# JOTI JOURNAL

FEBRUARY 2016 (BI-MONTHLY)

## मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर – 482 007

## MADHYA PRADESH STATE JUDICIAL ACADEMY

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

# JOTI JOURNAL FEBRUARY - 2016

# SUBJECT- INDEX

सम्पादकीय 1

## PART-I
## (ARTICLES & MISC.)


| | | |
|---|---|---|
| 1. | Hon'ble Shri Justice K.K. Trivedi demits office | 3 |
| 2. | Photographs | 4 |
| 3. | दाण्डिक प्रकरणों का शीघ्र निराकरण– कुछ महत्वपूर्ण बिन्दु | 7 |
| 4. | धारा 125 दं.प्र.सं. का उद्देश्य, प्रकृति, प्रक्रिया और विस्तार | 16 |
| 5. | Utilization of Grant-in-Aid for Judicial Education : An overview | 28 |
| 6. | Training Calender for the first half of the year 2016 | 35 |


## PART-II
## (NOTES ON IMPORTANT JUDGMENTS)


**ACT/ TOPIC** **NOTE NO.** **PAGE NO.**

**ADVOCATES ACT, 1961**

**अधिवक्ता अधिनियम, 1961**

**Sections 35 and 49 –** Professional misconduct by an Advocate – Appeared for and against the same client.

**धाराएं 35 और 49 –** एक अभिभाषक द्वारा व्यावसायिक दुराचरण – एक ही पक्षकार की ओर से और उसके विरूद्ध उपस्थित होना। **1 1**

**BAR COUNCIL OF INDIA RULES, 1975**

**भारतीय अधिवक्ता परिषद नियम, 1975**

**Part VI, Section II, Regulation 33 –** See Sections 35 and 49 of the Advocates Act, 1961

**भाग 6 धारा 2, विनियम 33 –** देखें धाराएं 35 और 49 की अधिवक्ता अधिनियम, 1961

**1 1**

**CIVIL PROCEDURE CODE, 1908**

**सिविल प्रक्रिया संहिता, 1908**

**Sections 2 to 33, 47, 151 & 152 and Order 20 –** Amendment of decree – Power of Executing Court, scope of – Executing Court cannot go behind the decree.

**धाराएं 2 से 33, 47, 151 और 152 तथा आदेश 20 –** आज्ञप्ति में संशोधन – निष्पादन न्यायालय की शक्तियों का क्षेत्र – निष्पादन न्यायालय आज्ञप्ति के पीछे नहीं जा सकती।

**2 3**

**Section 2(2), Order 2 Rule 2 and Order 8 Rule 6-A to 6-D –** (i) Order when may amount to decree – If by virtue of the order of the Court, the rights have finally been adjudicated, it would assume the status of a decree.

(ii) Counter-claim, nature and object of.

**धारा 2 (2), आदेश 2 नियम 2 और आदेश 8 निमय 6–ए से 6–डी –** (i) आदेश कब डिक्री के समान माना जा सकेगा – यदि न्यायालय के आदेश से अधिकारों का अंतिम रूप से न्यायनिर्णयन हो जाता है तब वह डिक्री की प्रास्थिति ले लेगा।

(ii) प्रतिदावे की प्रकृति और उद्देश्य। **3 5**

**Section 11 –** ***Res judicata*** – The subject-matter and the parties are the same in both the suits but cause of action, issues involved and relief claimed in the subsequent suit are different – Therefore, subsequent suit is not hit by the principle of ***res judicata***.

**धारा 11 –** रेस ज्यूडिकेटा या पूर्व निर्णय – दोनों वादों में वादग्रस्त संपत्ति और पक्षकार समान है किन्तु वाद कारण, अंतरग्रस्त वादप्रश्न और चाहा गया अनुतोष पश्चातवर्ती वाद में भिन्न है – – बाद का वाद रेस ज्यूडिकेटा के सिद्धांत से बाधित नहीं होता है। **4* 9**

**Section 11 and Order 7 Rule 11(d) –** Can a suit be rejected on the ground of ***res judicata*** under Order 7 Rule 11 (d) CPC?

**धारा 11 और आदेश 7 नियम 11(डी) –** क्या एक वाद को पूर्व न्याय या रेस जूडिकेटा के आधार पर आदेश 7 नियम 11(डी) सी.पी.सी. के अधीन खाारिज किया जा सकता है ?

**5* 10**

**Section 20 –** Words and phrases "not withstanding anything contained in any law for the time being in force", effect of – It does not necessarily oust/exclude applicability of other laws.

Interpretation of statutes – Mischief rule, applicability of.

Interpretation of statutes – Purposive interpretation.

**धारा 20 –** ''तत्समय प्रवृत किसी विधि में उल्लेखित किसी बात के होते हुए भी'' शब्द और वाक्यांश का प्रभाव – यह आवश्यक नहीं होता कि यह अन्य विधियों का लागू होना समाप्त कर देता है।

कानून का अर्थान्वयन – मिसचिफ नियम समझाया गया।

कानून का अर्थान्वयन – उद्देश्य जनक अर्थान्वयन **20 (ii), 31**

**(iii) & (iv)**

**Sections 33, 148 and 151 –** (i) Extension of time – Discretionary power of the Court, exercise of.
(ii) Conditional self operative decree, effect of non-compliance of terms and conditions – Non-compliance of conditions of decree lead to automatic dismissal of the suit.

**धाराएं 33, 148 और 151 –** (i) समय बढ़ाना – न्यायालय की विवेकीय शक्ति का प्रयोग किया जाना।
(ii) सशर्त स्वप्रभावी डिक्री की शर्तों और दशाओं का अनुपालन न करने का प्रभाव – डिक्री की शर्तों का पालन न करने से वाद स्वतः ही निरस्त हो जाता है। **62 120**

**Order 1 Rule 8 (1) –** (i) Transposition of party, requirement of – Law explained.
(ii) Label of application, effect of – It is trite law that label of an application is not decisive of the matter and its contents should be seen.

