either *suo motu* or at the behest of complainant. However, recently the three Judge Bench of Hon'ble Apex Court in the case of ***Vinubhai Haribhai Malviya v. State of Gujarat, 2019 SCC Online SC 1346*** has held as under:

> "It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and ends of justice demanded, the Court can still not direct the investigating agency to conduct further investigation, which it could do on its own."

Hence no doubt remains that for the ends of justice, in appropriate cases, the Court can order further investigation even at the stage of trial.

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***18. CRIMINAL PROCEDURE CODE, 1973 – Section 190**

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994 – Section 28(1)

Cognizance of offence – It can safely be held that until the complaint is signed and presented before the competent Court by the officer authorized or appropriate authority as notified by the State Government, the Court cannot take cognizance on such complaint.

दण प्रक्रिया संहिता, 1973 - धारा 190

गर्भधारण पूर्व और प्रसवपूर्व निदान तकनीक (लिंग चयन प्रतिषेध) अधिनियम, 1994 - धारा 28(1)

अपराध का संज्ञान - यह सुरक्षित रूप से कहा जा सकता है कि जब तक राज्य सरकार द्वारा अधिसूचित समुचित अथवा प्राधिकृत अधिकारी द्वारा हस्ताक्षर कर परिवाद सक्षम न्यायालय के समक्ष प्रस्तुत नहीं किया जाता, न्यायालय ऐसे परिवाद पर संज्ञान नहीं ले सकता है।

Mukesh Rathore v. State of M.P. and anr.

Order dated 26.06.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Criminal Case No. 3154 of 2020, reported in 2020 CriLJ 4094

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19. CRIMINAL PROCEDURE CODE, 1973 – Sections 195 and 340

INDIAN PENAL CODE, 1860 – Sections 192, 193, 463 and 464

(i) Offences against lawful authority of public servants and offences against public justice – Composite offences for some of which Section 195 CrPC is not attracted – Procedure to be followed – Held, when it is not possible to split up the offences, procedure contained in Section 195 should be followed.

(ii) Fabricating false evidence and making false document – Constitution of – Explained – To attract Section 464, document itself must be made in the name of a person, by whom the person who creates the document knows that it was not made – Thus, if a person executes a sale deed in his name relating to property which he knows that does not belong to him, does not constitute making a false document.

दण प्रक्रिया संहिता, 1973 - धाराएं 195 एवं 340

भारतीय दण संहिता, 1860 - धाराएं 192, 193, 463 एवं 464

(i) लक सेवकों के विधिपूर्ण प्राधिकार एवं लक न्याय के विरुद्ध अपराध - समष्टि अपराध जिनमें कुछ के लिए धारा 195 द.प्र.सं. के प्रावधान आकर्षित नहीं - अपनाई जाने वाली प्रक्रिया - अभिनिर्धारित, जब अपराधों क पृथक करना संभव नहीं ह, त धारा 195 में निहित प्रक्रिया का पालन किया जाना चाहिए।

(ii) मिथ्या साक्ष्य गढ़ना और मिथ्या दस्तावेज रचना - गठन - समझाया गया - धारा 464 क आकर्षित करने के लिए दस्तावेज किसी ऐसे व्यक्ति के नाम से तैयार किया जाना चाहिए, जिसके द्वारा दस्तावेज तैयार करने वाला व्यक्ति जानता है कि यह नहीं बनाया गया था - इस प्रकार, यदि कई व्यक्ति अपने नाम से ऐसी संपत्ति का विक्रय विलेख निष्पादित करता है, ज वह जानता है कि उसकी नहीं है, त यह मिथ्या दस्तावेज बनाना नहीं कहा जाएगा।

M/s Bandekar Brothers Pvt. Ltd. & anr. v. Prasad Vassudev Keni, Etc.

Judgment dated 02.09.2020 passed by the Supreme Court in Criminal Appeal No. 546 of 2017, reported in 2020 (3) Crimes 409 (SC)

Relevant extracts from the judgment:

Equally important to remember is that if in the course of the same transaction two separate offences are made out, for one of which Section 195 of the Cr.P.C. is not attracted, and it is not possible to split them up, the drill of Section 195(1)(b) of the Cr.P.C. must be followed.

x x x

Section 463 of the IPC speaks of “forgery” as being the making of a “false document” or “false electronic record”, or a part thereof, to do the various things that are stated in that section. Unless a person is said to make a false document or electronic record, Section 463 does not get attracted at all. The making of a “false document” is then dealt within Section 464 of the IPC.

The “First” category of Section 464 makes it clear that anyone who dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, can be said to make a false document. Several judgments of this Court

have held that assuming dishonesty or fraud, the second ingredient of the "First" category of Section 464 is that the document itself must be made by or by the authority of a person by whom or by whose authority the person who creates the forgery knows that it was not made. If the second ingredient is found missing, the offence of forgery is not made out at all.

In ***Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751***, it was held that the execution of a sale deed by somebody in his own name *qua* property which is not his does not constitute making a "false document" under Section 464 of the IPC, because he does not impersonate the owner or falsely claim to be authorised or empowered by the owner to execute the deed on the owner's behalf. The Court held:

> "The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.
>
> There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he *bona fide* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.
>
> When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else.

Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code is attracted."

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***20. CRIMINAL PROCEDURE CODE, 1973 – Section 197**

PREVENTION OF CORRUPTION ACT, 1988 – Sections 13(1)(d), (2) and 19

Sanction for prosecution – Investigation has been completed and charge sheet has been filed then the effect of sanction is not material.

दण प्रक्रिया संहिता, 1973 - धारा 197

भ्रष्टाचार निवारण अधिनियम, 1988 - धाराएं 13(1)(घ), (2) एवं 19

अभियजन के लिए स्वीकृति - अन्वेषण पूर्ण ह गया है और अभियगपत्र प्रस्तुत किया जा चुका है त स्वीकृति का प्रभाव महत्वपूर्ण नहीं है।

Vivek Singh v. State of M.P. and ors.

Order dated 19.05.2020 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No.25440 of 2019, reported in 2020 CriLJ 2893 (M.P.) (DB)

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21. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 228

Framing of Charge – Criminal Conspiracy – No material on record show that the accused and co-accused entered into an agreement and for getting a job, they prepared and submitted a forged mark-sheet as genuine – Only on the basis of memorandum of co-accused, framing of charge is not proper.

दण प्रक्रिया संहिता, 1973 - धाराएं 227 एवं 228

आरप्र की विरचना - आपराधिक ष यंत्र - अभिलेख पर ऐसी कई विषय वस्तु नहीं है ज यह दर्शित करती ह कि अभियुक्त एवं सह-अभियुक्त एक समझौते में शामिल थे और नौकरी पाने के लिए उन्होंने कूटरचित अंकसूची क वास्तविक के रूप में तैयार और प्रस्तुत किया - केवल सह-अभियुक्त के कथन के आधार पर आरप्र की विरचना उचित नहीं है।

Jagesh v. State of M.P.

Judgment dated 09.06.2020 passed by the High Court of Madhya Pradesh in Criminal Revision No. 404 of 2019, reported in 2020 CriLJ 3493

Relevant extracts from the judgment:

It *prima facie* appears from the case diary that the mark-sheet of four persons

were found forged but the petitioners have been made as an accused in relation to forged mark-sheet of co-accused Anjani Pawar. Although, the Trial Court has framed the aforesaid charges against the petitioners/accused in relation to other persons also allegedly whose mark-sheet found to be forged but this is not a case of prosecution. It is not disputed that on the basis of memorandum of Anjani Pawar, the petitioner Jagesh has been implicated as an accused who disclosed about the petitioner Dashrath. There is no other evidence against the petitioners except the memorandum of co-accused. Although, the seizure of ` 10,000/- from the possession of petitioner-Jagesh and ` 5,000/- from the possession of petitioner-Dashrath were made by the police but same was done after long time of its giving, moreover, there is no material on the record on which it can be said that the seized amount was in connection with the co-accused Anajni Pawar in any manner. Further during the investigation, the Investigating Officer has also recorded the statement of husband of Anjani Pawar who expressed his unawareness regarding payment of alleged amount by her wife to petitioner/accused for preparing forged mark-sheet. There is also no investigation found in relation to Jitendra Prajapati who allegedly got

` 45,000/- from the co-accused Dashrath. There is no material on the record on which it can be said that the petitioners committed alleged offences. Apart from that there is no material which shows that the petitioners and co-accused Anjani Pawar were entered into an agreement and for getting a job, they prepared and submitted a forged mark-sheet as genuine. In regard to criminal conspiracy, there is no material available on the record as well as no extra judicial confession of petitioners/accused in which he confess his offence. Further no statement of any witnesses is recorded who told that petitioners/accused received any amount from co-accused Anjani Pawar.

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22. CRIMINAL PROCEDURE CODE, 1973 – Sections 372 and 377

Maintainability – Appeal seeking enhancement of sentence at the instance of the victim is not maintainable.

दण प्रक्रिया संहिता, 1973 - धाराएं 372 एवं 377

पषणीयता - पीड़ित द्वारा दण आदेश में वृद्धि करने हेतु प्रस्तुत अपील पषणीय नहीं है।

Parvinder Kansal v. State of NCT of Delhi and anr.

Judgment dated 28.08.2020 passed by the Supreme Court in Criminal Appeal No. 555 of 2020, reported in AIR 2020 SC 4044 (Three-Judge Bench)

Relevant extracts from the judgment:

Chapter XXIX of the Code of Criminal Procedure, 1973 deals with 'Appeals' and Section 372 makes it clear that no appeal to lie unless otherwise provided by the Code or any other law for the time being in force. It is not in dispute that in the instant case appellant has preferred appeal only under Section 372, CrPC.

The proviso is inserted to Section 372, CrPC by Act 5 of 2009. Section 372 and the proviso which is subsequently inserted read as under:

> "*372. No appeal to lie unless otherwise provided.*– No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:
>
> Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, CrPC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, CrPC but similarly no appeal can be maintained by victim under Section 372, CrPC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further, we are of the view that the High Court while referring to the judgment of this Court in the case of ***National Commission for Women v. State of Delhi & anr., (2010) 12 SCC 599*** has rightly relied on the same and dismissed the appeal, as not maintainable.

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23. CRIMINAL PROCEDURE CODE, 1973 – Section 427

INDIAN PENAL CODE, 1860 – Sections 392 and 397 r/w/s 34

(i) It is settled position of the law that the direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.

(ii) The purpose of imprisonment is not only to incarcerate the accused person within four walls of the jail; the purpose is to reform the convict so that he may be brought back into the society as a peace-loving and law-abiding citizen.

दण प्रक्रिया संहिता, 1973 - धारा 427

भारतीय दण संहिता, 1860 - धाराएं 392 एवं 397 सहपठित धारा 34

(i) यह विधि की स्थापित प्रतिपादना है कि विचारण न्यायालय, अपीलीय न्यायालय और पुनरीक्षण न्यायालय दण आदेश के समवर्ती चलने के निर्देश दे सकते हैं।

(ii) दण आदेश का उद्देश्य न केवल अभियुक्त व्यक्ति क कारागार की चार-दीवारी में परिरूद्ध करके रखना है बल्कि इसका उद्देश्य दाषसिद्ध का सुधार करना है जिससे उसे शांतिप्रिय एवं विधि क मानने वाले नागरिक के रुप में समाज में वापस लाया जा सके।

Pankaj Verma alias Nikhil v. State

Judgment dated 12.06.2020 passed by the High Court of Delhi in Criminal Appeal No. 611 of 2018, reported in 2020 (3) Crimes 126 (Del.)

Relevant extracts from the judgment:

It is settled position of the law that the direction to run the sentence concurrently may be passed by the Trial Court, Appellate Court and the Revisional Court.

The purpose of imprisonment is not only to incarcerate the accused person within four walls of the jail; the purpose is to reform the convict. The aim of imprisoning a person is not merely to dump him in a jail. The aim is equally to reform him during the period of incarceration so that he may be brought back into the society as a peace-loving and law-abiding citizen. The appellant herein has been in judicial custody for more than seven years which is long enough time to reform a person. Therefore, further incarceration of the petitioner beyond seven years would not serve any fruitful purpose. The appellant has already undergone about 1 year 5 months actual sentence of 5 years. The appellant is otherwise in judicial custody from 19.06.2013 and has already been in jail for about 7 years. Thus, present case falls under four corners of cases discussed above. Therefore, it would be in the interest of justice as well as in the interest of family member of appellant who are stated to be in very bad financial condition, this Court is of the opinion that justice would be met if directed to run the sentences concurrently as prayed for.

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

Anticipatory bail – Even if the police authority has declared award or prepared *Farari Panchnama* even then anticipatory bail application is maintainable, however, it is to be seen on merits that whether that application deserves to be considered and allowed as per the factors enumerated in Section 438 of CrPC itself and if any of those factors are not satisfied then the Court certainly has discretion to reject it – It is to be kept in mind that personal liberty of an individual as ensured by Section 438 of CrPC is embodiment of Article 21 of Constitution of India in CrPC – Therefore, scope and legislative intent of Section 438 of CrPC is to be seen from that vantage point.

दण प्रक्रिया संहिता, 1973 - धारा 438

अग्रिम जमानत - यद्यपि पुलिस द्वारा पुरस्कार घोषित किया गया ह अथवा फरारी पंचनामा तैयार किया गया ह तब भी अग्रिम जमानत आवेदन पोषणीय है, तथापि यह गुणदोषों के आधार पर देखा जाना चाहिए कि क्या आवेदन द.प्र.सं. की धारा 438 में प्रगणित कारकों के अनुसार विचार किये जाने और स्वीकार किये जाने योग्य है और यदि इनमें से कोई कारक संतोषप्रद नहीं है तो न्यायालय को इसे नामंजूर करने का निश्चित रूप से विवेकाधिकार है - यह बात ध्यान में रखी जानी चाहिए कि द.प्र.सं. की धारा 438 द्वारा सुनिश्चित की गई किसी व्यक्ति की व्यक्तिगत स्वतंत्रता दण प्रक्रिया संहिता में भारत के संविधान के अनुच्छेद 21 की अभिव्यक्ति है - अतः द.प्र.सं. की धारा 438 के विस्तार एवं विधायी आशय को उस दृष्टिकोण से देखा जाना चाहिए।

Balveer Singh Bundela v. State of M.P.

Order dated 12.05.2020 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 5621 of 2020, reported in ILR (2020) MP 1216

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***25. CRIMINAL TRIAL :**

APPRECIATION OF EVIDENCE:

(i) Criminal Trial – Appreciation of evidence – Related witness – Just because the witnesses are related cannot be the basis to discard their evidence, if it is otherwise natural and truthful.

(ii) Benefit of doubt – Wrong acquittal of co-accused – If a wrong relief is given to one accused, does not mean that same should be given to co-accused against whom clinching evidence has come on record about the manner in which the offence was committed.

आपराधिक विचारणः

साक्ष्य का मूल्यांकनः

(i) आपराधिक विचारण - साक्ष्य का मूल्यांकन - सम्बद्ध साक्षी - सिर्फ इसलिए कि गवाह सम्बद्ध हैं, उनकी साक्ष्य को अस्वीकार करने का आधार नहीं हो सकता है, अगर यह अन्यथा स्वाभाविक और सत्य है।

(ii) संदेह का लाभ - सह-अभियुक्त की त्रुटिपूर्ण दोषमुक्ति - यदि एक अभियुक्त को त्रुटिपूर्ण अनुतोष दिया जाता है, तो इसका तात्पर्य यह नहीं है कि सह-अभियुक्त, जिसके विरूद्ध अपराध करने के तरीके के बारे में दृढ़ साक्ष्य अभिलेख पर आई हो, को भी वही अनुतोष दिया जाना चाहिए।

Rohtas & anr. v. The State of Haryana

Judgment dated 05.11.2019 passed by the Supreme Court in Criminal Appeal No. 764 of 2009, reported in 2020 (1) Crimes 352 (SC)

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***26. EVIDENCE ACT, 1872 – Sections 45 and 73**

Expert evidence – Application filed by the defendant for comparison of signature by handwriting expert was rejected by Trial Court on the ground that there is no admitted document on record – The plaintiffs had produced their own handwriting expert's opinion based upon the sale deed containing signature of executant of disputed Will – Signature contained in Will can be compared with the signature contained in said sale deed – Opportunity to call for report of handwriting expert cannot be denied.

साक्ष्य अधिनियम, 1872 - धाराएं 45 एवं 73

विशेषज्ञ साक्षी - हस्तलेख विशेषज्ञ से हस्ताक्षर की तुलना करने हेतु प्रतिवादी द्वारा प्रस्तुत आवेदन इस आधार पर विचारण न्यायालय द्वारा अस्वीकार किया गया कि अभिलेख पर काई स्वीकृत दस्तावेज नहीं था - वादीगण ने स्वयं की ओर से विक्रय विलेख पर आधारित हस्तलेख विशेषज्ञ की राय प्रस्तुत की, जिसमें वसीयत के निष्पादक के हस्ताक्षर अन्तर्विष्ट थे - वसीयत में अन्तर्विष्ट हस्ताक्षर की तुलना उक्त विक्रय विलेख में अन्तर्विष्ट हस्ताक्षर से की जा सकती है - हस्तलेख विशेषज्ञ का प्रतिवेदन आहुत करने का अवसर दिए जाने से इंकार नहीं किया जा सकता है।

Praveen Kunwar and anr. v. Vishwajeet Singh and ors.