**आदेश 1 नियम 8 (1) –** (i) पक्षकार के पक्षांतरण की आवश्यकता – विधि समझाई गई।
(ii) आवेदन के शीर्षक (या अंकन) का प्रभाव – यह स्थापित विधि है कि एक आवेदन पर उल्लेखित शीर्षक (या प्रावधान) मामले में निर्णायक नहीं होता है बल्कि उसमें उल्लेखित तथ्य देखना चाहिए। **6***

**10**

**Order 1 Rule 10 (2) –** Suit for specific performance of contract – After coming to know about proceeding, subsequent purchaser of suit property filed an application under Order 1 Rule 10 CPC for his impleadment as a defendant – Same has been rejected by the Trial Court – To avoid multiplicity of litigation, order of Trial Court set aside and application under Order 1 Rule 10 CPC has been allowed by Hon'ble the High Court.

**आदेश 1 नियम 10 (2) –** संविदा के विनिर्दिष्ट पालन का वाद– कार्यवाही की जानकारी लगने के बाद वादग्रस्त संपत्ति के पश्चातवर्ती क्रेता ने उसे प्रतिवादी के रूप में संयोजित किये जाने के लिए आदेश 1 नियम 10 सी.पी.सी. के अधीन एक आवेदन प्रस्तुत किया– उसे विचारण न्यायालय द्वारा निरस्त किया गया– वाद बाहुल्य से बचने के लिए विचारण न्यायालय का आदेश माननीय उच्च न्यायालय द्वारा निरस्त किया गया और आदेश 1 नियम 10 का आवेदन स्वीकार किया गया।

**7 11**

**Order 1 Rule 10 and Order 22 Rules 3 & 9 –** (i) Nature of provisions of Order 22 CPC.
(ii) Bringing L.Rs. of plaintiff or defendant on record – Order 22 stipulates the manner in which legal representatives of plaintiff or defendant ought to be brought on record – The prescribed procedure cannot be circumvented by filing application under Order 1 Rule 10 CPC r/w/s 151 CPC – It would be unjust to non-suit the appellants on the ground of technicalities.
(iii) Second appeal – Dismissed due to non-prosecution.

**आदेश 1 नियम 10 और आदेश 22 नियम 3 और 9 –** (i) आदेश 22 सी.पी.सी.के प्रावधान की प्रकृति।

(ii) वादी या प्रतिवादी के वेध प्रतिनिधियों को अभिलेख पर लाना – आदेश 22 में वादी या प्रतिवादी के वेध प्रतिनिधियों को अभिलेख पर लाने का एक तरीका निर्धारित किया गया है – विहित प्रक्रिया को आदेश 1 नियम 10 सहपठित धारा 151 सी.पी.सी. का आवेदन प्रस्तुत करके प्रवंचित नहीं किया जा सकता – अपीलार्थी को तकनीकी आधारों पर कार्यवाही से वंचित करना अयुक्तियुक्त होगा।

(iii) द्वितीय अपील– अभियोजित न करने के आधार पर खारिज की गयी **8 13**

**Order 6 Rules 2, 4 and 17 –** See section 3 of the Evidence Act, 1872.

**आदेश 6 नियम 2, 4 और 17 –** देखें साक्ष्य अधिनियम 1872 की धारा 3।

**9 16**

**Order 6 Rule 17 –** Amendment of plaint – When doctrine of relation back is not applicable?

**आदेश 6 नियम 17 –** वाद में संशोधन– कब रिलेशन बैक का सिद्धांत लागू नहीं होगा ?

**10 17**

**Order 6 Rule 17 –** Amendment of pleading, permissibility of – Application seeking amendment in relief clause which would tantamount to changing nature of the suit, is impermissible.

**आदेश 6 नियम 17 –** अभिवचन में संशोधन का अनुमत योग्य होना – आवेदन से अनुतोष खण्ड में संशोधन चाहा गया जो वाद की प्रकृति में संशोधन करने के समान होगा, अनुमत योग्य नहीं है। **11* 19**

**Order 6 Rule 17 Proviso –** See section 22 of the Specific Relief Act, 1963.

**आदेश 6 नियम 17 का परंतुक –** देखें विनिर्दिष्ट अनुतोष अधिनियम, 1963 की धारा 22।

**63* 123**

**Order 7 Rule 14 (3) and Order 16 Rule 1 –** Trial Court allowed the applications under Order 7 Rule 14 (3) CPC and under section 65 of the Evidence Act but disallowed the application under Order 16 Rule 1 CPC for summoning witness on the ground that plaintiffs did not produce any list of witnesses as per Order 16 Rule 1 CPC – Held, Trial Court has erred in examining the matter with a hyper-technical point of view.

**आदेश 7 नियम 14 (3) और आदेश 16 नियम 1 –** विचारण न्यायालय ने आदेश 7 नियम 14 (3) सी.पी.सी और धारा 65 साक्ष्य अधिनियम के आवेदन स्वीकार किये किंतु आदेश 16 नियम 1 सी.पी.सी. का आवेदन गवाह को समन करने के लिए इस आधार पर निरस्त किया कि वादी ने आदेश 16 नियम 1 सी.पी.सी के अनुसार साक्ष्य सूची प्रस्तुत नहीं की – अभिनिर्धारित किया गया, विचारण न्यायालय ने मामले को अति तकनीकी दृष्टिकोण से परीक्षित करने में त्रुटि की है।

**12 19**

**Order 12 Rule 8 –** (i) Object of Order 12 Rule 8 CPC.
(ii) Duty of the party.
**आदेश 12 नियम 9 –** (i) आदेश 12 नियम 8 सी.पी.सी. का उद्देश्य।
(ii) पक्षकार का कर्त्तव्य। **13* 21**

**Order 13 Rule 10 (3) –** Question involved in the suit regarding non-existence of a firm – Trial Court disallowed the application of defendant under Order 13 Rule 10 (3) CPC for summoning the record from the Commercial Tax Department and held that certified copies may be filed by the defendant – During trial plaintiff filed an application under the same provision for the verification of certified copy produced by the defendants.
**आदेश 13 नियम 10 (3) –** वाद में अंतरग्रस्त प्रश्न फर्म के अस्तित्व में न होने के बारे में था – विचारण न्यायालय ने प्रतिवादी द्वारा प्रस्तुत आवेदन आदेश 13 नियम 10 (3) सी.पी.सी., वाणिज्य कर विभाग से अभिलेख तलब करने के लिए, निरस्त कर दिया और यह प्रतिपादित किया गया प्रतिवादी प्रमाणित प्रतिलिपी प्रस्तुत कर सकता है – विचारण के दौरान वादी ने उसी प्रावधान के अधीन एक आवेदन प्रतिवादी द्वारा प्रस्तुत प्रमाणित प्रतिलिपि के सत्यापन के लिए प्रस्तुत किया – उसे विचारण न्यायालय द्वारा स्वीकार किया गया। **14 22**

**Order 13 Rule 10 and Order 16 Rule 1 –** Civil suit, right of parties – Freedom to prove case, grant of.
**आदेश 13 नियम 10 और आदेश 16 नियम 1 –** सिविल वाद, पक्षकारों के अधिकार – मामले को प्रमाणित करने की स्वतंत्रता दिया जाना। **15 23**

**Order 20 Rules 10, 12 and 18 –** Joint family property, proof of.
Doctrine of lis pendens, applicability of.
Effect of failure to seek leave or bring on record the person upon whom the interest has devolved during the pendency of the suit – Law stated.
**आदेश 20 नियम 10, 12 और 18 –** संयुक्त परिवार की संपत्ति का प्रमाण – मामले के क्रम में समझाया गया।
वाद लंबन के सिद्धांत का लागू होना – स्पष्ट किया गया।
वादी लंबन के दौरान उस व्यक्ति को जिसे संपत्ति में हित मिले है, अभिलेख पर लाने की अनुमति मांगने में असफल रहने का प्रभाव – विधि बतलाई गई। **65 (i) 124**
**(ii) & (v)**

**Order 22 Rules 10 and 11 –** Assignment during pendency of suit or appeal – Whether suit or appeal can be dismissed on the ground that the plaintiff released his right during pendency of lis?
**आदेश 22 नियम 10 और 11 –** वाद या अपील के लंबित रहने के दौरान अंतरण – क्या वाद या अपील इस आधार पर खारिज की जा सकती है कि वादी ने कार्यवाही के लंबित रहने के दौरान उसके अधिकार त्याग दिये ? **16 26**

**Order 37 Rule 3 –** Leave to defend in summary suit.

आदेश 37 नियम 3 – संक्षिप्त विचारण वाद में प्रतिरक्षा के लिए अनुमति। **17** **26**

**CONSUMER PROTECTION ACT, 1986**

**उपभोक्ता संरक्षण अधिनियम, 1986**

**Section 2 (1) (d) (i) & (ii) –** “Commercial purpose” and “consumer”, connotation of.

धारा 2 (1) (डी) (i) और (ii) – ''व्यावसायिक उद्देश्य'' और ''उपभोक्ता'' का अर्थ।

**18*** **28**

**CONTRACT ACT, 1872**

**संविदा अधिनियम, 1872**

**Section 128 –** (i) Liability of guarantor.

(ii) Right of purchaser in auction sale – Stated.

धारा 128 – (i) जमानतदार का दायित्व।

(ii) निलाम विक्रय के क्रेता के अधिकार – समझाये गये। **19** **28**

**COPYRIGHT ACT, 1957**

**प्रतिलिप्याधिकार अधिनियम, 1957**

**Section 62 –** Suit for infringement of copyright or trademark – Place of suing.

धारा 62 – प्रतिलिप्याधिकार या संपत्ति चिन्ह के उल्लंघन के वाद के लिए – वाद का स्थान।

**20 (i)** **31**

**COURT FEES ACT, 1870**

**न्यायालय शुल्क अधिनियम, 1870**

**Section 7 (i)** – Ad valorem Court Fees, payment of.

धारा 7 (i) – मूल्य अनुसार न्यायालय शुल्क का भुगतान। **48*** **80**

**COURT FEE (M.P. AMENDMENT) ACT, 2008**

**न्यायालय शुल्क (मध्यप्रदेश संशोधन) अधिनियम, 2008**

**Schedule I Article 1-A –** (i) Can an appellant who filed an appeal after 02.04.2008 take advantage of Court Fees under Schedule I Article 1-A as substituted by M.P. Amendment Act, 2008 w.e.f. 02.04.2008?

(ii) The expression ‘Civil Court’ occurring in Article 1-A of Schedule I of Court Fees Act encompasses the High Court being the highest Civil Court of appeal (not including the Supreme Court) in the part of India to which the Court Fees Act operates, as is applicable to the State of Madhya Pradesh.

**अनुसूची 1 का अनुच्छेद 1–ए –** (i) क्या एक अपीलार्थी जो 2 अप्रैल, 2008 के बाद एक अपील प्रस्तुत करता है, न्यायालय शुल्क अधिनियम अनुसूची 1 अनुच्छेद 1–ए जो कि मध्यप्रदेश संशोधन अधिनियम, 2008 दिनांक 02–04–2008 से प्रभावशील है, का लाभ ले सकता है ?