Order dated 12.03.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5985 of 2019, reported in AIR 2020 MP 110

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27. EVIDENCE ACT, 1872 – Sections 65 and 68

SUCCESSION ACT, 1925 – Section 63

(i) Secondary evidence – The original Will was lost and the certified copy was produced – The plaintiff had admitted the execution of the Will though it was alleged to be the result of fraud and misrepresentation – The execution of Will was not disputed by the plaintiff but only proof of the Will was the subject-matter in the suit – Therefore, one of the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading secondary evidence.

(ii) Secondary evidence – Requirement to file application – There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led – A party to the *lis* may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation for leading secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only

because an application for permission to lead secondary evidence was not filed.

(iii) Proof of Will – At least one of the attesting witnesses is required to be examined to prove his attestation and the attestation by another witness and the testator – Once the Will has been proved then the contents of such documents are part of evidence, thus the requirement of Section 63 of the Succession Act and Section 68 of the Evidence Act stands satisfied – Witness is not supposed to repeat in a parrot like manner the language of Section 68 of the Evidence Act.

साक्ष्य अधिनियम, 1872 - धाराएं 65 एवं 68

उत्तराधिकार अधिनियम, 1925 - धारा 63

(i) द्वितीयक साक्ष्य - मूल वसीयत ख□ गई थी और प्रमाणित प्रति प्रस्तुत की गई - वादी ने वसीयत के निष्पादन क□ स्वीकार किया, हालांकि यह आक्षेप लगाया कि वह ध□खाधड़ी और दुव्र्यपदेशन का परिणाम थी - वादी द्वारा वसीयत का निष्पादन विवादित नहीं था लेकिन वसीयत का प्रमाणित किया जाना ही वाद की विषय-वस्तु था - प्रतिवादियों की एक साक्ष्य यह है कि मूल वसीयत ख□ गई थी इसलिए प्रमाणित प्रति प्रस्तुत की गई है, प्रतिवादियों ने द्वितीयक साक्ष्य प्रस्तुत करने के लिए पर्याप्त आधार बताया है।

(ii) द्वितीयक साक्ष्य - आवेदन प्रस्तुत करने की आवश्यकता - इस बात की क□ई आवश्यकता नहीं है कि द्वितीयक साक्ष्य प्रस्तुत किये जाने से पहले साक्ष्य अधिनियम की धारा 65(ग) के संदर्भ में एक आवेदन किया जाना चाहिए - वाद का क□ई पक्ष आवेदन प्रस्तुत करने के विकल्प का चयन कर सकता है जिसे विचारण न्यायालय द्वारा विचार में लिया जाना चाहिए लेकिन वाद का क□ई पक्ष वादपत्र में या साक्ष्य में द्वितीयक साक्ष्य प्रस्तुत करने का आधार रखता है त□ द्वितीयक साक्ष्य क□ केवल इस कारण विचार में लेने से बाहर नहीं करना चाहिए कि द्वितीयक साक्ष्य प्रस्तुत करने की अनुमति के लिए आवेदन प्रस्तुत नहीं किया गया था।

(iii) वसीयत का साबित किया जाना - कम से कम एक अनुप्रमाणक साक्षी का परीक्षण उसके स्वयं के अनुप्रमाणन और दूसरे साक्षी तथा निष्पादन के अनुप्रमाणन क□ प्रमाणित करने के लिये आवश्यक है - जब एक बार वसीयत प्रमाणित ह□ जाती है त□ उसकी अन्तर्वस्तु साक्ष्य का भाग ह□ जाते है और धारा 63 उत्तराधिकार अधिनियम व धारा 68 साक्ष्य अधिनियम की आवश्यकता संतुष्ट ह□ जाती है - साक्षी के लिए यह आवश्यक नहीं है कि वह त□ने की भांति धारा 68 साक्ष्य अधिनियम की भाषा क□ दह□राए।

Dhanpat v. Sheo Ram (Deceased) through L.Rs. and ors.

Judgment dated 19.03.2020 passed by the Supreme Court in Civil Appeal No.1960 of 2020, reported in AIR 2020 SC 2666

Relevant extracts from the judgment:

In ***Aher Rama Gova & ors. v. State of Gujarat, (1979) 4 SCC 500***, the secondary evidence of dying declaration recorded by a Magistrate was produced in evidence. This Court found that though the original dying declaration was not produced but from the evidence, it is clear that the original was lost and was not available. The Magistrate himself deposed on oath that he had given the original dying declaration to the Head Constable whereas the Head Constable deposed that he had made a copy of the same and given it back to the Magistrate. Therefore, the Court found that the original dying declaration was not available and the prosecution was entitled to give secondary evidence which consisted of the statement of the Magistrate as also of the Head Constable who had made a copy from the original. Thus, the secondary evidence of dying declaration was admitted in evidence, though no application to lead secondary evidence was filed.

Even though, the aforesaid judgment is in respect of the loss of a sale deed, the said principle would be applicable in respect of a Will as well, subject to the proof of the Will in terms of Section 68 of the Evidence Act. In the present case as well, the Will was in possession of the beneficiary and was stated to be lost. The Will is dated 30th April, 1980 whereas the testator died on 15th January, 1982. There is no cross-examination of any of the witnesses of the defendants in respect of loss of original Will. Section 65 of the Evidence Act permits secondary evidence of existence, condition, or contents of a document including the cases where the original has been destroyed or lost. The plaintiff had admitted the execution of the Will though it was alleged to be the result of fraud and misrepresentation. The execution of the Will was not disputed by the plaintiff but only proof of the Will was the subject matter in the suit. Therefore, once the evidence of the defendants is that the original Will was lost and the certified copy is produced, the defendants have made out sufficient ground for leading of secondary evidence.

There is no requirement that an application is required to be filed in terms of Section 65(c) of the Evidence Act before the secondary evidence is led. A party to the *lis* may choose to file an application which is required to be considered by the trial court but if any party to the suit has laid foundation of leading of secondary evidence, either in the plaint or in evidence, the secondary evidence cannot be ousted for consideration only because an application for permission to lead secondary evidence was not filed.

In view of the ***H. Venkatachala Iyengar v. B.N. Thimmajamma, AIR 1959 SC 443*** and ***Seth Beni Chand (since dead) now by LRs. v. Smt. Kamla Kunwar & ors., (1976) 4 SCC 554***, at least one of the attesting witnesses is required to be examined

to prove his attestation and the attestation by another witness and the testator. In the present case, DW-3 Maha Singh deposed that Chandu Ram had executed his Will in favour of his four grandsons and he and Azad Singh signed as witnesses. He deposed that the testator also signed it in Tehsil office. He and Azad Singh were also witnesses before the Sub-Registrar. In the cross-examination, he stated that he had come to Tehsil office in connection with other documents for registration. He deposed that Ex.D-4 the Will, was typed in his presence. He denied the question that no Will was executed in his presence. There was no cross-examination about his not being present before the Sub-Registrar. Once the Will has been proved then the contents of such document are part of evidence. Thus, the requirement of Section 63 of the Sucession Act and Section 68 of the Evidence Act stands satisfied. The witness is not supposed to repeat in a parrot like manner the language of Section 68 of the Evidence Act. It is a question of fact in each case as to whether the witness was present at the time of execution of the Will and whether the testator and the attesting witnesses have signed in his presence. The statement of the attesting witness proves the due execution of the Will apart from the evidence of the scribe and the official from the Sub-Registrar's office.

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***28. EVIDENCE ACT, 1872 – Section 65-B**

Admissibility of electronic record – Where the mode of proof was irregular or insufficient and where the document is already marked as exhibit, then the objection with regard to its mode of proof cannot be raised at a later stage, however, where the document itself is not admissible, then it has to be excluded though it might have been brought without any objection – The electronic document without accompanied by a certificate u/s 65-B of Evidence Act is not admissible in law.

साक्ष्य अधिनियम, 1872 - धारा 65-ख

इलेक्ट्रॉनिक रिकॉ की ग्राह्यता - जहां प्रमाण की रीति अनियमित अथवा अपर्याप्त थी और दस्तावेज पहले से ही प्रदर्शित किया किया जा चुका है वहां उसके प्रमाण की रीति के संबंध में आपत्ति पश्चातवर्ती प्रक्रम पर नहीं उठाई जा सकती है, हालांकि, जहां दस्तावेज स्वयमेव अग्राह्य है वहां उसे अपवर्जित कर देना चाहिए भले ही उसे किसी आपत्ति के बिना लिया गया ह - इलेक्ट्रॉनिक दस्तावेज धारा 65-ख साक्ष्य अधिनियम के प्रमाणपत्र के बिना साक्ष्य में ग्राह्य नहीं है।

Vijay and anr. v. State of M.P.

Order dated 29.05.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 482 of 2014, reported in 2020 CriLJ 4136

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***29. EVIDENCE ACT, 1872 – Section 119**

(i) Dumb witness – Effect of non-compliance – Since the term 'shall' is used in the proviso to Section 119 of the Evidence Act, the obligation of videography of the statement is mandatory.

(ii) Non-compliance of the proviso is fatal to the prosecution case and the statement of the prosecutrix is not worthy of reliance.

साक्ष्य अधिनियम, 1872 - धारा 119

(i) मूक साक्षी - अननुपालन का प्रभाव - चूंकि 'करेगा ' शब्द का उपयोग साक्ष्य अधिनियम की धारा 119 के परंतुक में किया गया है, बयान की वीडियोग्राफी का दायित्व अनिवार्य है।

(ii) परंतुक का अनुपालन न करना अभियोजन के मामले के लिए घातक है और अभियोक्त्री का कथन विश्वास योग्य नहीं है।

Gokul v. State of M.P.

Judgment dated 12.05.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 187 of 2015, reported in 2020 CriLJ 2713

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***30. HINDU SUCCESSION ACT, 1956 – Partition**

Alienation before Partition – Right of Co-sharer – When the property in dispute is joint in nature, then although the co-sharer can sell the property to the extent of his share, but he cannot sell the specific piece of land – Alienation of the property beyond his share is void.

हिन्दू उत्तराधिकार अधिनियम, 1956 - विभाजन

विभाजन पूर्व हस्तांतरण - सह-अंशधारी का अधिकार - जब विवादित संपत्ति संयुक्त प्रकृति की है तब हालांकि सह-अंशधारी संपत्ति कोअपने अंश की सीमा तक विक्रय कर सकता है किंतु वह भूमि के विनिर्दिष्ट अंश का विक्रय नहीं कर सकता - उसके अंश के अतिरिक्त सम्पत्ति का हस्तांतरण शून्य है।

Parmal Singh (dead) through L.Rs. and ors. v. Ghanshyam and anr.

Judgment dated 07.03.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 373 of 2001, reported in 2020 (2) MPLJ 132

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***31. HINDU SUCCESSION ACT, 1956 – Section 6**

REGISTRATION ACT, 1908 – Section 17

Devolution of interest in coparcenary property – Right of a daughter

(i) The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 09.09.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 09.09.2005.

(iv) The statutory fiction of partition created by proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act of 1956 or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

हिन्दू उत्तराधिकार अधिनियम, 1956 - धारा 6

रजिस्ट्रीकरण अधिनियम, 1908 - धारा 17

सहदायिकी सम्पत्ति में हित का न्यागमन - पुत्री का अधिकार

(i) हिन्दू उत्तराधिकार अधिनियम, 1956 की प्रतिस्थापित धारा 6 के उपबंधित प्रावधानों में संषोधन के पूर्व अथवा पश्चात् जन्मी पुत्री क सहदायिक की प्रास्थिति पुत्र के समान अधिकारों और दायित्वों के साथ प्राप्त हती है।

(ii) संशोधन के पूर्व जन्मी पुत्री उक्त अधिकारों का दावा 09.09.2005 से कर सकती है, सिवाय धारा 6(1) में प्रावधानित अपवाद के जैसे वितरण, अंतरण, विभाजन या वसीयत द्वारा अन्य संक्रामण ज 20 दिसम्बर, 2004 के पूर्व ह चुके हों।

(iii) चूंकि सहदायिकी में अधिकार जन्म से हता है, इसलिए यह आवश्यक नहीं है कि पिता सहदायिक 09.09.2005 क जीवित ह।

(iv) मूल रूप से अधिनियमित हिन्दू उत्तराधिकार अधिनियम, 1956 की धारा 6 के परंतुक द्वारा बनाई गई विभाजन की वैधानिक संकल्पना, वास्तविक विभाजन या सहदायिकी की समाप्ति नहीं करती है। यह कल्पना मात्र मृतक सहदायिक का

अंश ज्ञात करने के उद्देश्य से थी, जब उसके पीछे 1956 के अधिनियम की अनुसूची में निर्दिष्ट वर्ग-एक की महिला उत्तराधिकारी, या ऐसी महिला के पुरुष नातेदार जीवित ह□ प्रतिस्थापित धारा 6 के प्रावधानों क□पूर्ण प्रभाव दिए जाने की आवष्यकता है। इस बात के ह□ते हुए कि एक प्रारंभिक आज्ञप्ति पारित कर दी गई है, अंतिम आज्ञप्ति अथवा अपील में लंबित कार्यवाही मं◌े भी पुत्रियों क□सहदायिकी में पुत्रों के समान हिस्सा दिया जाना ह□गा।

(v) 1956 के अधिनियम की धारा 6(5) के स्पष्टीकरण के कठ□र प्रावधानों के आलक्ष में मौखिक विभाजन क□ विभाजन के सांविधिक मान्यता प्राप्त रीति के रूप में स्वीकार नहीं किया जा सकता जिसमें विलेख द्वारा प्रभाव में लाए गए एवं रजिस्ट्रीकरण अधिनियम, 1908 के अधीन रजिस्ट्रीकृत अथवा न्यायालय की आज्ञप्ति द्वारा प्रभाव में लाए विभाजन आते हैं। तथापि, आपवादिक मामलों में जहां मौखिक विभाजन के तर्क क□लक्ष दस्तावेजों द्वारा समर्थित किया जाता है और विभाजन क□अंततः उसी तरीके से प्रकट किया जाता है जैसे कि यह न्यायालय की आज्ञप्ति द्वारा प्रभाव में आया ह□ त□ इसे स्वीकार किया जा सकता है। मात्र मौखिक साक्ष्य पर आधारित विभाजन के तर्क क□स्वीकार नहीं किया जा सकता है और इसे प्रथमतः खारिज किया जाना चाहिए।

Vineeta Sharma v. Rakesh Sharma and ors.

Judgment dated 11.08.2020 passed by the Supreme Court in Civil Appeal No. …., Diary No. 32601 of 2018, reported in AIR 2020 SC 3717 (Three-Judge Bench)

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32. INDIAN PENAL CODE, 1860 – Sections 120B and 420

The charge u/s 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the respondents may be liable with the aid of Section 120-B of IPC.

भारतीय दण□ संहिता, 1860 - धाराएं 120ख एवं 420

भारतीय दण□ संहिता की धारा 420 के अंतर्गत आर□प एकाकी अपराध नहीं है परन्तु इसे अधिनियम के अन्य अपराधों के साथ पढ़ा जाना ह□गा ज□प्रत्यर्थीगण क□धारा 120-ख भा.द.सं. की सहायता से उत्तरदायी बना सके।

State of Madhya Pradesh v. Yogendra Singh Jadon and anr.

Judgment dated 31.01.2020 passed by the Supreme Court in Criminal Appeal No. 175 of 2020, reported in 2020 (3) Crimes 119 (SC)

Relevant extracts from the judgment:

The manner in which loan was advanced without any proper documents and the fact that the respondents are beneficiary of benevolence of their father prima facie disclose an offence under Sections 420 and 120-B IPC. It may be stated that other officials of the Bank have been charge sheeted for an offence

under Sections 13(1)(d) and 13(2) of the Act. The charge under Section 420 IPC is not an isolated offence but it has to be read along with the offences under the Act to which the respondents may be liable with the aid of Section 120-B of IPC.

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33. INDIAN PENAL CODE, 1860 – Sections 149 and 302

CRIMINAL TRIAL:

APPRECIATION OF EVIDENCE:

(i) Sole eye witness – Evidentiary value of – Conviction can be based on evidence of sole eye witness provided it is trustworthy and reliable and free from material contradictions, omissions and/or improvements – Instantly, there were material contradictions, omissions and improvements in evidence of sole eye witness with respect to participation of co-accused in the incident, availability of light, manner in which they run away and carrying weapon *(lathis)* – Held, benefit of doubt must go to the co-accused.

(ii) Identification of accused in dark night *(Amavasya)* – Incident took place between 4.00 and 5.00 a.m. – Sole eye witness u/s 161 CrPC stated that she identified the co-accused in the light of torch and by voice – In her deposition she improved that there was chimney light in the cattle-shed where she was sleeping – There was no recovery of torch – Held, identification of co-accused is doubtful.

(iii) Conviction of original assailant relying upon the deposition of sole eye witness – Effect on case of other co-accused – Where case of original accused is distinguishable from the other co-accused, deposition of eye witness against original accused is found consistent and reliable, and against other co-accused is full of material contradictions and omissions, conviction of original accused will not affect acquittal of other co-accused.