(ii) अभिव्यक्ति 'सिविल न्यायालय' जो कि न्यायालय शुल्क अधिनियम की अनुसूची 1 के अनुच्छेद 1–ए में उल्लेखित है उसमें उच्च न्यायालय अपील की उच्चतम सिविल न्यायालय होने से मध्यप्रदेश राज्य में लागू न्यायालय शुल्क अधिनियम के प्रकाश में आती है लेकिन इसमें सर्वोच्च न्यायालय शामिल नहीं है। **21 39**

## CRIMINAL PROCEDURE CODE, 1973

## दण्ड प्रक्रिया संहिता, 1973

**Sections 2 (wa), 372 and 378 (3) –** Whether father of the deceased falls within the definition of 'victim' and has *locus standi* to file appeal against acquittal under section 372 CrPC?

**धाराएं 2 (wa) 372 और 378 (3)** – क्या मृतक का पिता '' पीड़ित'' की परिभाषा के अंतर्गत आता है और दोषमुक्ति के विरूद्ध धारा 372 दप्रसं के अधीन अपील प्रस्तुत करने का हकदार होता है? **22 40**

**Sections 53 and 198 (2) –** (i) Can an accused be compelled to allow sample for DNA test to be taken from his body? Held, Yes.

(ii) Whether such order be passed after filing of charge-sheet? Held, Yes.

**धाराएं 53 और 198 (2)** – (i) क्या एक अभियुक्त को उसके शरीर से डी.एन.ए. परीक्षण का नमूना लेने की अनुमति देने के लिए बाध्य किया जा सकता है ? अभिनिर्धारित किया गया, हाँ।

(ii) क्या ऐसा आदेश अभियोग पत्र प्रस्तुत हो जाने के बाद पारित किया जा सकता है ? अभिनिर्धारित किया गया, हाँ। **23* 41**

**Sections 156 (3) and 202 –** Can a Magistrate issue direction u/s 156 (3) CrPC for registration of an FIR and investigation thereof for offences triable by Court of Sessions? Held, Yes.

**धाराएं 156 (3) और 202** – क्या एक मजिस्ट्रेट सत्र न्यायालय द्वारा विचारणीय अपराध के लिए धारा 156 (3) दण्ड प्रक्रिया संहिता के अधीन एक प्रथम सूचना प्रतिवेदन दर्ज करने और अनुसंधान करने के निर्देश जारी कर सकता है ? अभिनिर्धारित किया गया, हाँ। **24* 42**

**Sections 167 (2) and 309 –** Whether remand in police custody can be given to the investigating agency in respect of the absconding accused, who is arrested only after filing of charge-sheet? Held, Yes.

**धाराएं 167(2) और 309** – क्या अनुसंधान अभिकरण को पुलिस अभिरक्षा का रिमाण्ड, फरार अभियुक्त के संबंध में जो कि अभियोग पत्र प्रस्तुत करने के बाद गिरफ्तार हुआ हो, दिया जा सकता है? अभिनिर्धारित किया गया है हाँ। **25 42**

**Section 250 –** Compensation for accusation without reasonable cause, when cannot be awarded?

**धारा 250** – उचित कारण के बिना अभियोग के लिए प्रतिकर – कब नहीं दिलाया जा सकता?

**26 44**

**Section 311 –** (i) Recalling of witnesses – Mere change of counsel cannot be made a ground to recall witnesses.

(ii) A counsel appointed by an accused – No finding can be recorded that he was incompetent particularly behind his back.

(iii) Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of crime is not unduly harassed.

**धारा 311** – (i) गवाहों को पुनः बुलाना– केवल अभिभाषक का बदल जाना गवाहों को पुनः बुलाने का एक आधार नहीं हो सकता है।

(ii) अभियुक्त द्वारा नियुक्त एक अभिभाषक – ऐसा निष्कर्ष अभिलिखित नहीं किया जा सकता है, विशेषकर उनकी अनुपस्थिति में, कि वह सक्षम नहीं है।

(iii) न्यायालय को उनके मस्तिष्क में न केवल अभियुक्त को ऋजु अवसर देने की आवश्यकता को ध्यान में रखना होता है बल्कि यह भी आवश्यक होता है कि यह सुनिश्चित करें कि अपराध के पीड़ित को अनावश्यक तंग न किया जाये। **27 46**

**Section 354 –** See sections 53 and 306 of the Indian Penal Code, 1860.

**धारा 354** – देखें भारतीय दण्ड संहिता, 1860 की धाराएं 53 और 306। **38 66**

**Section 357-A –** Compensation for acid attack victim:

(i) There should be a minimum compensation of Rs. 3 lakh for acid attack victims.

(ii) Direction issued by Hon'ble the Apex Court for acid attack case.

**धारा–357–ए** – अम्ल द्वारा हमले के मामले में पीड़ित को प्रतिकर।

(i) अम्ल द्वारा हमले के पीड़ित को न्यूनतम तीन लाख प्रतिकर दिया जाना चाहिए।

(ii) माननीय सर्वोच्च न्यायालय द्वारा अम्ल द्वारा हमले के प्रकरण के बारे में निर्देश जारी किये गये।

**46* 78**

**Section 439 –** Grant of bail – How to exercise discretionary powers? Principles reiterated.

**धारा 439** – जमानत का दिया जाना – विवेकीय शक्तियों का प्रयोग कैसे किया जाये ? सिद्धांत पुनः बतलाये गये। **28 47**

**ELECTRICITY ACT, 1910**

**विद्युत अधिनियम, 1910**

**Section 39 –** See sections 126 and 135 of the Electricity Act, 2003.
**धारा 39 –** देखें विद्युत अधिनियम, 2003 की धाराएं 126 और 135। **29** **49**

**ELECTRICITY ACT, 2003**

**विद्युत अधिनियम, 2003**

**Sections 126 and 135 –** Whether criminal proceedings can be quashed merely because accused has satisfied the civil liability? Held, No.
**धाराएं 126 और 135 –** क्या दाण्डिक कार्यवाही केवल इसलिए अपास्त की जा सकती है कि अभियुक्त ने सिविल दायित्व की तुष्टि कर दी है ? अभिनिर्धारित किया गया, नहीं। **29** **49**