भारतीय दण संहिता, 1860 - धाराएं 149 एवं 302

आपराधिक विचारणः

साक्ष्य का मूल्यांकनः

(i) एकल चक्षुदर्शी साक्षी - साक्ष्यिक मूल्य - दषसिद्धि एकल चक्षुदर्शी साक्षी की साक्ष्य पर आधारित ह सकती है बशर्ते वह दृढ़ और विश्वसनीय ह तथा तात्विक विरधाभासों, लप्पों और/या सुधारों से मुक्त ह - हस्तगत मामले में, एकल चक्षुदर्शी साक्षी की साक्ष्य में घटना में सह-अभियुक्त की भागीदारी, प्रकाश की उपलब्धता, घटना स्थल से उनके भागने की रीति एवं हथियार (लाठियां) रखने के बिन्दु पर तात्विक विरधाभास, लप्प और सुधार थे - अभिनिर्धारित, सह-अभियुक्त क संदेह का लाभ मिलना चाहिए।

(ii) अंधेरी रात (अमावस्या) में अभियुक्त की पहचान - घटना प्रातः 04-05 बजे के मध्य हुई - एकल चक्षुदर्शी साक्षी ने अपने धारा 161 के कथन में बताया कि उसने टा◌ॅर्च की रा◌शनी और आवाज से सह-अभियुक्त क◌ पहचाना था - अपनी परिसाक्ष्य में उसने सुधार किया कि सार (मवेशीघर) में जहां वह स◌ रही थी वहां चिमनी की रा◌शनी थी - टार्च बरामद नहीं हुई थी - अभिनिर्धारित, सह-अभियुक्त की पहचान संदिग्ध है।

(iii) एकल चक्षुदर्शी साक्षी की साक्ष्य के आधार पर मूल हमलावर की द◌षसिद्धि - अन्य सह-अभियुक्त के मामले पर प्रभाव - जहां मूल अभियुक्त का मामला अन्य सह-अभियुक्त से पृथक्करणीय है, एकल चक्षुदर्शी साक्षी का साक्ष्य मूल अभियुक्त के विरुद्ध सुदृढ़ एवं विश्वसनीय है और अन्य सह-अभियुक्त के विरुद्ध साक्ष्य तात्विक विर◌धाभासों और ल◌पों से परिपूर्ण है, मूल अभियुक्त की द◌षसिद्धि अन्य सह-अभियुक्त की द◌षमुक्ति क◌ प्रभावित नहीं करेगी।

Parvat Singh and ors. v. State of Madhya Pradesh

Judgment dated 02.03.2020 passed by the Supreme Court in Criminal Appeal No. 374 of 2020, reported in (2020) 4 SCC 33

Relevant extracts from the judgment:

The appellants herein – original Accused 2 to 5 are convicted by the learned trial court and the High Court solely relying upon the evidence/deposition of PW 8 – Mullo Bai. It cannot be disputed that there can be a conviction relying upon the evidence/deposition of the sole witness. However, at the same time, the evidence/deposition of the sole witness can be relied upon, provided it is found to be trustworthy and reliable and there are no material contradictions and/or omissions and/or improvements in the case of the prosecution.

It is required to be noted that it was a black night (Amavasya) at the time of incident. It was a dark night as the incident has happened between 4-5 a.m. PW 8 in her statement recorded under Section 161 CrPC has stated that she has seen all the accused in the light of the torch. She has stated that Bal Kishan – original Accused 1 was having an axe and other four were armed with *lathis*. She had also stated in her statement under Section 161 CrPC that Bal Kishan – original Accused 1 gave the axe-blow on the neck of the deceased due to the enmity and earlier dispute and other accused were telling to run away immediately and thereafter all the five accused ran away from behind the cattle-shed/house. She stated that she had identified all the accused in the light of the torch and also by voice. According to her after she shouted, other persons came. However, there is material improvement in her deposition before the court. In her deposition, she has stated tha accused Santosh and Rakesh caught hold of Bal Kishan – deceased. In her deposition, she has also stated that there was a chimney light in the cattle-shed. She has also stated in her deposition that the accused ran away from the nearby agricultural field of sugarcane. Therefore, the deposition of PW 8 is full of material contradictions and improvements so far

as original Accused 2 to 5 is concerned. It is required to be noted that no other independent witness even named by PW 8 has supported the case of the prosecution. Though, according to PW 8, she identified the accused in the light of the torch, there is no recovery of torch. There is material improvement so far as the chimney light is concerned. In her deposition, she has not stated anything that the appellants – original Accused 2 to 5 were having the *lathis*, though she has stated this in her statement under Section 161 CrPC. The High Court has observed relying upon her statement recorded under Section 161 CrPC that the appellants herein – Accused 2 to 5 were having *lathis*. However, as per the settled proposition of law, a statement recorded under Section 161 CrPC is inadmissible in evidence and cannot be relied upon or used to convict the accused. As per the settled proposition of law, the statement recorded under Section 161 CrPC can be used only to prove the contradictions and/or omissions. Therefore, as such, the High Court has erred in relying upon the statement of PW 8 recorded under Section 161 CrPC while observing that the appellants were having the *lathis*.

As observed hereinabove in her statement under Section 161 CrPC, she has never stated that accused Santosh and Rakesh caught hold of Bal Kishan, but stated that the appellants herein told to run away as other persons have woken. In the facts and circumstances of the case, there are material contradictions, omissions and/or improvements so far as the appellants herein - original Accused nos. 2 to 5 are concerned and therefore we are of the opinion that it is not safe to convict the appellants on the evidence of the sole witness of PW8. The benefit of material contradictions, omissions and improvements must go in favour of the appellants herein. Therefore, as such the appellants are entitled to be given benefit of doubt.

Now, so far as the submission on behalf of the State that relying upon the deposition of PW 8, the original Accused 1 was convicted and his conviction has been confirmed up to this Court and therefore to dismiss the present appeal *qua* other accused is concerned from the evidence on record and having observed hereinabove the case of the appellants – original Accused 2 to 5, is distinguishable on facts. There are material contradictions and omissions so far as the appellants – original Accused 2 to 5 are concerned. So far as the original Accused 1 is concerned, PW 8 is consistent in her statement under Section 161 CrPC as well as in her deposition before the court. There was a recovery of axe used in commission of the offence by Accused 1 at the instance of Accused 1. Under the circumstances, the case of the original Accused 2 to 5 is clearly distinguishable to that of original Accused 1.

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34. INDIAN PENAL CODE, 1860 – Sections 302 and 304

EVIDENCE ACT, 1872 – Section 3

APPRECIATION OF EVIDENCE:

(i) Murder – Single injury – There is no hard and fast rule that Section 302 IPC is not attracted in case of single injury – Nature of injury, part of body, weapon used are indicators to gather intention – It depends upon the facts and circumstances of each case.

(ii) Motive; absence of – Effect – Where there is definite evidence and eye-witness account of incident to prove the role of accused, absence of proving the motive does not affect prosecution case.

भारतीय दण संहिता, 1860 - धाराएं 302 एवं 304

साक्ष्य अधिनियम, 1872 - धारा 3

साक्ष्य का मूल्यांकनः

(i) हत्या - एकल चट - ऐसा क ई कठ र नियम नहीं है कि एकल चट के मामले में भा.द.सं. की धारा 302 आकर्षित नहीं ह ती है - चट की प्रकृति, शरीर का भाग, प्रयुक्त हथियार आशय ज्ञात करने के लिए संकेतक हैं - यह प्रत्येक मामले के तथ्यों और परिस्थितियों पर निर्भर करता है।

(ii) हेतुक का अभाव - प्रभाव - जहां अभियुक्त की भूमिका क साबित करने के लिए निश्चित साक्ष्य और घटना के चक्षुदर्शी साक्षी हैं, वहां हेतुक साबित करने में विफलता अभिय जन के मामले क प्रभावित नहीं करती है।

Stalin v. State represented by the Inspector of Police

Judgment dated 09.09.2020 passed by the Supreme Court in Criminal Appeal No. 577 of 2020, reported in 2020 (3) Crimes 447 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

There is no hard and fast rule that in a case of single injury Section 302 IPC would not be attracted. It depends upon the facts and circumstances of each case. The nature of injury, the part of the body where it is caused, the weapon used in causing such injury are the indicators of the fact whether the accused caused the death of the deceased with an intention of causing death or not. It cannot be laid down as a rule of universal application that whenever the death occurs on account of a single blow, Section 302 IPC is ruled out. The fact situation has to be considered in each case, more particularly, under the circumstances narrated hereinabove, the events which precede will also have a bearing on the issue whether the act by which the death was caused was done with an intention of causing death or knowledge that it is likely to cause death, but without intention to cause death. It is the totality of the circumstances which will decide the nature of offence.

x x x

As observed and held by this Court in the case of ***Jafel Biswas v. State of West Bengal, (2019) 12 SCC 560***, the absence of motive does not disperse a prosecution case if the prosecution succeed in proving the same. The motive is always in the mind of person authoring the incident. Motive not being apparent or not being proved only requires deeper scrutiny of the evidence by the courts while coming to a conclusion. When there are definite evidence proving an incident and eye-witness accounts prove the role of accused, absence in proving the motive by prosecution does not affect the prosecution case.

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

(i) Murder or culpable homicide not amounting to murder – Single assault on head with lathi – Deceased died next day morning in hospital – Post-mortem revealed two contusions and one fracture in parietal region – There was land dispute between the parties – Assault was not pre-meditated but took place in heat of passion – Held, cumulative effect of circumstances, manner of assault, nature and number of injuries reveal that act was done with knowledge that it was likely to cause death, but without any intention to do so – Conviction from Section 302 IPC converted to 304 Part-II.

(ii) Lathi – Nature of – Held, lathi is a common item carried by a villager in this country – Fact that it is also capable of being used as a weapon of assault does not make it a weapon of assault simpliciter.

भारतीय दण संहिता, 1860 - धाराएं 302 एवं 304 भाग-द

(i) हत्या अथवा आपराधिक मानव वध ज हत्या नहीं है - लाठी से सिर पर एकमात्र प्रहार - मृतक की अगले दिन सुबह अस्पताल में मृत्यु हुई - शव-परीक्षण में पार्श्विका क्षेत्र में द नीलगू और एक अस्थिभंग का पता चला - पक्षकारों के मध्य भूमि विवाद था - हमला पूर्व नियजित नहीं था और आवेश में आकर किया गया - अभिनिर्धारित, परिस्थितियों का संचयी प्रभाव, मारपीट करने का तरीका, चटों की प्रकृति व संख्या से पता चलता है कि कृत्य इस ज्ञान के साथ किया गया था कि इससे मृत्यु हने की संभावना थी, परंतु ऐसा करने के आशय से नहीं किया गया था - दषसिद्धि धारा 302 भा.द.सं. से धारा 304 भाग-द में संपरिवर्तित की गई।

(ii) लाठी की प्रकृति - अभिनिर्धारित, लाठी इस देश में एक ग्रामीण द्वारा रखे जाने वाली एक सामान्य वस्तु है - मात्र यह तथ्य कि यह हमला करने के हथियार के रूप में भी उपयग की जा सकती है, इसे हमला करने का हथियार नहीं बनाता है।

Jugut Ram v. State of Chhattisgarh

Judgment dated 16.09.2020 passed by the Supreme Court in Criminal Appeal No. 616 of 2020, reported in (2020) 9 SCC 520 (Three Judge Bench)

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***36. INDIAN PENAL CODE, 1860 – Sections 304 Part-II and 304-A**

Death by negligent act or culpable homicide not amounting to murder – On the occasion of marriage of a girl, the accused was playing fire breathing and was pouring kerosene on the cow dung cake with cane – The villager asked him not to do so but he did not prevent himself due to which the cane caught fire and the accused threw the same onto the children standing over there – Resultantly, five children died – At the time when accused was playing fire breathing, he had no knowledge that his act would result in an accident causing death of children – Accused did not take precautions while playing such dangerous act and acted in a negligent manner – Act of accused falls within the ambit of death by negligence u/s 304-A of IPC.

भारतीय दण संहिता, 1860 - धाराएं 304 भाग-द एवं 304-क

उपेक्षापूर्ण कार्य द्वारा मृत्यु या हत्या की कटि में न आने वाला सदष मानव वध - लड़की के विवाह के अवसर पर अभियुक्त आग से खेल रहा था और छड़ी की सहायता से कण पर मिट्टी का तेल ाल रहा था - गांव वाले ने उसे ऐसा करने से मना किया किन्तु वह नहीं माना जिस कारण छड़ी ने आग पकड़ लिया और अभियुक्त ने उसे वहां पर खड़े बच्चों पर फेंक दिया - परिणामस्वरूप पांच बच्चों की मृत्यु ह गई - जब अभियुक्त आग से खेल रहा था तब उसे ज्ञात नहीं था कि उसके कृत्य का परिणाम ऐसी दुर्घटना हगा जिससे बच्चों की मृत्यु हगी - अभियुक्त ने खतरनाक कार्य करने हेतु काई पूर्वावधानी नहीं रखी और उपेक्षापूर्ण तरीके से कार्य किया - अभियुक्त का कृत्य धारा 304-क भा.द.सं. के अन्तर्गत उपेक्षापूर्ण कार्य द्वारा मृत्यु कारित करने की परिधि में आता है।

Abdul Razzak v. State of M.P.

Judgment dated 18.08.2020 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 400 of 1998, reported in 2020 CriLJ 4318

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37. INDIAN PENAL CODE, 1860 – Sections 406, 409 and 420

CRIMINAL PROCEDURE CODE, 1973 – Section 154

FIR – In case of several victims in case of cheating, consolidated FIR should not be lodged because in such case one victim cannot be treated as a complainant and the remaining victims cannot be treated as witness only.

भारतीय दण संहिता, 1860 - धाराएं 406, 409 एवं 420

दण प्रक्रिया संहिता, 1973 - धारा 154

प्रथम सूचना प्रतिवेदन - छल के एक प्रकरण में अनेक पीड़ित हाने के मामले में समेकित प्रथम सूचना प्रतिवेदन दर्ज नहीं की जानी चाहिए क्योंकि ऐसे मामले में एक पीड़ित क परिवादी तथा शेष पीड़ितों क मात्र साक्षीगण नहीं माना जा सकता।

Manoj Kumar Goyal v. State of M.P. & ors.

Judgment dated 09.07.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 15521 of 2019, reported in ILR (2020) MP 522

Relevant extracts from the judgment:

Each and every act of cheating is a separate offence in itself, requiring registration of separate F.I.R. In the present case, the police has registered only one consolidated F.I.R. and as per the allegations, several persons to the tune of ` 4 Crores were cheated by the accused persons. Thus, under these circumstances, although the police might have registered only one F.I.R., but one victim cannot be treated as a complainant and the remaining victims cannot be treated as witnesses only.

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38. INSOLVENCY AND BANKRUPTCY CODE, 2016 – Sections 7 and 238A (as amendment by Second Amendment Act 26 of 2018)

LIMITATION ACT, 1963 – Section 18, Articles 62 and 137

(i) Insolvency and Bankruptcy Code, 2016 – Application filed u/s 7 of the Act – Limitation – Article 137 of Limitation Act is applicable which commences from the date of default.

(ii) Extension of limitation – It is a mixed question of law and facts – Where a party seeks application for extension of limitation, relevant facts are required to be pleaded and requisite evidence is to be adduced.

दिवाला और श धन अक्षमता संहिता, 2016 - धाराएं 7 एवं 238क (2018 के द्वितीय संश धनअधिनियम 26 द्वारा यथासंश धित)

परिसीमा अधिनियम, 1963 - धारा 18, अनुच्छेद 62 एवं 137

(i) दिवाला और और श धन अक्षमता संहिता, 2016 - आवेदन अधिनियम की धारा 7 के अंतर्गत प्रस्तुत - परिसीमा - परिसीमा अधिनियम का अनुच्छेद 137 प्रय ज्य हा गा ज ऐसे व्यतिक्रम की तिथि से आरंभ हा ता है।

(ii) परिसीमा का विस्तारण - यह विधि एवं तथ्य का मिश्रित प्रश्न है - जहां एक पक्षकार आवेदन प्रस्तुत कर परिसीमा अवधि में विस्तार की प्रार्थना करता है वहां सुसंगत तथ्यों क अभिवचनित करना एवं अपेक्षित साक्ष्य प्रस्तुत करना आवश्यक है।

Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. and anr.

Judgment dated 14.08.2020 passed by the Supreme Court in Civil Appeal No. 6347 of 2019, reported in AIR 2020 SC 4668

Relevant extracts from the judgment:

Therefore, on the admitted fact situation of the present case, where only the date of default as '08.07.2011' has been stated for the purpose of maintaining the application under Section 7 of the Code, and not even a foundation is laid in the application for suggesting any acknowledgement or any other date of default, in our view, the submissions sought to be developed on behalf of the respondent No. 2 at the later stage cannot be permitted. It remains trite that the question of limitation is essentially a mixed question of law and facts and when a party seeks application of any particular provision for extension or enlargement of the period of limitation, the relevant facts are required to be pleaded and requisite evidence is required to be adduced. Indisputably, in the present case, the respondent No. 2 never came out with any pleading other than stating the date of default as '08.07.2011' in the application. That being the position, no case for extension of period of limitation is available to be examined. In other words, even if Section 18 of the Limitation Act and principles thereof were applicable, the same would not apply to the application under consideration in the present case, looking to the very averment regarding default therein and for want of any other averment in regard to acknowledgement. In this view of the matter, reliance on the decision in Mahabir Cold Storage does not advance the cause of the respondent No. 2.

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39. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 25

GENERAL CLAUSES ACT, 1897 – Section 6

(i) Juvenile Justice (Care and Protection of Children) Act, 2015 – Effect on pending proceedings – In terms of Section 25 of the 2015 Act, all proceedings pending before any Board or Court shall continue as if 2015 Act had not been enforced.

(ii) The use of the word 'any' before the Board or Court in Section 25 of the 2015 Act, would include the appellate court or a court before which the revision petition is pending.