**EVIDENCE ACT, 1872**

**साक्ष्य अधिनियम 1872**

**Section 3 –** Appreciation of evidence in civil cases – Variation between pleading and proof, how to take into consideration?
**धारा 3 –** सिविल मामलों में साक्ष्य का मूल्यांकन– अभिवचन और प्रमाण में भिन्नता को कैसे विचार में लिया जाये ? **9** **16**

**Sections 3 and 24 –** Whether village Chowkidar and Patel are Police Officers? Held, No.
**धाराएं 3 और 24 –** क्या गाँव का चौकीदार और पटैल पुलिस अधिकारी है ? अभिनिर्धारित किया गया नहीं। **31** **52**

**Sections 3 and 45 –** See Sections 201, 302 and 498-A of the Indian Penal Code, 1860.
**धाराएं 3 और 45 –** देखें भारतीय दण्ड संहिता, 1860 की धाराएं 201, 302 और 498–ए। **40** **69**

**Sections 3, 114 (b) and 133 –** Appreciation of evidence:
(i) Evidence of accomplice.
(ii) Evidence of trap/decoy witness.
**धाराएं 3, 114 (बी) और 133 –** साक्ष्य का मूल्यांकनः
(i) सहः अपराधी की साक्ष्य।
(ii) ट्रेप साक्ष्य/गवाह – ऐसे गवाहों की साक्ष्य पर विचार करते समय इन्हें हितबद्ध साक्षी की तरह लेने से अधिनियम के उद्देश्यों पर पड़ने वाला प्रभाव समझाया गया। **30** **50**

**Section 45 –** Application under section 45 of the Evidence Act, how to be dealt with?
**धारा 45 –** धारा 45 भारतीय साक्ष्य अधिनियम के अधीन आवेदन का निराकरण कैसे किया जाये ? **32*** **53**

**Sections 50 and 68 –** See Section 63 of the Succession Act, 1925.
**धाराएं 50 और 68 –** देखें उत्ताधिकार अधिनियम, 1925 की धारा 63। **33*** **53**

**Section 65 –** See Order 7 Rule 14 (3) and Order 16 Rule 1 of the Civil Procedure Code, 1908.

**धारा 65** – देखें सिविल प्रक्रिया संहिता, 1908 का आदेश 7 नियम 14 (3) और आदेश 16 नियम 1। **12 19**

**FOREIGN EXCHANGE REGULATION ACT, 1973**

**विदेशी मुद्रा विनिमय अधिनियम, 1973**

**Section 56 r/w/s 40 –** Whether complaint under section 56 r/w/s 40 of the FERA is maintainable for evading summons even where proceeding as to the substantive offences under FERA were subsequently dropped? Held, Yes.

**धारा 56 सहपठित 40** – क्या धारा 56 सहपठित धारा 40 फेरा अधिनियम का परिवाद समन की अनदेखी करने के लिए चलने योग्य है जबकि फेरा के अधीन मूल अपराध की कार्यवाही बाद में ड्राप कर दी गई थी ? अभिनिर्धारित किया गया हाँ। **39 (ii)* 68**

**GENERAL CLAUSES ACT, 1897**

**साधारण खण्ड अधिनियम, 1897**

**Section 3 (25) –** See Schedule I Article 1-A of the Court Fees (M.P. Amendment) Act, 2008

**धारा 3 (25)** – देखें न्यायालय शुल्क (मध्यप्रदेश संशोधन) अधिनियम, 2008 की अनुसूची 1 का अनुच्छेद 1–ए। **21 39**

**GUARDIANS AND WARDS ACT, 1890**

**संरक्षक और प्रतिपाल्य अधिनियम, 1890**

**Sections 7 and 17 –** See section 6 of the Hindu Minority and Guardianship Act, 1956.

**धारा 7 और 17** – देखें हिन्दू अवयस्कता और संरक्षकता अधिनियम, 1956 की धारा 6। **35 57**

**HINDU LAW:**

**हिन्दू विधि :**

– Doctrine of relation back, application of – Law explained.
Properties by inheritance vis-à-vis collateral property.

– रिलेशन बैक का सिद्धांत लागू होना – विधि समझाई गई।
दाय द्वारा संपत्ति विरूद्ध सम्पार्शविक संपत्ति – अंतर समझाया गया। **34 54**

**HINDU MINORITY AND GUARDIANSHIP ACT, 1956**

**हिन्दू अवयस्कता और संरक्षकता अधिनियम, 1956**

**Section 6 –** (i) Custody of a child, determination of – Best interests and welfare of the child are of paramount importance.

(ii) Custody of child ordinarily residing in foreign country and is brought in India, principles applicable.
In such a case, following two contrasting principles of law are applicable; (a) the principle of Comity of Court and (b) the principles of best interest and welfare of the child.
(iii)Repatriation as per custodial order of foreign Court, when can be ordered – Law stated.
(iv)Defiance of interlocutory or interim order – Must be viewed seriously as it would have deleterious effect on rule of law.
**धारा 6 –** (i) बच्चे की अभिरक्षा का निर्धारण – बच्चे के सर्वोत्त हित और कल्याण महत्वपूर्ण होते है।
(ii) बच्चे की अभिरक्षा जो साधारणतः विदेश में रहता है और भारत लाया गया है उसके बारे में लागू होने वाले सिद्धान्त समझाये गये।
(iii) विदेश न्यायालय के अभिरक्षा आदेश अनुसार प्रत्यावर्तन, कब आदेश किया जा सकता है – विधि बतलाई गई।
(iv) अंतर्वर्ती या अंतरिम आदेश की अवज्ञा – गंभीरता से लिया जाना चाहिए क्योंकि यह कानून के नियम पर हानिकारक प्रभाव डालने वाला होगा। **35** **57**

**HINDU SUCCESSION ACT, 1956**

**हिन्दू उत्तराधिकारी अधिनियम, 1956**

**Section 15 –** Succession in case of females.
**धारा 15 –** महिलाओं के मामले में उत्तराधिकार। **37(i)*** **65**

**HINDU SUCCESSION (AMENDMENT) ACT, 2005**

**हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005**

**Section 6 –** Whether section 6 of Hindu Succession (Amendment) Act, 2005 will have retrospective effect ? Held, No.
**धारा 6 –** क्या धारा 6 हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 का भूतलक्षी प्रभाव रहेगा? अभिनिर्धारित किया गया, नहीं। **36*** **65**

**INDIAN PENAL CODE, 1860**

**भारतीय दण्ड संहिता, 1860**

**Sections 53 and 306 –** Offence of abetment of suicide.
**धाराएं 53 और 306 –** आत्म हत्या के लिए दुष्प्रेरण का अपराध। **38** **66**

**Sections 172 to 174 –** Non-obedience to summons – Non-attendance, consequence of.
**धाराएं 172 से 174 –** समन का अनुपालन न करना – उपस्थित न होने का परिणाम।
**39 (i)*** **68**

**Sections 201, 302 and 498-A –** Appreciation of evidence – Case based on circumstantial evidence – Death due to murder or suicide – The story of suicide has been disbelieved by trial court as well as High Court – Affirmed by Hon'ble the Apex Court.

**धाराएं 201, 302 और 498–ए –** साक्ष्य का मूल्यांकन – परिस्थितिजन्य साक्ष्य पर आधारित मामला– मृत्यु का कारण हत्या या आत्महत्या – आत्महत्या की कहानी को विचारण न्यायालय और उच्च न्यायालय द्वारा अविश्वसनीय माना गया – माननीय सर्वोच्च न्यायालय ने इसकी पुष्टि की। **40 69**

**Sections 294, 323 and 324 r/w/s 34 –** Whether an injury caused by human nail can be said to be caused by an instrument used for stabbing or cutting and making causing of such injury punishable under section 324 IPC? Held, No.

**धाराएं 294, 323 और 324 सहपठित 34 –** क्या मानव नाखून द्वारा कारित एक उपहति के लिए यह कहा जा सकता है कि वह वेधन या काटने के किसी उपकरण द्वारा कारित की गयी है और धारा 324 भा.द.स. के तहत दण्डनीय है ? अभिनिर्धारित किया गया, नहीं।

**41 71**

**Sections 300 , 302 and 304 Part II –** Offence of murder, proof of – Murder and culpable homicide, distinction between – Law explained.

**धाराएं 300, 302 और 304 भाग II –** हत्या के अपराध का प्रमाण – हत्या व सदोष मानव वध के मध्य अंतर – विधि समझाई गई। **42 72**

**Section 302 –** See sections 3 and 24 of the Evidence Act, 1872.

**धारा 302 –** देखें साक्ष्य अधिनियम, 1872 की धारा 3 और 24। **31 52**

**Section 302 r/w/s 149 –** Offence of murder by members of unlawful assembly, constitution of.

**धारा 302 सहपठित 149 –** अवैध सभा के सदस्यों द्वारा हत्या के अपराध का गठन।

**43 74**

**Sections 307 and 325 –** Offence when falls under section 325 and not under section 307 IPC?

**धाराएं 307 और 325 –** अपराध कब धारा 325 भा.दं.सं में आता है और धारा 307 भा.दं.सं. में नहीं आता है?

**44* 75**

**Sections 320 and 325 –** (i) Offence of voluntarily causing grievous hurt by hard and blunt object, constitution of and grievous hurt, connotation of.

(ii) Sentencing – Is always a matter of discretion by the Court.

(iii) Imposition of sentence, interference by appellate Court.

**धाराएं 320 और 325 –** (i) शख्त और बोथरे हथियार से स्वेच्छया घोर उपहति कारित करने के अपराध का गठन और स्वेच्छया घोर उपहित का अर्थ।

(ii) दण्डाज्ञा – यह सदैव न्यायालय के विवेकाधिकार का विषय होता है।

(iii) दण्ड अधिरोपित करना, अपील न्यायालय द्वारा हस्तक्षेप। **45** **76**

**Section 326-A –** See section 357-A of the Criminal Procedure Code, 1973.

**धारा 326–ए –** देखें दण्ड प्रक्रिया संहिता, 1973 की धारा 357–ए। **46*** **78**

**Sections 406 and 497 –** See sections 53 and 198 (2) of the Criminal Procedure Code, 1973.

**धाराएं 406 और 497 –** देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 53 और 198 (2)।

**23*** **41**

**Sections 420, 467 and 468 –** See sections 156 (3) and 202 of the Criminal Procedure Code, 1973.

**धाराएं 420, 467 और 468 –** देखें दण्ड प्रक्रिया संहिता, 1973 की धाराएं 156 (3) और 202।

**24*** **42**

**JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

**किशोर न्याय (बालकों की देख रेख और संरक्षण) अधिनियम, 2000**

**Section 12 –** If release of juvenile in conflict with law defeats the ends of justice, his bail application cannot be allowed.

**धारा 12 –** यदि विधि संबंधि विरोध में किशोर को रिहा किया जाना न्याय के उद्देश्यों को पराजित करता हो तो उसका जमानत आवेदन स्वीकार नहीं किया जा सकता। **47*** **79**

**LAND ACQUISITION ACT, 1894**

**भूमि अधिग्रहण अधिनियम, 1894**

**Section 31 –** See section 7 (i) of Court Fees Act, 1870.

**धारा 31 –** देखें न्यायालय शुल्क अधिनियम, 1870 की धारा 7 (i)। **48*** **80**

**LAND REVENUE CODE, 1959 (M.P)**

**भू राजस्व संहिता, 1959 (म.प्र.)**

**Section 110 –** Mutation entry, relevancy of – Mutation entries do not convey or extinguish any title and are relevant only for the purpose of collection of land revenue.