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 - धारा 25

साधारण खण अधिनियम, 1897 - धारा 6

(i) किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 - लंबित कार्यवाहियों का प्रभाव - अधिनियम 2015 की धारा 25 के अनुसार किसी बोर्ड या न्यायालय के समक्ष लंबित समस्त कार्यवाहियां ऐसा अधिनियम प्रवृत्त होने की दिनांक पर जारी रहेगी।

(ii) अधिनियम 2015 की धारा 25 में बो अथवा न्यायालय के पूर्व उल्लेखित शब्द ''कोई ' ' अपीलीय न्यायालय अथवा ऐसे न्यायालय जिसके समक्ष पुनरीक्षण याचिका लंबित है को समाहित करता है।

X v. State of Uttar Pradesh

Judgment dated 07.10.2020 passed by the Supreme Court in Criminal Appeal No. 860 of 2019, reported in AIR 2020 SC 4826

(Note – Name of child in conflict with law is deliberately not published.**)**

Relevant extracts from the judgment:

This brings us to the question whether the Juvenile Justice (Care and Protection) Act of 2015 (2015 Act) would be applicable as the 2015 Act vide Sub-section (1) to Section 111 repeals the 2000 Act, albeit Sub-section (2) to Section 111 states that notwithstanding this repeal anything done or any action taken under the 2000 Act shall be deemed to have been done or taken under the corresponding provisions of the 2015 Act. Section 69 'Repeal and saving clause' of the 2000 Act is identical as Sub-section (1) thereof had repealed the 1986 Act and Sub-section (2) provides that notwithstanding such repeal anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. However, what is important and relevant for us is Section 25 of the 2015 Act which, as per the head note to that Section, incorporates 'special provision in respect of pending cases' and reads:

> "Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

Section 25 is a non-obstante Clause which applies to all proceedings in respect of a child1 alleged or found to be in conflict with law pending before any Board or court on the date of commencement of the 2015 Act, that is, 31st December 2015. It states that the pending proceedings shall be continued in that Board or court as if the 2015 Act had not been passed. In ***Akhtari Bi v. State of M.P. MANU/SC/0188/2001 : (2001) 4 SCC 355***, it was observed that the right to appeal being a statutory right, the trial court's verdict does not attain finality during the pendency of the appeal and for that purpose the trial is deemed to be continuing despite conviction. Thus, the use of the word 'any' before the board or court in Section 25 of the 2015 Act, would mean and include any court including the appellate court or a court before which the revision petition is pending. This is also apparent from the use of the words 'a child alleged or found to be in conflict with law'. The word 'found' is used in past-tense and would apply in cases where an order/judgment has been passed. The word 'alleged' would refer to those proceedings where no final order has been passed and the matter is sub-judice. Further, Section 25 of the 2015 Act applies to

proceedings before the board or the court and as noticed above, it would include any court, including the appellate court or the court where the revision petition is pending. In the context of Section 25, the expression 'court' is not restricted to mean a civil court which has the jurisdiction in the matter of 'adoption' and 'guardianship' in terms of Clause (23) to Section 2 of the 2015 Act. The definition Clause is applicable unless the context otherwise requires. In case of Section 25, the legislature is obviously not referring to a civil court as the Section deals with pending proceedings in respect of a child alleged or found to be in conflict with law, which cannot be proceedings pending before a civil court. Since the Act of 2015 protects and affirms the application of the 2000 Act to all pending proceedings, we do not read that the legislative intent of the 2015 Act is to the contrary, that is, to apply the 2015 Act to all pending proceedings.

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40. LAND REVENUE CODE, 1959 (M.P.) – Sections 185 and 190

(i) Bhumiswami rights – The occupancy tenant in Mahakoshal region can only be a person who is in possession of the land before coming into force of the Land Revenue Code, 1954.

(ii) Limitation – It is settled principle of law that the order without jurisdiction can be assailed at any point of time. The said order can be considered to be a nullity and that its invalidity could be set-up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and further a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

भू-राजस्व संहिता, 1959 (म.प्र.) - धाराएं 185 एवं 190

(i) भूमिस्वामी अधिकार - महाकौशल क्षेत्र में मौरूसी कृषक केवल वही व्यक्ति ह□ सकता है ज□ 1954 की भू-राजस्व संहिता के प्रवर्तन में आने के पूर्व से भूमि के आधिपत्य में रहा ह□।

(ii) परिसीमा - यह सुस्थापित विधि है कि बिना क्षेत्राधिकारिता वाले आदेश क□ किसी भी समय चुनौती दी जा सकती है - उक्त आदेश प्रारंभतः शून्य माना जा सकता है और इसकी अमान्यता, जब और जहां इसे लागू किया जाये या इसका अवलंब लिया जाये, स्थापित की जा सकती है - यहां तक कि निष्पादन कार्यवाहियों में और संपार्श्विक कार्यवाहियों में भी और इसके अतिरिक्त क्षेत्राधिकार का द□ष चाहे धन संबंधी ह□ या क्षेत्र संबंधी या यह कार्यवाही की विषय वस्तु के संबंध में ह□, यह न्यायालय के □क्री पारित करने के मूल प्राधिकार पर प्रहार करता है और ऐसा द□ष द□नों पक्षों की सहमति से भी उपचारित नहीं किया जा सकता।

Venishankar v. Smt. Siyarani & ors.

Order dated 19.03.2020 passed by the High Court of Madhya Pradesh, in Writ Petition No. 20898 of 2013, reported in ILR (2020) MP 1144

Relevant extracts from the order:

It is clear from the provisions of Sections 185 and 190 of the Land Revenue Code that the occupancy tenant in Mahakoshal region can only be a person who is in possession of the land before coming before coming into force of the Madhya Pradesh Land Revenue Code, 1954. In the present case, admittedly, the possession over the land in question of late Siyarani (respondent herein) was recorded only with effect from 1973-74. Thus, applying the provision of Section 190 of the Code, 1959, declaring Siyarani to be a Bhumiswami treating herself to be an occupancy tenant in pursuance to her uninterrupted possession over the land from last 17 years with effect from 1973-74, is absolutely illegal and without jurisdiction of the Tahsildar.

It is also settled principle of law that the order without jurisdiction can be assailed at any point of time. The said order can be considered to be a nullity and that its invalidity could be set-up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and further a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

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41. LIMITATION ACT, 1963 – Article 65

Adverse possession – The appellant took plea of adverse possession and at the same time title was claimed on the basis of very documents, it is held that plea of title and adverse possession cannot be advanced simultaneously from the very date – On the failure to establish the plea of title, it is necessary to prove as to from which date did the possession amount to a hostile possession in a peaceful, open and continuous manner.

परिसीमा अधिनियम, 1963 - अनुच्छेद 65

प्रतिकूल कब्जा - अपीलार्थी ने प्रतिकूल कब्जे का अभिवाक् लिया और उसी समय उन्हीं दस्तावेजों के आधार पर स्वत्व का दावा किया, यह अभिनिर्धारित किया गया कि स्वत्व और प्रतिकूल कब्जे का अभिवाक प्रारंभ से एक साथ अग्रगत नहीं किया जा सकता है - स्वत्व के अभिवाक् क□प्रमाणित करने में असफल रहने की दशा में यह आवश्यक है कि यह प्रमाणित किया जावे कि किस दिनांक क□अधिपत्य शांतिपूर्ण, खुले रूप में एवं निरंतर दशा में प्रतिकूल हुआ।

Narsamma and ors v. A. Krishnappa (Dead) through L.Rs.

Judgment dated 26.08.2020 passed by the Supreme Court in Civil Appeal No. 2710 of 2010, reported in AIR 2020 SC 4178 (Three Judge Bench)

Relevant extract from the judgment:

We may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation *vis-a-vis* the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, Appellant 1 herein, had title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession should be recognised from the very date.

In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date.

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42. MOTOR VEHICLES ACT, 1988 – Section 50

Transfer of vehicle – Any transfer of hypothecated vehicle becomes complete when financier bank issues "no objection" and all other statutory requirements are fulfilled for the transfer.

मोटरयान अधिनियम, 1988 - धारा 50

वाहन का अंतरण - वित्तपोषित वाहन का कोई अंतरण तब पूर्ण होता है जब वित्तदाता बैंक ''अनापत्ति' ' जारी कर देता है एवं अंतरण हेतु अन्य सभी वैधानिक आवश्यकताएं पूर्ण कर दी जाती है।

Surendra Kumar Bhilawe v. New India Assurance Co. Ltd.

Judgment dated 18.06.2020 passed by the Supreme Court in Civil Appeal No. 2632 of 2020, reported in 2020 ACJ 1904 (SC)

Relevant extracts from the judgment:

It was an implicit condition of the agreement for transfer of the said truck,

that the transfer would be complete only upon issuance of 'no objection" by the financier bank and upon compliance with the statutory requirements for transfer of a motor vehicle.

The contract in this case, could not possibly have been an unconditional contract of transfer of movable property in deliverable state, but a contract to transfer, contingent upon 'no objection" from ICICI Bank, and compliance with the statutory provisions of the Motor Vehicles Act, 1988.

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***43. MOTOR VEHICLES ACT, 1988 – Section 147(1)**

Fitness certificate – An insurance policy is required to use a vehicle u/s 147 of the Act and to use a vehicle, registration is compulsory and for registration of transport vehicle, the fitness certificate is necessary u/s 56 of the Act – If the offending vehicle was driven without fitness certificate, the insurance company should be exonerated from its liability and principle of "Pay and recover" should be applied.

मोटरयान अधिनियम, 1988 - धारा 147(1)

ठीक हालत में हाने का प्रमाण पत्र (फिटनेस सर्टिफिकेट) - अधिनियम की धारा 147 के अंतर्गत किसी वाहन का उपयोग करने हेतु एक बीमा पॉलिसी की आवश्यकता हाती है एवं एक वाहन का उपयोग करने हेतु रजिस्ट्रीकरण अनिवार्य है एवं परिवहन यान के रजिस्ट्रीकरण हेतु अधिनियम की धारा 56 के अतंर्गत ठीक हालत में हाने का प्रमाण पत्र (फिटनेस सर्टिफिकेट) आवश्यक है। यदि उल्लंघनकर्ता वाहन ठीक हालत में हाने के प्रमाण पत्र (फिटनेस सर्टिफिकेट) के बिना चलाया गया था तब बीमा कंपनी क उसके दायित्व से उन्मुक्त किया जाना चाहिए तथा ''भुगतान करे और वसूले' ' का सिद्धांत लागू किया जाना चाहिए।

Kavita Balethiya and ors. v. Santosh Kumar and anr.

Judgment dated 26.06.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 691 of 2016, reported in 2020 ACJ 2077

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44. MOTOR VEHICLES ACT, 1988 – Section 149(2)(a)(ii)

Liability of insurance company – If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy – However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would not be liable.

मोटरयान अधिनियम, 1988 - धारा 149(2)(क)(ii)

बीमा कंपनी का दायित्व - यदि नियोक्ता, वाहन चालक को चालन के लिए सक्षम पाता है और स्वयं संतुष्ट है कि चालक के पास अनुज्ञप्ति है, तब धारा 149(2) (क)(ii) का कोई उल्लंघन नहीं होता है तथा बीमा कंपनी, पॉलिसी की शर्तों के अधीन उत्तरदायी होगी - परंतु यदि बीमा कंपनी ये प्रमाणित करने में सक्षम है कि स्वामी/बीमाधारक को ऐसी जानकारी थी कि अनुज्ञप्ति फर्जी या अवैध है और उसके बाद भी ऐसे व्यक्ति को वाहन चालन हेतु अनुमत किया गया तब बीमा कंपनी उत्तरदायी नहीं होगी।

Nirmala Kothari v. United India Insurance Co. Ltd.

Judgment dated 04.03.2020 passed by the Supreme Court in Civil Appeal No. 1999 of 2020, reported in AIR 2020 SC 1193

Relevant extracts from the judgment:

While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

On facts, in the instant case, the Appellant/Complainant had employed the Driver, Dharmendra Singh as driver after checking his driving licence. The driving licence was purported to have been issued by the licencing authority, Sheikh Sarai, Delhi, however, the same could not be verified as the concerned officer of the licencing authority deposed that the record of the licence was not available with them. It is not the contention of the Respondent/ Insurance Company that the Appellant/complainant is guilty of willful negligence while employing the driver. The driver had been driving competently and there was no reason for the Appellant/Complainant to doubt the veracity of the driver's licence. In view of above facts and circumstances, the impugned judgment is not liable to be sustained and is hereby set aside. The appeals accordingly stand allowed. The respondent/Insurance Company is held liable to indemnify the appellant.

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45. MOTOR VEHICLES ACT, 1988 – Section 163-A

Negligence – Claim u/s 163-A – Negligence or default of the owner need not to be pleaded or established – Aspect of negligence should not be considered in a case of claim filed u/s 163-A.

माटरयान अधिनियम, 1988 - धारा 163-क

उपेक्षा - धारा 163-क के अंतर्गत दावा - स्वामी की उपेक्षा या दाष का अभिवचन करने या उसे स्थापित करने की आवश्यकता नहीं है - धारा 163-क के अंतर्गत पंजीकृत दावों में उपेक्षा के पहलू क□विचार में नहीं लिया जाना चाहिए।

Chandrakanta Tiwari v. New India Assurance Co. Ltd. and anr.

Judgment dated 08.06.2020 passed by the Supreme Court in Civil Appeal No. 2527 of 2020, reported in 2020 ACJ 2552 (Three-Judge Bench)

Relevant extracts from the judgment:

A perusal of this provision would show that learner counsel for appellant is correct in stating that the claimant need not plead or establish that the death in respect of which the claim was made, was due to any negligence or default of the owner of the vehicle or of any other person.

In this view of the matter, it is not relevant that the person insured must be the driver of the vehicle but may well have been riding with somebody else driving a vehicle which resulted in the death of the person driving the vehicle. The High Court, therefore, is clearly wrong in stating that it was necessary under Section 163A to prove that somebody else was driving the vehicle rashly and negligently, as a result of which, the death of the victim would take place.

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46. MOTOR VEHICLES ACT, 1988 – Section 166

Consortium – Consortium includes spousal consortium, parental consortium as well as filial consortium – The tribunals are directed to award compensation for loss of consortium which is a legitimate conventional head.

माटरयान अधिनियम, 1988 - धारा 166

साहचर्य - साहचर्य में पति/पत्नि का साहचर्य, माता/पिता का साहचर्य एवं पुत्र/पुत्री संबंधी साहचर्य भी शामिल है - अधिकरणों क□साहचर्य की हानि हेतु प्रतिकर अधिनिर्णीत करने हेतु निर्देशित किया जाता है ज□कि एक विधिसम्मत परंपरागत मद है।

United India Insurance Co. Ltd. v. Satinder Kaur and ors.

Judgment dated 30.06.2020 passed by the Supreme Court in Civil Appeal No. 2705 of 2020, reported in 2020 ACJ 2131 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

In ***Magma General Insurance Co. Ltd. v. Nanu Ram & ors., 2018 ACJ 2782 (SC)*** this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.

[Note: *In this judgment, Full Bench of Hon'ble the Supreme Court has awarded ` 1,20,000/- as parental consortium to three children of the deceased i.e. ` 40,000 to each child.*]

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47. MOTOR VEHICLES ACT, 1988 – Section 166

Contributory negligence – When the fact of parking of the truck-trailor on the road at night without any reflectors is proved before MACT as substantive evidence, the Tribunal should not proceed on conjectures and surmises to hold contributory negligence of motor cyclist without any reason.

मा टरयान अधिनियम, 1988 - धारा 166

या गदायी उपेक्षा - जब मा टर दुर्घटना दावा अधिकरण के समक्ष बिना किसी परावर्तक के सड़क पर रात्रि में ट्रक-ट्रेलर खड़े करने का तथ्य ठ स सबूत के तौर पर साबित कर दिया जाता है, तब अधिकरण क बिना किसी कारण के अनुमानों और सम्भावनाओं के आधार पर मा टर साइकिल चालक की या गदायी उपेक्षा का निर्धारण नहीं करना चाहिए।

Jumani Begam v. Ram Narayan and ors.

Judgment dated 11.12.2019 passed by the Supreme Court in Civil Appeal No. 9343 of 2019, reported in 2020 ACJ 2148 (SC)

Relevant extracts from the judgment:

After analysing the evidence of the driver, the MACT held that his evidence did not inspire confidence, when he stated that indicators on the truck trailer had been lit. On the contrary, the eye-witness, AW 2, in the course of his cross-examination, denied the existence of reflectors at the spot. The MACT noted that it did not appear that the truck trailer had been parked outside the area of the pakka road. Inspite of its analysis in the above terms, the MACT surmised that if the lights of the motorcycle were lit, the deceased would have been able to avoid the accident. This part of the reasoning of the MACT is purely a matter of surmise. Once the substantive evidence before the MACT established that the truck trailer had been parked on the road at night without any reflectors, we are of the view that there was no reason or justification for the MACT to proceed on the basis of conjecture in arriving at a finding of contributory negligence. We find from the judgment of the High Court that this aspect has not been discussed at all and the High Court simply proceeded to confirm the finding of contributory negligence. Consequently, on the first limb of the submission, learned counsel appearing on behalf of the appellant is correct and the submission requires to be accepted.

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48. MOTOR VEHICLES ACT, 1988 – Section 166

(i) Compensation – Permanent total disability – Loss of future prospects – Whether compensation can be awarded under the head of loss of future prospects in cases of permanent disability? Held, yes – Loss of earning capacity was found to be 100% – Victim was self employed – 40% of monthly income awarded towards future prospects.

(ii) Compensation – Permanent total disability – Loss of future prospects – Deduction towards personal expenses – Though victim survived, but is in "coma stage", Insurance Company's plea for deduction towards personal expenses rejected.

(iii) Compensation – Permanent total disability – Award of expenses for caregiver – Victim was in "coma stage" after accident – He was a labour in construction industry – Held, it would be irrational to expect victim to engage a direct caregiver after the accident – Absence of evidence does not disquality him from claiming expenses for caregiver – ` 7,00,000/- lumpsum awarded as medical attendant charges and for future medical treatment.