**धारा 110 –** नामांतरण इंद्राज की सुसंगतता – नामांतरण इंद्राज कोई स्वत्व न तो प्रदान करते है न वापस लेते है और ये भू राजस्व वसूली के उद्देशय से सुसंगत होते है। **37 (ii)*** **65**

**MOTOR VEHICLES ACT, 1988**

**मोटर यान अधिनियम, 1988**

**Section 163-A and Schedule II –** Benefit of structured formula provided in Schedule II, entitlement of – Such benefit can be availed by those claimants only whose annual income is up to Rs. 40,000/-.

**धारा 163–ए और अनुसूची II** – द्वितीय अनुसूची में उपलब्ध संरचनात्मक सूत्र के लाभ का हकदार होना – ऐसा लाभ उन्हीं दावेदारों द्वारा लिया जा सकता है जिनकी वार्षिक आय 40 हजार रूपये तक है। **49*** **80**

**Section 166 – (i)** Death claim – Self-employed person of 45 years of age – Compensation, determination of – Law stated.

(ii) Age, determination of – Deceased had completed 45 years 5 months and 28 days of age – Held, since he had completed only 45 years, age to be taken as 45 years.

(iii) Death claim – Self-employed persons vis-à-vis persons on fixed wages – Future prospects, determination of – Law explained.

(iv) Divergent views between two previous three Judge Bench decisions – Rule of judicial discipline and propriety – Proper course to be followed by two Judge Bench – Law stated.

**धारा 166 –** (i) मृत्यु प्रकरण – 45 वर्षीय स्व–नियोजित व्यक्ति – प्रतिकर का निर्धारण – विधि समझाई गई।

(ii) उम्र का निर्धारण – मृतक ने 45 वर्ष 5 माह व 28 दिन की उम्र पूर्ण की थी – अभिनिर्धारित किया गया उसने 45 वर्ष की उम्र पूर्ण की थी अतः उसकी उम्र 45 वर्ष विचार ली जायेगी।

(iii) मृत्यु प्रकरण – स्व–नियोजित व्यक्ति विरूद्ध नियत मजदूरी पर व्यक्ति – भविष्य की संभावनाओं का निर्धारण – विधि समझाई गई।

(iv) पूर्व के दो, तीन न्यायमूर्तिगण की पीठ के परस्पर विरोधी मत – न्यायिक अनुशासन का नियम और औचित्य – दो न्यायमूर्तिगण की पीठ द्वारा अनुसरित किये जाने वाला उचित मार्ग – विधि समझाई गई। **50** **81**

**Section 166 –** Divergent views of Benches of equal strength – Authoritative pronouncement, need therefor.

Claim – Compensation – Future prospects vis-à-vis persons who are self-employed or on fixed wages, determination of – Law explained.

**धारा 166 –** समान संख्या की पीठ द्वारा विरोधी मत – अधिमान्य निर्णय की आवश्यकता।

दावा – प्रतिकर – व्यक्ति जो स्व–नियोजित है या नियत मजदूरी पर है उनके भविष्य की संभावनायों का निर्धारण – विधि समझाई गई। **51** **86**

**Section 166 (2) –** Territorial jurisdiction of Claims Tribunal.

**धारा 166 (2) –** दावा अधिकरण का प्रादेशिक क्षेत्राधिकार। **52** **90**

## NEGOTIABLE INSTRUMENTS ACT, 1881

## परक्राम्य लिखित अधिनियम, 1881

**Section 20 –** See section 45 of the Evidence Act, 1872.

**धारा 20 –** देखें साक्ष्य अधिनियम, 1872 की धारा 45। **32*** **53**

**Section 138 –** Whether compounding fee as applicable in negotiable instruments cases pursuant to the judgment of ***Damodar S. Prabhu v. Sayyad Baba Lal H., (2010) 5 SCC 663*** is applicable to cases which are compounded after 03.05.2010 retrospectively irrespective of the date on which the cheque is executed ?

**धारा 138** – क्या परक्राम्य लिखत के मामलों में लागू शमन शुल्क जो कि दामोदर एस. प्रभु विरूद्ध सैयद बाबा लाल एच. (2010) 5 एस.सी.सी. 663 के निर्णय के संदर्भ में उन मामलों में भी लागू होती है जिनमें 3 मई 2010 के बाद शमन होता है चाहे चैक की तारीख जो भी हो ? **53 91**

**Section 138 –** (i) Whether action can be taken against a guarantor u/s 138 of N.I. Act? Held, Yes.

(ii) Effect of non-filing of list of witnesses along with complaint – The party complaining against such non-compliance must establish prejudice.

**धारा 138** – (i) क्या एक जमानतदार के विरूद्ध धारा 138 एन.आई. एक्ट के अधीन कार्यवाही की जा सकती है? अभिनिर्धारित किया गया, हाँ।

(ii) परिवाद के साथ गवाहों की सूची प्रस्तुत न करने का प्रभाव – पक्षकार जो ऐसे अननुपालन की शिकायत करता है उसे उसके हितों पर प्रतिकूल असर गिरना स्थापित करना चाहिए।

**54 93**

**PREVENTION OF CORRUPTION ACT, 1988**

**भ्रष्टाचार निवारण अधिनियम, 1988**

**Section 7 –** See sections 2, 114 (b) and 133 of the Evidence Act, 1872.

**धारा 7** – देखें साक्ष्य अधिनियम, 1872 की धाराएं 2, 114 (बी) और 133। **30 50**

**Section 17 –** Investigation by an unauthorized officer.

**धारा 17** – अप्राधिकृत अधिकारी द्वारा अनुसंधान। **55 95**

**Section 19 –** Grant of sanction for prosecution by Department of Law and Justice, validity of – Law explained.

**धारा 19** – विधि और न्याय विभाग द्वारा अभियोजन चलाने की अनुमति देने की वैधानिकता – विधि समझाई गई। **56 98**

**PROTECTION OF HUMAN RIGHTS ACT, 1993**

**मानव अधिकार संरक्षण अधिनियम, 1993**

**Sections 21(1), (5) & (6), 3 (1), 9 to 11, 13 to 18 and 12 (a) to (d) –** (i) State Human Rights Commission, constitution of – Is mandatory and does not depend upon discretion of concerning State Government.