(iv) Compensation – Permanent total disability – Loss of amenities and loss of expectation of life – When compensation is awarded by treating loss of future earning capacity to be 100%, compensation under heads of loss of amenities or loss of expectation of life need not be awarded or nominal amount may be awarded.

मा□टरयान अधिनियम, 1988 - धारा 166

(i) प्रतिकर - स्थायी पूर्ण निःशक्तता - भविष्य की संभावनाओं की हानि - क्या स्थायी विकलांगता के मामलों में भविष्य की संभावनाओं की हानि के शीर्ष में प्रतिकर दिया जा सकता है? अभिनिर्धारित, हाँ - अर्जन क्षमता की हानि 100% पाई गई - पीड़ित स्व-नियो□जित था – 40% मासिक आय भविष्य की संभावनाओं के रूप में दिलाई गई।

(ii) प्रतिकर - स्थायी पूर्ण निःशक्तता - भविष्य की संभावनाओं की हानि - व्यक्तिगत खर्चों की कटौती - यद्यपि पीड़ित जीवित बच गया, परन्तु ''को□मा की अवस्था ' ' में है, व्यक्तिगत खर्चों की कटौती संबंधी बीमा कंपनी का तर्क खारिज किया गया।

(iii) प्रतिकर - स्थायी पूर्ण निःशक्तता - देखभाल करने वाले व्यक्ति के लिए खर्चे दिलाया जाना - दुर्घटना के बाद पीड़ित ''को□मा की अवस्था ' ' में था - वह निर्माण उद्यो□ग में एक श्रमिक था - अभिनिर्धारित, पीड़ित से दुर्घटना के बाद एक प्रत्यक्ष देखभाल करने वाले व्यक्ति की नियुक्ति करने की अपेक्षा करना तर्कहीन हो□गा - साक्ष्य का अभाव उसे देखभाल करने वाले व्यक्ति के लिए खर्चे का दावा करने से अयो□ग्य नहीं बनाता है - चिकित्सा अटेंडेंट शुल्क और भविष्य में चिकित्सा उपचार के रूप में रूपये 7,00,000/- दिलाए गए।

(iv) प्रतिकर - स्थायी पूर्ण निःशक्तता - सुविधाओं की हानि और जीवन की अपेक्षा की हानि - जब भविष्य की आय की क्षमता के नुकसान क 100% मानकर प्रतिकर दिलाया जाता ह, तब सुविधाओं की हानि और जीवन की अपेक्षा की हानि के शीर्ष के अधीन पृथक प्रतिकर दिलाने की आवश्यकता नहीं है अथवा सांकेतिक राशि दिलाई जा सकती है।

Lalan D. @ Lal and anr. v. Oriental Insurance Company Ltd.

Judgment dated 17.09.2020 passed by the Supreme Court in Civil Appeal No. 2855 of 2020, reported in (2020) 9 SCC 805 (Three Judge Bench)

Relevant extracts from the judgment:

The respondent Insurance Company has cited ***Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267*** to contend that in the context of loss of future earning, physical disability resulting from an accident ought to be judged with reference to the nature of work being performed by the person suffering the disability. The approach of the Tribunal as also the High Court in the case of the victim has been in that line only.

We are, however, also of the opinion that the High Court went wrong in not awarding any sum under the head of loss of future prospects. In ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680***, a Constitution Bench has opined that the standardisation of just compensation is to include addition of future prospects to the income of the victim at the time of occurrence of the accident. This was a case where the victim had succumbed to the injuries. The present appeal relates to a victim, who has survived the accident but his disability has been assessed to be 100% by the High Court. We confirm this finding of the High Court.

In ***Parminder Singh v. New India Assurance Co. Ltd., (2019) 7 SCC 217***, a Bench comprising of two Judges of this Court found 50% of the income of the victim was to be assessed as loss of future prospects. Earlier, this Court broadly took the same view in ***Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210***.

The multiplier to be applicable in this case would be 16 following the specification contained in ***Sarla Verma v. DTC, (2009) 6 SCC 121***. Accordingly, his loss of future earnings would have to be calculated first by multiplying Rs 4900 by 12, which would come to Rs 58,800. This would be his annual income. Once multiplier of 16 is applied, his loss of future earning would come to ` 9,40,800, considering that degree of his disability is 100%. As the appellant has survived though at present in almost “coma stage” as observed by the High Court, we reject the Insurance Company’s plea for making any deduction towards personal living expenses.

x x x

We also find that there was no compensation awarded towards expenses for a caregiver barring a paltry sum of ` 6000 as bystander expenses. The defence of the Insurance Company for keeping the said sum at that negligible

level is that no evidence had been led as regards expenses incurred towards any medical attendant. But going by the work the victim was doing and his physical state of being resulting from his injuries, conclusion has to be inevitable that he required and still requires caregiver round-the-clock and round the year to remain barely functional. Judging by the stratum of the society he comes from, it would be irrational to expect that he would have been in a position to directly engage a caregiver after his accident. It would not be an unreasonable assumption that his family members must have had to fit into that role. They could perform the role of caregiver only by diverting their own time from any form of gainful employment which could have generated some income. We proceed on the same assumption on his requirement of continued medical treatment post-discharge from the hospital. There is observation in the judgment of the High Court that he was undergoing treatment in "Aarogya Keralam" Palliative Caring Scheme.

We are of the opinion that ` 7,00,000 ought to be awarded as lump sum, composite amount for medical attendant charges and future medical treatment. In ***Kajal v. Jagdish Chand, (2020) 4 SCC 413*** for attendant charges, a Bench of two Judges of this Court has held that the multiplier methodology ought to be applied. On the other hand, in ***Parminder Singh*** (supra) a lump sum amount has been awarded. In the facts of the given case, we are of the opinion that award of lump sum would be the proper course considering the fact that the first appellant was a daily labourer. In traumatic times after his accident, his family was unlikely to maintain detailed records of the expenses incurred.

x x x

In ***Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343*** it has been observed that when compensation is awarded by treating loss of future earning capacity to be 100% or even anything more than 50% the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear. As a result, only a token or nominal amount may have to be awarded under those heads.

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49. MOTOR VEHICLES ACT, 1988 – Sections 166 and 168

(i) Compensation – Death cases – Loss of consortium and loss of love and affection – "Loss of love and affection" is comprehended in "loss of consortium" and no compensation can be awarded towards "loss of love and affection as a separate head".

(ii) Loss of consortium – Whether loss of consortium refers only to spousal consortium? Held, No – Apart from spousal consortium, parental and filial consortium are also payable.

मोटरयान अधिनियम, 1988 - धाराएं 166 एवं 168

(i) प्रतिकर - मृत्यु के मामले - साहचर्य की हानि एवं प्रेम व स्नेह की हानि - ''प्रेम व स्नेह की हानि ' ' क ''साहचर्य की हानि ' ' में सम्मिलित समझा जाता है और ''प्रेम व स्नेह की हानि ' ' के पृथक शीर्ष में क ई प्रतिकर नहीं दिलाया जा सकता है।

(ii) साहचर्य की हानि - क्या साहचर्य की हानि मात्र पति/पत्नी के साहचर्य क संदर्भित करती है? अभिनिर्धारित, नहीं - पति/पत्नी के साहचर्य की हानि के अतिरिक्त माता-पिता एवं बच्चों के साहचर्य की हानि भी देय है।

New India Assurance Company Ltd. v. Somwati and ors.

Judgment dated 07.09.2020 passed by the Supreme Court in Civil Appeal Nos. 3093 of 2020, reported in (2020) 9 SCC 644

Relevant extracts from the judgment:

The three-Judge Bench in the case of ***United India Insurance Co. Ltd. v. Satinder Kaur, 2020 SCC OnLine SC 410*** approved the comprehensive interpretation given to the expression "consortium" to include spousal consortium, parental consortium as well as filial consortium. The three-Judge Bench, however, further laid down that "loss of love and affection" is comprehended in "loss of consortium", hence, there is no justification to award compensation towards "loss of love and affection" as a separate head.

The Constitution Bench in ***National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680*** has also not, under conventional head, included any compensation towards "loss of love and affection" which have been now further reiterated by the three-Judge Bench in ***Satinder Kaur*** (supra). It is thus now authoritatively well settled that no compensation can be awarded under the head "loss of love and affection".

x x x

The word "consortium" has been defined in Black's Law Dictionary, 10th Edn. The Black's Law Dictionary also, simultaneously, notices the filial consortium, parental consortium and spousal consortium in the following manner:

> "Consortium 1. The benefits that one person, esp. a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations a claim for loss of consortium.
>
> • *Filial consortium* A child's society, affection, and companionship given to a parent.
>
> • *Parental consortium* A parent's society, affection and companionship given to a child.
>
> • *Spousal consortium* A spouse's society, affection and companionship given to the other spouse."

In ***Magma General Insurance Co. Ltd. v. Nanu Ram, (2018) 18 SCC 130*** as well as ***Satinder Kaur*** (supra), the three-Judge Bench laid down that the consortium is not limited to spousal consortium and it also includes parental consortium as well as filial consortium. In para 87 of ***Satinder Kaur*** (supra), "consortium" to all the three claimants was thus awarded. Para 87 is quoted below:

> "87. In so far as the conventional heads are concerned, the deceased Satpal Singh left behind a widow and three children as his dependents. On the basis of the judgments in ***Pranay Sethi*** (supra) and ***Magma General Insurance Co. Ltd.*** (supra), the following amounts are awarded under the conventional heads:
>
> (i) Loss of estate : Rs 15,000
>
> (ii) Loss of consortium:
>
> (a) Spousal consortium : Rs 40,000
>
> (b) Parental consortium : 40,000 × 3 = Rs 1,20,000
>
> (iii) Funeral expenses : Rs 15,000"

The learned counsel for the appellant has submitted that ***Pranay Sethi*** (supra) has only referred to spousal consortium and no other consortium was referred to in the judgment of ***Pranay Sethi*** (supra), hence, there is no justification for allowing the parental consortium and filial consortium. The Constitution Bench in ***Pranay Sethi*** (supra) has referred to amount of Rs 40,000 to the "loss of consortium" but the Constitution Bench had not addressed the issue as to whether consortium of ` 40,000 is only payable as spousal consortium. The judgment of ***Pranay Sethi*** (supra) cannot be read to mean that it lays down the proposition that the consortium is payable only to the wife.

The three-Judge Bench in ***Satinder Kaur*** (supra) has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of the three-Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.

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50. MOTOR VEHICLES ACT, 1988 – Section 173

Pay and Recover – In a claim of third party when insurance company is absolved of its liability because of breach of policy conditions then also the tribunal has power to pass an award directing the insurance company to "Pay and Recover".

मोटरयान अधिनियम, 1988 - धारा 173

भुगतान करें और वसूलें - तीसरे पक्ष के दावे में जब पॉलिसी की शर्तों के उल्लंघन के कारण बीमा कंपनी अपने दायित्वों से मुक्त हो जाती है तब भी अधिकरण को बीमा कंपनी के संबंध में भुगतान करें और वसूलें का अधिनिर्णय पारित करने की शक्ति होती है।

Shriram General Insurance Co. Ltd. v. Pappu & ors.

Order dated 11.02.2020 passed by the High Court of Madhya Pradesh, in Miscellaneous Appeal No. 894 of 2020, reported in ILR (2020) MP 453

Relevant extracts from the order:

It is not in dispute that the claimant is a third party, therefore, even though, it is proved that the driver of the offending vehicle was driving in breach of policy conditions the Insurance Company is absolved of its liability. But, principle of "pay and recover" also applies.

It is better to discuss that in several other cases the Hon'ble Supreme Court gave similar findings with regard to the third party Insurance directing that if the Tribunal holds that the owner of the vehicle is liable to pay the compensation to the claimants, then the Tribunal has a power to direct the Insurance Company to first pay and then recover the same from the owner.

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51. N.D.P.S., Act 1985 – Section 20

APPRECIATION OF EVIDENCE:

(i) Police witnesses – Evidentiary value of – Effect of non-corroboration – Held, there is no law that evidence of police officials, unless supported by independent evidence is to be discarded – Testimony of official witnesses cannot be rejected on the ground of non-corroboration of independent witness.

(ii) Panch witness turning hostile – Effect of – Where police witnesses are found to be reliable and trustworthy, hostility of panch witness does not affect the prosecution version.

(iii) Seizure of contraband – Non-recovery of vehicle and failure to establish ownership of vehicle – Effect – Held, what is required to be established and proved is the recovery of contraband and commission of offence under the Act – Merely because ownership of vehicle is not established and vehicle is not recovered subsequently, will not vitiate the trial.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 - धारा 20

साक्ष्य का मूल्यांकनः

(i) पुलिस साक्षियों की साक्ष्य का मूल्य - असंपुष्टि का प्रभाव - अभिनिर्धारित, ऐसी कोई विधि नहीं है कि पुलिस अधिकारियों की साक्ष्य, जब तक कि स्वतंत्र साक्ष्य से समर्थित न हो, अस्वीकार की जानी चाहिए - आधिकारिक साक्षियों की साक्ष्य स्वतंत्र साक्ष्य से संपुष्ट न होने के आधार पर अस्वीकार नहीं की जा सकती है।

(ii) पंच साक्षियों का पक्षद्रोही हो जाना - प्रभाव - जहां पुलिस साक्षी दृढ़ एवं विश्वसनीय पाए गए हों, वहां पंच साक्षियों का पक्षद्रोही हो जाना अभियोजन के मामले को प्रभावित नहीं करता है।

(iii) प्रतिषिद्ध सामग्री की जप्ती - वाहन की बरामदगी न ह□ना और वाहन के स्वामित्व क□ स्थापित करने में विफलता - प्रभाव - अभिनिर्धारित, प्रतिषिद्ध सामग्री की जप्ती एवं अधिनियम के अधीन अपराध स्थापित और सिद्ध करना आवश्यक है - मात्र इसलिए कि वाहन का स्वामित्व स्थापित नहीं हुआ है और बाद में वाहन बरामद नहीं हुआ है, विचारण दूषित नहीं ह□ जाएगा।

Rizwan Khan v. The State of Chhattisgarh

Judgment dated 10.09.2020 passed by the Supreme Court in Criminal Appeal No. 580 of 2020, reported in 2020 (3) Crimes 441 (SC) (Three-Judge Bench)

Relevant extracts from the judgment:

In the present case the prosecution has been successful in proving the case against the accused by examining the witnesses PW3, PW4, PW5, PW7 and PW8. It is true that all the aforesaid witnesses are police officials and two independent witnesses who were panchnama witnesses had turned hostile. However, all the aforesaid police witnesses are found to be reliable and trustworthy. All of them have been thoroughly cross-examined by the defence. There is no allegation of any enmity between the police witnesses and the accused. No such defence has been taken in the statement under Section 313 Cr.P.C. There is no law that the evidence of police officials, unless supported by independent evidence, is to be discarded and/or unworthy of acceptance.

It is settled law that the testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case, [see ***State of Himachal Pradesh v. Pardeep Kumar, (2018) 13 SCC 808***].

x x x

So far as the submission on behalf of the accused that the ownership of the motor cycle (vehicle) has not been established and proved and/or that the vehicle has not been recovered is concerned, it is required to be noted that in the present case the appellant and the other accused persons were found on the spot with the contraband articles in the vehicle. To prove the case under the NDPS Act, the ownership of the vehicle is not required to be established and proved. It is enough to establish and prove that the contraband articles were found from the accused from the vehicle purchased by the accused. Ownership of the vehicle is immaterial. What is required to be established and proved is the recovery of the contraband articles and the commission of an offence under the NDPS Act? Therefore, merely because of the ownership of the vehicle is not established and proved and/or the vehicle is not recovered subsequently, trial is not vitiated, while the prosecution has been successful in proving and establishing the recovery of the contraband articles from the accused on the spot.

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52 PREVENTION OF CORRUPTION ACT, 1988 – Section 13 (1)(d)

PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018 – Sections 7 and 13

Amendment – Effect of – Provisions of Prevention of Corruption (Amendment) Act, 2018 are purely prospective and not retrospective.

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

भ्रष्टाचार निवारण (संशोधन) अधिनियम, 2018 - धाराएं 7 एवं 13

संशोधन का प्रभाव - भ्रष्टाचार निवारण (संशोधन) अधिनियम, 2018 के प्रावधान शुद्ध रूप से भविष्यलक्षी हैं न कि भूतलक्षी।

Vijendra Kumar Kaushal v. Union of India & ors.

Judgment dated 06.02.2020 passed by the High Court of Madhya Pradesh, in Writ Petition No. 2865 of 2020, reported in ILR (2020) MP 399 (DB)

Relevant extracts from the judgment:

Whenever a situation arises before the Court where is has to examine the effect of substitution in a statute, the same must be examined in the backdrop of the rule of Construction against evasion. If the Court is of the opinion that retrospective application of substitution would result in evasion of the legislative intent, then a prospective application of the substituted provision is to be preferred. Thus, the argument put forth by the Ld. Counsel for the Petitioner in favour of retrospective application of the substituted provisions is rejected, in view of the discussion hereinabove and we have no hesitation in holding that the provisions of the Prevention of Corruption (Amendment) Act, 2018 are purely prospective and not retrospective.

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***53. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Section 16**

PREVENTION OF FOOD ADULTERATION RULES, 1955 – Rule 32(e)

Compliance of Rule 32(e) – Identification of manufacturer through lot/batch/code number – Impugned product had barcode on it which can be decoded by barcode scanner to trace manufacturer – Held, there is sufficient compliance.

खाद्य अपमिश्रण निवारण अधिनियम, 1954 - **धारा** 16

खाद्य अपमिश्रण निवारण नियम, 1955 - **नियम** 32(**ई**)

नियम **32(**ई) का अनुपालन - लाॅट/बैच/क नंबर के आधार पर निर्माता की पहचान - विवादित वस्तु में बारक था जिसे स्कैनर से िक कर निर्माता का पता किया जा सकता था - अभिनिर्धारित, नियम का पर्याप्त अनुपालन है।

Raghav Gupta v. State (NCT of Delhi) and anr.

Judgment dated 04.09.2020 passed by the Supreme Court in Criminal Appeal No. 562 of 2020, reported in 2020 (3) Crimes 408 (SC) (Three-Judge Bench)

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54. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Section 18

Debt – Repayment – Liability of A guarantor or a mortgagor – A guarantor or a mortgagor who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower.

ऋण - पुनर्भुगतान - एक प्रत्याभूति दाता या एक बंधककर्ता के दायित्व - एक प्रत्याभूति दाता या एक बंधककर्ता जिसने ऋण के पुनर्भुगतान क□सुरक्षित करने हेतु अपनी संपत्ति क□बंधक रखा है, एक ऋणी की ही श्रेणी में आता है।

Union Bank of India v. Rajat Infrastructure Private Limited and ors.

Judgment dated 02.03.2020 passed by the Supreme Court in Civil Appeal No. 1902 of 2020, reported in (2020) 3 SCC 770

Relevant extracts from the judgment:

We are not in agreement with the submission of Senior Advocate for the respondents that the High Court has exercised its discretionary powers under Article 226 of the Constitution. The order of the High Court does not show any exercise of such discretionary powers but according to the High Court on an interpretation of the Section, pre-deposit was not required. We are also not impressed with the argument of Senior Advocate for the respondents that his client is not a borrower. A guarantor or a mortgagor, who has mortgaged its property to secure the repayment of the loan, stands on the same footing as a borrower and if he wants to file an appeal, he must comply with the terms of Section 18 of the SARFAESI Act.

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55. SERVICE LAW:

(i) Departmental enquiry – Whether enquiry officer can put his own questions to the witnesses or cross-examine them? Held, Yes – Such questions may be put to witnesses in order to discover the truth.

(ii) Departmental enquiry and criminal proceedings – Whether delinquent employee should be exonerated after investigation, where investigating agency do not find adequate material to launch criminal prosecution? Held, No – Employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding.

सेवा विधिः

(i) विभागीय जाँच - क्या जाँच अधिकारी साक्षियों से स्वयं प्रश्न पूछ सकता है अथवा उनका प्रति-परीक्षण कर सकता है? अभिनिर्धारित, हाँ - सत्य की खो□ज के लिए ऐसे प्रश्न साक्षियों से पूछे जा सकते हैं।

(ii) विभागीय जाँच और आपराधिक कार्यवाही - क्या जहाँ अन्वेषण उपरांत अनुसंधान एजेंसी क□ आपराधिक प्रकरण चलाने के लिए पर्याप्त सामग्री नहीं

मिलती ह□ वहां अपचारी कर्मचारी क□ उन्मुक्त कर दिया जाना चाहिए? अभिनिर्धारित, नहीं - नियाक्ता क□ आपराधिक कार्यवाही के परिणाम के बावजूद एक स्वतंत्र अनुशासनात्मक कार्यवाही चलाने का अधिकार ह□ता है।

Pravin Kumar v. Union of India and ors.

Judgment dated 10.09.2020 passed by the Supreme Court in Civil Appeal No. 6270 of 2012, reported in (2020) 9 SCC 471 (Three Judge Bench)

Relevant extracts from the judgment:

Significant emphasis has been placed by the appellant on the fact that the enquiry officer put his own questions to the prosecution witness and that he cross-examined the witnesses brought forth by the defence. This, it is claimed, amounts to making the prosecutor the Judge, in violation of the natural justice principle of "nemo judex in sua causa". However, such a plea is misplaced. It must be recognised that, under Section 165, Evidence Act, Judges have the power to ask any question to any witness or party about any fact, in order to discover or to obtain proper proof of relevant facts. While strict rules of evidence are inapplicable to disciplinary proceedings, enquiry officers often put questions to witnesses in such proceedings in order to discover the truth. Indeed, it may be necessary to do such direct questioning in certain circumstances. Further, the learned counsel for the appellant, except for making a bald allegation that the enquiry officer has questioned the witnesses, did not point to any specific question put by the officer that would indicate that he had exceeded his jurisdiction. No specific malice or bias has been alleged against the enquiry officer, and even during the enquiry no request had been made to seek a replacement, thus, evidencing how these objections are nothing but an afterthought.

x x x

The incident of 28-2-1999 raised serious questions of criminality under the Penal Code and the Prevention of Corruption Act, as well as of violation of Service Regulations and administrative misconduct. Thus, in addition to appointment of enquiry officer, the authorities also registered a criminal complaint with the CBI. After investigation, the CBI though did not find adequate material to launch criminal prosecution against the appellant but through its self-speaking report dated 7-3-2000, the CBI recommended major disciplinary action against the appellant and a few others.

It is beyond debate that criminal proceedings are distinct from civil proceedings. It is both possible and common in disciplinary matters to establish charges against a delinquent official by preponderance of probabilities and consequently terminate his services. But the same set of evidence may not be sufficient to take away his liberty under our criminal law jurisprudence. [***Karnataka SRTC v. M.G. Vittal Rao, (2012) 1 SCC 442***] Such distinction between standards of proof amongst civil and criminal litigation is deliberate, given the differences in stakes, the power imbalance between the parties and the social costs of an erroneous decision. Thus, in a disciplinary enquiry, strict rules of evidence and

procedure of a criminal trial are inapplicable, like say, statements made before enquiry officers can be relied upon in certain instances. [***Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764***]

Thus, the appellant's contention that he should be exonerated in the present proceedings as no criminal charge-sheet was filed by the CBI after enquiry, is liable to be discarded. [***BHEL v. M. Mani, (2018) 1 SCC 285***] The employer always retains the right to conduct an independent disciplinary proceeding, irrespective of the outcome of a criminal proceeding.

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56. SPECIFIC RELIEF ACT, 1963 – Sections 16(c), 20 and 22(1)(b)

The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the Plaintiff even in the absence of the defence put forth.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 - धाराएं 16(ग), 20 एवं 22(1)(ख)

विक्रय संव्यवहार की अवशेष राशि के भुगतान के साथ संविदा के विनिर्दिष्ट अनुपालन के लिए प्रस्तुत वाद में यद्यपि प्रतिरक्षा प्रस्तुत न की गई हो□वादी के लिए इच्छुक एवं तत्पर होना प्रमाणित करना आवश्यक था।

Sukhwinder Singh v. Jagroop Singh and anr.

Judgment dated 28.01.2020 passed by the Supreme Court in Civil Appeal No. 760 of 2020, reported in AIR 2020 SC 4865

Relevant extracts from the judgment:

The suit being the one for specific performance of the contract on payment of the balance sale consideration, the readiness and willingness was required to be proved by the plaintiff and was to be considered by the Courts below as a basic requirement if a decree for specific performance is to be granted. In the instant case though the defendant No.2 had denied the agreement as also the receipt of the earnest money, the same would not be of consequence as the agreement claimed by the plaintiff is with the defendant No.1 and the contention of the defendant No.2 to deny the same is without personal knowledge on that aspect. However, even in the absence of the defence put forth, the plaintiff was required to prove his readiness and willingness and that aspect of the matter was to be considered by the Courts below. In the present case though the plaintiff examined himself as PW1, as also PW2 and PW3, the document writer, and the witness to the agreement who stated with regard to the execution of the agreement, the evidence to prove the readiness and willingness with regard to the resources to pay the balance sale consideration is insufficient. In the absence of denial by the defendant No.1, even if the payment of ` 69,500/- and the claim by the plaintiff of having gone to the office of Sub-Registrar on 15.06.2004 is accepted, the fact as to whether the plaintiff had notified the defendant No.1 about he being ready with the balance sale consideration and calling upon the plaintiff to appear before the Sub-Registrar and execute the Sale Deed was required to be proved. From among the documents produced and marked as

Exhibit P1 to P9 there is no document to that effect, more particularly to indicate the availability of the balance sale consideration as on 15.06.2004 and as on the date of filing the suit. Despite the same, merely based on the oral testimony of PW1, the Courts below have accepted the case put forth by the plaintiff to be ready and willing to complete the transaction.

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***57. SPECIFIC RELIEF ACT, 1963 – Section 38**

Possession – Relevance of possession is the prime consideration in a bare suit for injunction but each case should be examined on its own merits keeping in view the nature of the pleadings put before the trial court and the understanding of the case with which the parties have gone to trial.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 - धारा 38

कब्जा - मात्र व्यादेश के वाद में कब्जे की सुसंगतता प्रमुख विचारणीय बिंदु है किंतु प्रत्येक वाद का परीक्षण उसके अपने गुण दोषों के आधार पर विचारण न्यायालय के समक्ष प्रस्तुत किए गए अभिवचनों की प्रकृति और प्रकरण की समझ, जिसे लेकर पक्षकार विचारण हेतु गए है, को ध्यान में रखते हुए किया जाना चाहिए।

Jose v. Johnson

Judgment dated 02.03.2020 passed by the Supreme Court in Civil Appeal No. 1892 of 2020, reported in (2020) 3 SCC 780

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58. SUCCESSION ACT, 1925 – Sections 59, 63(b) and 68

EVIDENCE ACT, 1872 – Section 68

CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 23-A and 24

(i) Will – Relevant circumstance – The unexplained, unusual and abnormal features pertaining to the document only lead to the logical deduction that the document in question was prepared after the demise of the testator with use of blank signed papers that came in possession of the propounders and their associates.

(ii) Remand – The occasion for remand would arise only when the factual findings of Trial Court are reversed and a re-trial is considered necessary by the Appellate Courtt.

उत्तराधिकार अधिनियम, 1925 - धाराएं 59, 63(ख) एवं 68

साक्ष्य अधिनियम, 1872 - धारा 68

सिविल प्रक्रिया संहिता, 1908 - आदेश 41 नियम 23-क एवं 24

(i) वसीयत - सुसंगत परिस्थिति - दस्तावेज से संबंधित अस्पष्ट, असामान्य एवं अस्वाभाविक लक्षण एकमात्र ऐसे तर्कसंगत अनुमान की ओर अग्रसर करते हैं कि प्रश्नगत दस्तावेज वसीयतकर्ता की मृत्यु के पश्चात् प्रतिपादकों और उनके सहयोगियों के आधिपत्य में आये हस्ताक्षरयुक्त कोरे कागजों के उपयोग से तैयार किया गया था।

(ii) प्रतिप्रेषण - प्रतिप्रेषण का अवसर तभी उत्पन्न हो□गा जबकि विचारण न्यायालय के तथ्यात्मक अभिनिश्चय क□ उलटते हुए अपीलीय न्यायालय द्वारा पुनः विचारण किया जाना आवश्यक माना जाये।

Shivakumar and ors. v. Sharanabasappa and ors.

Judgment dated 24.04.2020 passed by the Supreme Court in Civil Appeal No. 6076 of 2009, reported in AIR 2020 SC 3102 (Three-Judge Bench)

Relevant extracts from the judgment:

When all the abnormal, curious and rather mysterious circumstances are put together, the inescapable conclusion is that the document in question cannot be accepted as the last Will of the testator. The unexplained, unusual and abnormal features pertaining to the document only lead to the logical deduction that the document in question was prepared after the demise of the testator with use of blank signed papers that came in possession of the propounders and their associates. The High Court has stated such deduction after thorough examination of the material on record and, in our view, rightly so. It is noticed that all the features and factors indicated hereinabove are very much available on the face of the record. However, the Trial Court, even while dealing with several contentions in excessive details, either failed to notice some of the features indicated above or simply brushed aside the particular feature carrying abnormality with the observations to the effect that the propounders were not to be expected to remove the suspicions concerning the document when they had no role in its execution. The Trial Court having, obviously, misdirected itself on several of the key and pivotal factors, its decision could not have been approved.

It gets perforce reiterated that the occasion for remand would arise only when the factual findings of Trial Court are reversed and a re-trial is considered necessary by the Appellate Court.

The present case had clearly been the one where the parties had adduced all their evidence, whatever they wished to; and it had not been the case of the plaintiff-appellants that they were denied any opportunity to produce any particular evidence or if the trial was vitiated because of any alike reason. As noticed, there had been several suspicious circumstances surrounding the Will in question, some of which were noticed by the Trial Court but were brushed aside by it on untenable reasons. The High Court has meticulously examined the same evidence and the same circumstances and has come to a different conclusion that appears to be sound and plausible, and does not appear suffering from any infirmity. There was no reason or occasion for the High Court to consider remanding the case to the Trial Court. The contention in this regard is required to be, and is, rejected.

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59. TRANSFER OF PROPERTY ACT, 1882 – Sections 58 and 60

LIMITATION ACT, 1963 – Section 65

(i) If the party is in permissive possession of the suit property, then the party is not entitled to claim title over the suit property on the plea of "adverse possession".

(ii) On the basis of execution of unregistered sale deed the title cannot be claimed over the suit property.

(iii) Relation between the parties as mortgager and mortgagee is duly established. Hence, respondents are rightly entitled to redeem the suit property.

संपत्ति अंतरण अधिनियम, 1882 - धाराएं 58 एवं 60

परिसीमा अधिनियम, 1963 - धारा 65

(i) यदि पक्षकार वादग्रस्त संपत्ति पर अनुमत आधिपत्य में है तब वह ''प्रतिकूल आधिपत्य ' ' के अभिवाक् के आधार पर वादग्रस्त संपत्ति पर स्वत्व का दावा करने का हकदार नहीं है।

(ii) अपंजीकृत विक्रय विलेख के निष्पादन के आधार पर वादग्रस्त संपत्ति पर स्वत्व का दावा नहीं किया जा सकता।

(iii) पक्षकारों के मध्य बंधककर्ता एवं बंधक-ग्रहीता के संबंध सम्यक् रुप से स्थापित हैं। अतः प्रत्यर्थीगण वादग्रस्त संपत्ति का मोचन कराने के उचित अधिकारी है।

Jeetan Prasad Kushwah v. Vinay Kumar Singh and ors.

Order dated 29.05.2020 passed by the High Court of Madhya Pradesh in Second Appeal No. 648 of 1994, reported in AIR 2020 MP 116

Relevant extracts from the order:

The plaintiffs/respondents were in possession of the suit property till 15.04.1954. Umapratap being karta of his family, mortgaged the suit property in favour of the defendants/respondent No.3 Jageshwar (since deceased) for ` 1,000/- on 16.04.1954 by registered sale deed and delivered the possession to Jageshwar. Accordingly, the LRs of respondent No.3/defendant are in permissive possession of the suit property. Therefore, they are not entitled to claim their title over the suit property on the plea of "adverse possession".

On the basis of execution of unregistered sale deed the appellant cannot claim title over the suit property nor unregistered sale deed. Ex. D/4 is admissible for any collateral purpose.

The appellant has admitted that suit property was mortgaged in their favour. Relation between the parties as mortgager and mortgagee is duly established. Admission of the appellants regarding the same cannot be ignored. Nor it is essential for respondent Nos. 1 and 2 to prove the admitted facts in their favour. Hence, respondents are rightly entitled to redeem the suit property after paying ` 500/- to the appellant. They are also entitled to recover possession of the suit property from the appellant.

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PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

New Delhi, the 25th February, 2021

G.S.R. 139(E).— In exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (21 of 2000), and in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:—

PART I
PRELIMINARY

1. **Short Title and Commencement.**—(1) These rules may be called the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

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

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

   (a) 'access control mechanism' means any measure, including a technical measure, through which access to online curated content may be restricted based on verification of the identity or age of a user;

   (b) 'access services' means any measure, including technical measure such as closed captioning, subtitles and audio descriptions, through which the accessibility of online curated content may be improved for persons with disabilities;

   (c) 'Act' means the Information Technology Act, 2000 (21 of 2000);

   (d) 'child' means any person below the age of eighteen years;

   (e) 'committee' means the Inter-Departmental Committee constituted under rule 14;

   (f) 'communication link' means a connection between a hypertext or graphical element, and one or more items in the same or different electronic document wherein upon clicking on a hyperlinked item, the user is automatically transferred to the other end of the hyperlink which can be another electronic record or another website or application or graphical element;

(g) 'content' means the electronic record defined in clause (t) of section 2 of the Act;

(h) 'content descriptor' means the issues and concerns which are relevant to the classification of any online curated content, including discrimination, depiction of illegal or harmful substances, imitable behaviour, nudity, language, sex, violence, fear, threat, horror and other such concerns as specified in the Schedule annexed to the rules;

(i) 'digital media' means digitized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited or processed by –

(i) an intermediary; or

(ii) a publisher of news and current affairs content or a publisher of online curated content;

(j) 'grievance' includes any complaint, whether regarding any content, any duties of an intermediary or publisher under the Act, or other matters pertaining to the computer resource of an intermediary or publisher, as the case may be;

(k) 'Grievance Officer' means an officer appointed by the intermediary or the publisher, as the case may be, for the purposes of these rules;

(l) 'Ministry' means, for the purpose of Part II of these rules unless specified otherwise, the Ministry of Electronics and Information Technology, Government of India, and for the purpose of Part III of these rules, the Ministry of Information and Broadcasting, Government of India;

(m) 'news and current affairs content' includes newly received or noteworthy content, including analysis, especially about recent events primarily of socio-political, economic or cultural nature, made available over the internet or computer networks, and any digital media shall be news and current affairs content where the context, substance, purpose, import and meaning of such information is in the nature of news and current affairs content.

(n) 'newspaper' means a periodical of loosely folded sheets usually printed on newsprint and brought out daily or at least once in a week, containing information on current events, public news or comments on public news;

(o) 'news aggregator' means an entity who, performing a significant role in determining the news and current affairs content being made available, makes available to users a computer resource that enable such users to access the news and current affairs content which is aggregated, curated and presented by such entity.

(p) ‘on demand’ means a system where a user, subscriber or viewer is enabled to access, at a time chosen by such user, any content in electronic form, which is transmitted over a computer resource and is selected by the user;

(q) ‘online curated content’ means any curated catalogue of audio-visual content, other than news and current affairs content, which is owned by, licensed to or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks, and includes films, audio visual programmes, documentaries, television programmes, serials, and other such content;

(r) ‘person’ means a person as defined in sub-section (31) of section 2 of the Income Tax Act, 1961 (43 of 1961);

(s) ‘publisher’ means a publisher of news and current affairs content or a publisher of online curated content;

(t) ‘publisher of news and current affairs content’ means an online paper, news portal, news aggregator, news agency and such other entity called by whatever name, which is functionally similar to publishers of news and current affairs content but shall not include newspapers, replica e-papers of the newspaper and any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity;

(u) ‘publisher of online curated content’ means a publisher who, performing a significant role in determining the online curated content being made available, makes available to users a computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity;

(v) ‘significant social media intermediary’ means a social media intermediary having number of registered users in India above such threshold as notified by the Central Government;

(w) ‘social media intermediary’ means an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services;

(x) ‘user’ means any person who accesses or avails any computer resource of an intermediary or a publisher for the purpose of hosting,

publishing, sharing, transacting, viewing, displaying, downloading or uploading information and includes other persons jointly participating in using such computer resource and addressee and originator;

(y) 'user account' means the account registration of a user with an intermediary or publisher and includes profiles, accounts, pages, handles and other similar presences by means of which a user is able to access the services offered by the intermediary or publisher.

(2) Words and expressions used and not defined in these rules but defined in the Act and rules made thereunder shall have the same meaning as assigned to them in the Act and the said rules, as the case may be.

PART II

DUE DILIGENCE BY INTERMEDIARIES AND GRIEVANCE REDRESSAL MECHANISM

3. (1) Due diligence by an intermediary: An intermediary, including social media intermediary and significant social media intermediary, shall observe the following due diligence while discharging its duties, namely:—

(a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person;

(b) the rules and regulations, privacy policy or user agreement of the intermediary shall inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that,—

(i) belongs to another person and to which the user does not have any right;

(ii) is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force;

(iii) is harmful to child;

(iv) infringes any patent, trademark, copyright or other proprietary rights;

(v) violates any law for the time being in force;

(vi) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact;

(vii) impersonates another person;

(viii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation;

(ix) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;

(x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;

(c) an intermediary shall periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove non-compliant information or both, as the case may be;

(d) an intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force:

Provided that any notification made by the Appropriate Government or its agency in relation to any information which is prohibited under any law for the time being in force shall be issued by an authorised agency, as may be notified by the Appropriate Government:

Provided further that if any such information is hosted, stored or published, the intermediary shall remove or disable access to that information, as early as possible, but in no case later than thirty-six hours from the receipt of the court order or on being notified by the Appropriate Government or its agency, as the case may be:

Provided also that the removal or disabling of access to any information, data or communication link within the categories of information specified under this clause, under clause (b) on a voluntary basis, or on the basis of grievances received under sub-rule (2) by such intermediary, shall not amount to a violation of the conditions of clauses (a) or (b) of sub-section (2) of section 79 of the Act;

(e) the temporary or transient or intermediate storage of information automatically by an intermediary in a computer resource within its control as an intrinsic feature of that computer resource, involving no exercise of any human, automated or algorithmic editorial control for onward transmission or communication to another computer resource shall not amount to hosting, storing or publishing any information referred to under clause (d);

(f) the intermediary shall periodically, and at least once in a year, inform its users of its rules and regulations, privacy policy or user agreement or any change in the rules and regulations, privacy policy or user agreement, as the case may be;

(g) where upon receiving actual knowledge under clause (d), on a voluntary basis on violation of clause (b), or on the basis of grievances received under sub-rule (2), any information has been removed or access to which has been disabled, the intermediary shall, without vitiating the evidence in any manner, preserve such information and associated records for one hundred and eighty days for investigation purposes, or for such longer period as may be required by the court or by Government agencies who are lawfully authorised;

(h) where an intermediary collects information from a user for registration on the computer resource, it shall retain his information for a period of one hundred and eighty days after any cancellation or withdrawal of his registration, as the case may be;

(i) the intermediary shall take all reasonable measures to secure its computer resource and information contained therein following

the reasonable security practices and procedures as prescribed in the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011;

(j) the intermediary shall, as soon as possible, but not later than seventy two hours of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorised for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution of offences under any law for the time being in force, or for cyber security incidents:

Provided that any such order shall be in writing stating clearly the purpose of seeking information or assistance, as the case may be;

(k) the intermediary shall not knowingly deploy or install or modify technical configuration of computer resource or become party to any act that may change or has the potential to change the normal course of operation of the computer resource than what it is supposed to perform thereby circumventing any law for the time being in force:

Provided that the intermediary may develop, produce, distribute or employ technological means for the purpose of performing the acts of securing the computer resource and information contained therein;

(l) the intermediary shall report cyber security incidents and share related information with the Indian Computer Emergency Response Team in accordance with the policies and procedures as mentioned in the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.

(2) **Grievance redressal mechanism of intermediary:** (a) The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or any other matters pertaining to the computer resources made available by it, and the Grievance Officer shall -

(i) acknowledge the complaint within twenty four hours and dispose off such complaint within a period of fifteen days from the date of its receipt;

(ii) receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.

(b) The intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:

(c) The intermediary shall implement a mechanism for the receipt of complaints under clause (b) of this sub-rule which may enable the individual or person to provide details, as may be necessary, in relation to such content or communication link.

4. **Additional due diligence to be observed by significant social media intermediary.**— (1) In addition to the due diligence observed under rule 3, a significant social media intermediary shall, within three months from the date of notification of the threshold under clause (v) of sub-rule (1) of rule 2, observe the following additional due diligence while discharging its duties, namely:—

(a) appoint a Chief Compliance Officer who shall be responsible for ensuring compliance with the Act and rules made thereunder and shall be liable in any proceedings relating to any relevant third-party information, data or communication link made available or hosted by that intermediary where he fails to ensure that such intermediary observes due diligence while discharging its duties under the Act and rules made thereunder:

Provided that no liability under the Act or rules made thereunder may be imposed on such significant social media intermediary without being given an opportunity of being heard.

Explanation — For the purposes of this clause Chief Compliance Officer means a key managerial personnel or such other senior employee of a significant social media intermediary who is resident in India;

(b) appoint a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.

Explanation — For the purposes of this clause "nodal contact person" means the employee of a significant social media intermediary, other than the Chief Compliance Officer, who is resident in India;

(c) appoint a Resident Grievance Officer, who shall, subject to clause (b), be responsible for the functions referred to in sub-rule (2) of rule 3.

Explanation — For the purposes of this clause, "Resident Grievance Officer" means the employee of a significant social media intermediary, who is resident in India;

(d) publish periodic compliance report every month mentioning the details of complaints received and action taken thereon, and the number of specific communication links or parts of information that the intermediary has removed or disabled access to in pursuance of any proactive monitoring conducted by using automated tools or any other relevant information as may be specified;

(2) A significant social media intermediary providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court of competent jurisdiction or an order passed under section 69 by the Competent Authority as per the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009, which shall be supported with a copy of such information in electronic form:

Provided that an order shall only be passed for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material, punishable with imprisonment for a term of not less than five years:

Provided further that no order shall be passed in cases where other less intrusive means are effective in identifying the originator of the information:

Provided also that in complying with an order for identification of the first originator, no significant social media intermediary shall be required to disclose the contents of any electronic message, any other information related to the first originator, or any information related to its other users:

Provided also that where the first originator of any information on the computer resource of an intermediary is located outside the territory of India, the first originator of that information within the territory of India shall be deemed to be the first originator of the information for the purpose of this clause.

(3) A significant social media intermediary that provides any service with respect to an information or transmits that information on behalf of another person on its computer resource –

(a) for direct financial benefit in a manner that increases its visibility or prominence, or targets the receiver of that information; or

(b) to which it owns a copyright, or has an exclusive license, or in relation with which it has entered into any contract that directly or indirectly restricts the publication or transmission of that information through any means other than those provided through the computer resource of such social media intermediary, shall make that information clearly identifiable to its users as being advertised, marketed, sponsored, owned, or exclusively controlled, as the case may be, or shall make it identifiable as such in an appropriate manner.

(4) A significant social media intermediary shall endeavour to deploy technology-based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information that has previously been removed or access to which has been disabled on the computer resource of such intermediary under clause (d) of sub-rule (1) of rule 3, and shall display a notice to any user attempting to access such information stating that such information has been identified by the intermediary under the categories referred to in this sub-rule:

Provided that the measures taken by the intermediary under this sub-rule shall be proportionate having regard to the interests of free speech and expression, privacy of users on the computer resource of such intermediary, including interests protected through the appropriate use of technical measures:

Provided further that such intermediary shall implement mechanisms for appropriate human oversight of measures deployed under this sub-rule, including a periodic review of any automated tools deployed by such intermediary:

Provided also that the review of automated tools under this sub-rule shall evaluate the automated tools having regard to the accuracy and fairness of such tools, the propensity of bias and discrimination in such tools and the impact on privacy and security of such tools.

(5) The significant social media intermediary shall have a physical contact address in India published on its website, mobile based application or both, as the case may be, for the purposes of receiving the communication addressed to it.

(6) The significant social media intermediary shall implement an appropriate mechanism for the receipt of complaints under sub-rule (2) of rule 3 and grievances in relation to the violation of provisions under this rule, which shall enable the complainant to track the status of such complaint or grievance by providing a unique ticket number for every complaint or grievance received by such intermediary:

Provided that such intermediary shall, to the extent reasonable, provide such complainant with reasons for any action taken or not taken by such intermediary in pursuance of the complaint or grievance received by it.

(7) The significant social media intermediary shall enable users who register for their services from India, or use their services in India, to voluntarily verify their accounts by using any appropriate mechanism, including the active Indian mobile number of such users, and where any user voluntarily verifies their account, such user shall be provided with a demonstrable and visible mark of verification, which shall be visible to all users of the service:

Provided that the information received for the purpose of verification under this sub-rule shall not be used for any other purpose, unless the user expressly consents to such use.

(8) Where a significant social media intermediary removes or disables access to any information, data or communication link, under clause (b) of sub-rule (1) of rule 3 on its own accord, such intermediary shall,—

(a) ensure that prior to the time at which such intermediary removes or disables access, it has provided the user who has created, uploaded, shared, disseminated, or modified information, data or communication link using its services with a notification explaining the action being taken and the grounds or reasons for such action;

(b) ensure that the user who has created, uploaded, shared, disseminated, or modified information using its services is

provided with an adequate and reasonable opportunity to dispute the action being taken by such intermediary and request for the reinstatement of access to such information, data or communication link, which may be decided within a reasonable time;

(c) ensure that the Resident Grievance Officer of such intermediary maintains appropriate oversight over the mechanism for resolution of any disputes raised by the user under clause (b).

(9) The Ministry may call for such additional information from any significant social media intermediary as it may consider necessary for the purposes of this part.

5. **Additional due diligence to be observed by an intermediary in relation to news and current affairs content** — In addition to adherence to rules 3 and 4, as may be applicable, an intermediary shall publish, on an appropriate place on its website, mobile based application or both, as the case may be, a clear and concise statement informing publishers of news and current affairs content that in addition to the common terms of service for all users, such publishers shall furnish the details of their user accounts on the services of such intermediary to the Ministry as may be required under rule 18:

Provided that an intermediary may provide such publishers who have provided information under rule 18 with a demonstrable and visible mark of verification as being publishers, which shall be visible to all users of the service.

Explanation.—This rule relates only to news and current affairs content and shall be administered by the Ministry of Information and Broadcasting.

6. **Notification of other intermediary** — (1) The Ministry may by order, for reasons to be recorded in writing, require any intermediary, which is not a significant social media intermediary, to comply with all or any of the obligations mentioned under rule 4, if the services of that intermediary permits the publication or transmission of information in a manner that may create a material risk of harm to the sovereignty and integrity of India, security of the State, friendly relations with foreign States or public order.

(2) The assessment of material risk of harm referred to in sub-rule (1) shall be made having regard to the nature of services of such intermediary, and if those services permit,—

(a) interaction between users, notwithstanding, whether it is the primary purpose of that intermediary; and

(b) the publication or transmission of information to a significant number of other users as would be likely to result in widespread dissemination of such information.

(3) An order under this rule may be issued in relation to a specific part of the computer resources of any website, mobile based application or both, as the case may be, if such specific part is in the nature of an intermediary:

Provided that where such order is issued, an entity may be required to comply with all or any of the obligations mentions under rule 4, in relation to the specific part of its computer resource which is in the nature of an intermediary.

7. **Non-observance of Rules** — Where an intermediary fails to observe these rules, the provisions of sub-section (1) of section 79 of the Act shall not be applicable to such intermediary and the intermediary shall be liable for punishment under any law for the time being in force including the provisions of the Act and the Indian Penal Code.

PART III

CODE OF ETHICS AND PROCEDURE AND SAFEGUARDS IN RELATION TO DIGITAL MEDIA

8. **Application of this Part** — (1) The rules made under this Part shall apply to the following persons or entities, namely:—

(a) publishers of news and current affairs content;

(b) publishers of online curated content; and shall be administered by the Ministry of Information and Broadcasting, Government of India, which shall be referred to in this Part as the "Ministry":

Provided that the rules made under this Part shall apply to intermediaries for the purposes of rules 15 and 16;

(2) the rules made under this Part shall apply to the publishers, where,—

(a) such publisher operates in the territory of India; or

(b) such publisher conducts systematic business activity of making its content available in India.

Explanation.— For the purposes of this rule,—

(a) a publisher shall be deemed to operate in the territory of India where such publisher has a physical presence in the territory of India;

(b) "systematic activity" shall mean any structured or organised activity that involves an element of planning, method, continuity or persistence.

(3) The rules made under this Part shall be in addition to and not in derogation of the provisions of any other law for the time being in

force and any remedies available under such laws including the Information Technology (Procedure and Safeguards for Blocking of Access of Information by the Public) Rules, 2009.

9. **Observance and adherence to the Code** — (1) A publisher referred to in rule 8 shall observe and adhere to the Code of Ethics laid down in the Appendix annexed to these rules.

(2) Notwithstanding anything contained in these rules, a publisher referred to in rule 8 who contravenes any law for the time being in force, shall also be liable for consequential action as provided in such law which has so been contravened.

(3) For ensuring observance and adherence to the Code of Ethics by publishers operating in the territory of India, and for addressing the grievances made in relation to publishers under this Part, there shall be a three-tier structure as under —

(a) Level I – Self-regulation by the publishers;

(b) Level II – Self-regulation by the self-regulating bodies of the publishers;

(c) Level III – Oversight mechanism by the Central Government.

CHAPTER I

GRIEVANCE REDRESSAL MECHANISM

10. **Furnishing and processing of grievance.** – (1) Any person having a grievance regarding content published by a publisher in relation to the Code of Ethics may furnish his grievance on the grievance mechanism established by the publisher under rule 11.

(2) The publisher shall generate and issue an acknowledgement of the grievance for the benefit of the complainant within twenty-four hours of it being furnished for information and record.

(3) The manner of grievance redressal shall have the following arrangement –

(a) the publisher shall address the grievance and inform the complainant of its decision within fifteen days of the registration of the grievance;

(b) if the decision of the publisher is not communicated to the complainant within the stipulated fifteen days, the grievance shall be escalated to the level of the self-regulating body of which such publisher is a member.

(c) where the complainant is not satisfied with the decision of the publisher, it may prefer to appeal to the self-regulating body of

which such publisher is a member within fifteen days of receiving such a decision.

(d) the self-regulating body shall address the grievance referred to in clauses (b) and (c), and convey its decision in the form of a guidance or advisory to the publisher, and inform the complainant of such decision within a period of fifteen days.

(e) where the complainant is not satisfied with the decision of the self-regulating body, it may, within fifteen days of such decision, prefer an appeal to the Oversight Mechanism referred to in rule 13 for resolution.

CHAPTER II

SELF REGULATING MECHANISH – LEVEL I

11. **Self-Regulating mechanism at Level I**. – (1) The publisher shall be the level I of the self-regulating mechanism.

(2) A publisher shall -

(a) establish a grievance redressal mechanism and shall appoint a Grievance Officer based in India, who shall be responsible for the redressal of grievances received by him;

(b) display the contact details related to its grievance redressal mechanism and the name and contact details of its Grievance Officer at an appropriate place on its website or interface, as the case may be;

(c) ensure that the Grievance Officer takes a decision on every grievance received by it within fifteen days, and communicate the same to the complainant within the specified time;

(d) be a member of a self-regulating body as referred to in rule 12 and abide by its terms and conditions.

(3) The Grievance Officer shall,–

(a) be the contact point for receiving any grievance relating to Code of Ethics;

(b) act as the nodal point for interaction with the complainant, the self-regulating body and the Ministry.

(4) Online curated content shall be classified by the publisher of such content into the categories referred to in the Schedule, having regard to the context, theme, tone, impact and target audience of such content, with the relevant rating for such categories based on a assessment of the relevant content descriptors in the manner specified in the said Schedule.

(5) Every publisher of online curated content shall display the rating of any online curated content and an explanation of the relevant content descriptors, prominently to its users at an appropriate place, as the case may be, in a manner that ensures that such users are aware of this information before accessing such content.

CHAPTER III

SELF REGULATING MECHANISM – LEVEL II

12. **Self-regulating body**.— (1) There may be one or more self-regulatory bodies of publishers, being an independent body constituted by publishers or their associations.

(2) The self-regulatory body referred to in sub-rule (1) shall be headed by a retired Judge of the Supreme Court, a High Court, or an independent eminent person from the field of media, broadcasting, entertainment, child rights, human rights or such other relevant field, and have other members, not exceeding six, being experts from the field of media, broadcasting, entertainment, child rights, human rights and such other relevant fields.

(3) The self-regulating body shall, after its constitution in accordance with sub-rule (2), register itself with the Ministry within a period of thirty days from the date of notification of these rules, and where a self-regulating body is constituted after such period, within thirty days from the date of its constitution:

Provided that before grant of registration to the self-regulating body, the Ministry shall satisfy itself that the self-regulating body has been constituted in accordance with sub-rule (2) and has agreed to perform the functions laid down in sub-rules (4) and (5).

(4) The self-regulating body shall perform the following functions, namely:—

(a) oversee and ensure the alignment and adherence by the publisher to the Code of Ethics;

(b) provide guidance to publishers on various aspects of the Code of Ethics;

(c) address grievances which have not been resolved by publishers within the specified period of fifteen days;

(d) hear appeals filed by the complainant against the decision of publishers;

(e) issue such guidance or advisories to such publishers as specified in sub-rule for ensuring compliance to the Code of Ethics.

(5) The self-regulating body while disposing a grievance or an appeal referred to it in sub-rule (4) may issue following guidance or advisories to the publishers as under, namely:—

(a) warning, censuring, admonishing or reprimanding the publisher; or

(b) requiring an apology by the publisher; or

(c) requiring the publisher to include a warning card or a disclaimer; or

(d) in case of online curated content, direct the publisher to,—

(i) reclassify ratings of relevant content;

(ii) make appropriate modification in the content descriptor, age classification and access control measures;

(iii) edit synopsis of relevant content; or

(e) in case of any content where it is satisfied that there is a need for taking action to delete or modify the content for preventing incitement to the commission of a cognizable offence relating to public order, or in relation to the reasons enumerated in sub-section (1) of section 69A of the Act, refer such content to the Ministry for consideration by the Oversight Mechanism referred to in rule 13 for appropriate action.

(6) Where the self-regulating body is of the opinion that there is no violation of the Code of Ethics, it shall convey such decision to the complainant and such entity.

(7) Where a publisher fails to comply with the guidance or advisories of the self-regulating body within the time specified in such guidance or advisory, the self-regulating body shall refer the matter to the Oversight Mechanism referred to in rule 13 within fifteen days of expiry of the specified date.

CHAPTER IV

OVERSIGHT MECHANISM – LEVEL III

13. **Oversight mechanism**.— (1) The Ministry shall co-ordinate and facilitate the adherence to the Code of Ethics by publishers and self regulating bodies, develop an Oversight Mechanism, and perform the following functions, namely:—

(a) publish a charter for self regulating bodies, including Codes of Practices for such bodies;

(b) establish an Inter-Departmental Committee for hearing grievances;

(c) refer to the Inter-Departmental Committee grievances arising out of the decision of the self-regulating body under rule 12, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics as it may consider necessary;

(d) issue appropriate guidance and advisories to publishers;

(e) issue orders and directions to the publishers for maintenance and adherence to the Code of Ethics.

(2) The Ministry shall appoint an officer of the Ministry not below the rank of a Joint Secretary to the Government of India, as the *"Authorized Officer"*, for the purposes of issuing directions under rules 15 or 16, as the case may be.

14. **Inter-Departmental Committee**.— (1) The Ministry shall constitute an Inter Departmental Committee, called the Committee, consisting of representatives from the Ministry of Information and Broadcasting, Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of Home Affairs, Ministry of Electronics and Information Technology, Ministry of External Affairs, Ministry of Defence, and such other Ministries and Organisations, including domain experts, that it may decide to include in the Committee:

Provided that the Authorised Officer designated under sub-rule (2) of rule 13 shall be the Chairperson of such Committee.

(2) The Committee shall meet periodically and hear the following complaints regarding violation or contravention of the Code of Ethics by the entities referred to in Rule 8 –

(a) arising out of the grievances in respect of the decisions taken at the Level I or II, including the cases where no such decision is taken within the time specified in the grievance redressal mechanism; or

(b) referred to it by the Ministry.

(3) Any complaint referred to the Committee, whether arising out of the grievances or referred to it by the Ministry, shall be in writing and may be sent either by mail or fax or by e-mail signed with electronic signature of the authorised representative of the entity referring the grievance, and the Committee shall ensure that such reference is assigned a number which is recorded along with the date and time of its receipt.

(4) The Ministry shall make all reasonable efforts to identify the entity referred to in Rule 8 which has created, published or hosted the content or part thereof, and where it is able to identify such entity, it

shall issue a duly signed notice to such entity to appear and submit their reply and clarifications, if any, before the Committee.

(5) In the hearing, the Committee shall examine complaints or grievances, and may either accept or allow such complaint or grievance, and make the following recommendations to the Ministry, namely:—

(a) warning, censuring, admonishing or reprimanding such entity; or

(b) requiring an apology by such entity; or

(c) requiring such entity to include a warning card or a disclaimer; or

(d) in case of online curated content, direct a publisher to—

(i) reclassify ratings of relevant content; or

(ii) edit synopsis of relevant content; or

(iii) make appropriate modification in the content descriptor, age classification and parental or access control;

(e) delete or modify content for preventing incitement to the commission of a cognizable offence relating to public order;

(f) in case of content where the Committee is satisfied that there is a need for taking action in relation to the reasons enumerated in sub-section (1) of section 69A of the Act, it may recommend such action.

(6) The Ministry may, after taking into consideration the recommendations of the Committee, issue appropriate orders and directions for compliance by the publisher:

Provided that no such order shall be issued without the approval of the Secretary, Ministry of Information and Broadcasting, Government of India (hereinafter referred to as the "Secretary, Ministry of Information and Broadcasting").

15. **Procedure for issuing of direction**.— (1) In respect of recommendations referred to in clauses (e) and (f) of sub-rule (5) of rule 14, the Authorised Officer shall place the matter for consideration before the Secretary, Ministry of Information and Broadcasting for taking appropriate decision.

(2) The Authorised Officer shall, on approval of the decision by the Secretary, Ministry of Information and Broadcasting, direct the publisher, any agency of the Government or any intermediary, as the case may be to delete or modify or block the relevant content and information generated, transmitted, received, stored or hosted in their computer resource for public access within the time limit specified in the direction:

Provided that in case the recommendation of the Authorised Officer is not approved by the Secretary, Ministry of Information and Broadcasting, the Authorised Officer shall convey the same to the Committee.

(3) A direction under this rule may be issued only in respect of a specific piece of content or an enumerated list of content, as the case may be, and shall not require any entity to cease its operations.

16. **Blocking of information in case of emergency**.— (1) Notwithstanding anything contained in rules 14 and 15, the Authorised Officer, in any case of emergency nature, for which no delay is acceptable, shall examine the relevant content and consider whether it is within the grounds referred to in sub-section (1) of section 69A of the Act and it is necessary or expedient and justifiable to block such information or part thereof and submit a specific recommendation in writing to the Secretary, Ministry of Information and Broadcasting.

(2) In case of emergency nature, the Secretary, Ministry of Information and Broadcasting may, if he is satisfied that it is necessary or expedient and justifiable for blocking for public access of any information or part thereof through any computer resource and after recording reasons in writing, as an interim measure issue such directions as he may consider necessary to such identified or identifiable persons, publishers or intermediary in control of such computer resource hosting such information or part thereof without giving him an opportunity of hearing.

(3) The Authorised Officer, at the earliest but not later than forty-eight hours of issue of direction under sub-rule (2), shall bring the request before the Committee for its consideration and recommendation.

(4) On receipt of recommendations of the Committee under sub-rule (3), the Secretary, Ministry of Information and Broadcasting, shall pass the final order as regard to approval of such request and in case the request for blocking is not approved by the Secretary, Ministry of Information and Broadcasting in his final order, the interim direction issued under sub-rule (2) shall be revoked and the person, publisher or intermediary in control of such information shall be accordingly, directed to unblock the information for public access.

17. **Review of directions issued**.— (1) The Authorised Officer shall maintain complete records of the proceedings of the Committee, including any complaints referred to the Committee, and shall also maintain records of recommendations made by the Committee and any directions issued by the Authorised Officer.

(2) The Review Committee shall meet at least once in every two months and record its findings whether the directions of blocking of content or information issued under these rules are in accordance with the provisions of sub-section (1) of section 69A of the Act and if it is of the opinion that the directions are not in accordance with the said provisions, it may set aside the directions and issue order for unblocking of such content or information generated, transmitted, received, stored or hosted in a computer resource.

Explanation.— For the purpose of this rule, "Review Committee" shall mean the Review Committee constituted under rule 419A of the Indian Telegraph Rules, 1951.

CHAPTER V
FURNISHING OF INFORMATION

18. **Furnishing of information**.— (1) A publisher of news and current affairs content and a publisher of online curated content operating in the territory of India, shall inform the Ministry about the details of its entity by furnishing information along with such documents as may be specified, for the purpose of enabling communication and coordination.

(2) The information referred to in sub-rule (1) shall be furnished within a period of thirty days of the publication of these rules, and where such publisher begins operation in the territory of India or comes into existence after commencement of these rules, within thirty days from the date of start of its operations in the territory of India or its coming into existence, as the case may be.

(3) The publisher of news and current affairs content and the publisher of online curated content shall publish periodic compliance report every month mentioning the details of grievances received and action taken thereon.

(4) The Ministry may call for such additional information from the publisher as it may consider necessary for the implementation of this Rule.

CHAPTER VI
MISCELLANEOUS

19. **Disclosure of Information**.— (1) A publisher and a self-regulating body, shall make true and full disclosure of all grievances received by it, the manner in which the grievances are disposed of, the action taken on the grievance, the reply sent to the complainant, the orders or directions received by it under these rules and action taken on such orders or directions.

(2) The information referred to in sub-rule (1) shall be displayed publicly and updated monthly.

(3) Subject to any law for the time being in force, the publisher shall preserve records of content transmitted by it for a minimum period of sixty days and make it available to the self-regulating body or the Central Government, or any other Government agency, as may be requisitioned by them for implementation of these rules.

APPENDIX

CODE OF ETHICS

I News and current affairs:

(i) Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978;

(ii) Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995;

(iii) Content which is prohibited under any law for the time being in force shall not be published or transmitted.

II Online curated content:

(A) General Principles:

(a) A publisher shall not transmit or publish or exhibit any content which is prohibited under any law for the time being in force or has been prohibited by any court of competent jurisdiction.

(b) A publisher shall take into consideration the following factors, when deciding to feature or transmit or publish or exhibit any content, after duly considering the implications of any content as falling under the following categories, and shall exercise due caution and discretion in relation to the same, namely:—

(i) content which affects the sovereignty and integrity of India;

(ii) content which threatens, endangers or jeopardises the security of the State;

(iii) content which is detrimental to India‘s friendly relations with foreign countries;

(iv) content which is likely to incite violence or disturb the maintenance of public order.

(c) A publisher shall take into consideration India‘s multi-racial and multi-religious context and exercise due caution and discretion when featuring the activities, beliefs, practices, or views of any racial or religious group.

(B) Content Classification:

(i) All content transmitted or published or exhibited by a publisher of online curated content shall be classified, based on the nature and type of content, into the following rating categories, namely:—

(a) Online curated content which is suitable for children as well as people of all ages shall be classified as "U" rating;

(b) Online curated content which is suitable for persons aged 7 years and above, and can be viewed by a person under the age of 7 years with parental guidance, shall be classified as "U/A 7+" rating;

(c) Online curated content which is suitable for persons aged 13 years and above, and can be viewed by a person under the age of 13 years with parental guidance, shall be classified as "U/A 13+" rating;

(d) Online curated content which is suitable for persons aged 16 years and above, and can be viewed by a person under the age of 16 years with parental guidance, shall be classified as "U/A 16+" rating; and

(e) Online curated content which is restricted to adults shall be classified as "A" rating.

(ii) The Content may be classified on the basis of.— i) Themes and messages; ii) Violence; iii) Nudity; iv) Sex; v) Language; vi) Drug and substance abuse; and (vii) Horror as described in the Schedule, as may be modified from time to time by the Ministry of Information & Broadcasting.

(C) Display of Classification:

(a) The publisher of online curated content shall prominently display the classification rating specific to each content or programme together with a content descriptor informing the user about the nature of the content and advising on viewer discretion (if applicable) at the beginning of every programme enabling the user to make an informed decision, prior to watching the programme.

(b) The publisher of online curated content making available content that is classified as U/A 13+ or higher shall ensure that access control mechanisms, including parental locks, are made available for such content.

(c) A publisher of online curated content which makes available content or programme that is classified as "A" shall implement a reliable age verification mechanism for viewership of such content.

(d) A publisher of online curated content must strive to include classification rating and consumer advice for their programmes in any print, televised or online promotional or publicity material and prominently display the classification rating specific to each such content.

(D) Restriction of access to certain curated content by a child:

Every publisher of online curated content providing access to online curated content which has an A rating shall take all efforts to restrict access to such content by a child through the implementation of appropriate access control measures.

(E) Measures to improve accessibility of online curated content by persons with disabilities:

Every publisher of online curated content shall, to the extent feasible, take reasonable efforts to improve the accessibility of online curated content transmitted by it to persons with disabilities through the implementation of appropriate access services.

SCHEDULE

Classification of any curated content shall be guided by the following sets of guidelines, namely:—

PART I

GENERAL GUIDELINES FOR CLASSIFICATION OF FILMS AND OTHER ENTERTAINMENT PROGRAMMES, INCLUDING WEB BASED SERIALS

There are general factors that may influence a classification decision at any level and in connection with any issue and the following factors are elucidated which may be read along with Part II of the Guidelines -

(a) Context:

Curated content may be considered in the light of the period depicted in such content and the contemporary standards of the country and the people to which such content relates. Therefore, the context in which an issue is presented within a film or video may be given consideration. Factors such as the setting of a work (historical, fantasy, realistic, contemporary etc.), the manner of presentation of the content, the apparent intention of the content, the original production date of the content, and any special merits of the work may influence the classification decision.

(b) Theme:

Classification decisions may take into the theme of any content but will depend significantly on the treatment of that theme, especially the sensitivity

of its presentation. The most challenging themes (for example, drug misuse, violence, pedophilia, sex, racial or communal hatred or violence etc.) are unlikely to be appropriate at the junior levels of classification.

(c) Tone and impact:

Curated content may be judged in its entirety from the point of view of its overall impact. The tone of content can be an important factor in deciding the influence it may have on various groups of people. Thus, films/serials that have a stronger depiction of violence may receive a higher classification.

(d) Target audience:

The classification of any content may also depend upon the target audience of the work and the impact of the work on such audience

PART II

ISSUE RELATED GUIDELINES

This part of the guidelines comprises the issues and concerns that apply in varying degrees to all categories of classification and elaborates the general approach that may be taken in this regard to the same. These concerns are listed in alphabetical order, and are to be read with the four General Guidelines listed in Part I.

(a) Discrimination:

The categorical classification of content shall take into account the impact of a film on matters such as caste, race, gender, religion, disability or sexuality that may arise in a wide range of works, and the classification decision will take account of the strength or impact of their inclusion.

(b) Psychotropic substances, liquor, smoking and tobacco:

Films or serials, etc. that as a whole portray misuse of psychotropic substances, liquor, smoking and tobacco would qualify for a higher category of classification.

(c) Imitable behaviour:

(1) Classification decisions may take into account any portrayal of criminal and violent behaviour with weapons.

(2) Portrayal of potentially dangerous behaviour that are likely to incite the commission of any offence (including suicide, and infliction of self-harm) and that children and young people may potentially copy, shall receive a higher classification.

(3) Films or serials with song and dance scenes comprising lyrics and gestures that have sexual innuendos would receive a higher classification.

(d) Language:

(1) Language is of particular importance, given the vast linguistic diversity of our country. The use of language, dialect, idioms and euphemisms vary from region to region and are culture-specific. This factor has to be taken into account during the process of classification of a work in a particular category.

(2) Language that people may find offensive includes the use of expletives. The extent of offence may vary according to age, gender, race, background, beliefs and expectations of the target audience from the work as well as the context, region and language in which the word, expression or gesture is used.

(3) It is not possible to set out a comprehensive list of words, expressions or gestures that are acceptable at each category in every Indian language. The advice at different classification levels, therefore, provides general guidance to consider while judging the level of classification for content, based on this guideline.

(e) Nudity:

(1) No content that is prohibited by law at the time being in force can be published or transmitted.

(2) Nudity with a sexual context will receive a higher classification of "A".

(f) Sex:

No content that is prohibited by law at the time being in force can be published or transmitted. The classification of content in various ratings from U/A 16+ to ''A" shall depend upon the portrayal of non-explicit (implicit) to explicit depiction of sexual behaviour.

(g) Violence:

Classification decisions shall take account of the degree and nature of violence in a work.

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