(ii) Vacancies of Chairpersons and Members of the Commission, filling up of – Is mandatory and is not a power simplicitor but a duty coupled with power.

(iii) Setting up/specifying the Human Rights Courts – The State Government directed to take appropriate steps for setting up/specifying the Human Rights Courts in every district

(iv) Distinction between power simplicitor and duty coupled with power, explained.

(v) CCTV cameras in police stations and prisons, installation of – Directions issued to State Governments.

(vi) Custodial violence and police torture – Cases of death and injury – Direction issued to State Governments to initiate appropriate proceedings so that custodial torture and violence in police stations and prisons is effectively prevented and dealt with.

(vii) Word, 'may' and 'shall', interpretation of – Whether a provision is directory or mandatory cannot be decided by the use of words 'what', 'may' and 'shall' – It depends upon the object and purpose of the enactment and the context in which the expression is used.

**धाराएं 21(1), (5) और (6), 3(1), 9 से 11, 13 से 18 और 12 (ए) से (डी) –** (i) राज्य मानव अधिकार आयोग का गठन – आज्ञापक है और संबंधित राज्य सरकार के विवेक पर निर्भर नहीं होता है।

(ii) आयोग के अध्यक्ष और सदस्यों की रिक्तियाँ भरी जाना – आज्ञापक है और यह शक्ति नहीं बल्कि कर्तव्य है जो शक्ति के साथ जुड़ा होता है।

(iii) मानव अधिकार न्यायालयों का स्थापित/विनिर्दिष्ट करना – राज्य सरकार को प्रत्येक जिले में मानव अधिकार न्यायालय स्थापित/विनिर्दिष्ट करने के लिए निर्देश दिये गये।

(iv) केवल शक्तियों और कर्तव्य के साथ जुड़ी शक्तियों को स्पष्ट किया गया।

(v) पुलिस थानों और जेलों में सीसीटीवी कैमरे लगाये जाना – राज्य सरकारों को निर्देश जारी किये गये।

(vi) अभिरक्षा में हिंसा और पुलिस प्रताड़ना – मृत्यु और उपहित के मामले –राज्य सरकारों को इस बारे में निर्देश जारी किये गये कि समुचित कार्यवाही प्रारंभ करे ताकि अभिरक्षा में प्रताड़ना और हिंसा जो कि पुलिस थानों और जेलों में होती है उसे प्रभावकारी तरीके से रोका जाये और लिया जाये।

(vii) शब्द "may" और "shall" का अर्थान्वयन – कोई प्रावधान निर्देशात्मक है या आज्ञापक है यह इन उपयोग किये गये शब्दों द्वारा निर्धारित नहीं होता – यह कानून के बनाने के उद्‌देश्य पर निर्भर करता है और यह शब्द किस संदर्भ में उपयोग किये गये है इस पर निर्भर करता है।

**57 100**

## PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

## घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

**Section 12 –** Whether calling for and consideration of the domestic incident report, if not available at the time of issuance of notice on an application under section 12 of the Act, is mandatory?

**धारा 12 –** क्या धारा 12 अधिनियम के एक आवेदन पर सूचना पत्र जारी करते समय यदि घरेलू घटना की सूचना उपलब्ध न हो तो उसे बुलाना और विचार में लेना आज्ञापक है?

**58 115**

## SENTENCING:
## दण्डाज्ञा :

**Sentencing –** Appropriate sentence, imposition of.

**दण्डाज्ञा –** युक्तियुक्त अधिरोपित करना। **59* 117**

## SPECIFIC RELIEF ACT, 1963
## विनिर्दिष्ट अनुतोष अधिनियम, 1963

**Section 16 (c) –** Relief of specific performance of contract of sale, entitlement of.

**धारा 16 (सी) –** संविदा के विनिर्दिष्ट पालन के अनुतोष का हकदार होना। **60 117**

**Section 20 –** (i) Finding recorded by criminal court, whether conclusive proof?

(ii) Alleged agreement was executed on a quarter sheet of paper and not on a proper stamp and written in small letters – No opinion of handwriting expert about execution of documents sought for – Held, it is not a fit case where the discretionary relief for specific performance is to be granted in favour of the plaintiff.

**धारा 20 –** (i) क्या दण्ड न्यायालय द्वारा अभिलिखत निष्कर्ष निश्चायक सबूत होते हैं ?

(ii) अभिकथित अनुबंध एक कागज के एक चौथाई हिस्से पर निष्पादित था और उचित स्टाम्प पर नहीं था – छोटे अक्षरों में भी लिखा था – दस्तावेज के निष्पादन के बारे में हस्तलेख विशेषज्ञ की राय भी नहीं मांगी गयी थी – अभिनिर्धारित किया गया, यह वादी के पक्ष में विनिर्दिष्ट अनुतोष का विवेकीय अनुतोष देने का उचित मामला नहीं है। **61 119**

**Sections 20 and 28 (1) –** See sections 33, 148 and 151 of the Civil Procedure Code, 1908.

**धाराएं 20 और 28 (1) –** देखें सिविल प्रक्रिया संहिता, 1908 की धाराएं 33, 148 और 151।

**62 120**

**Section 22 –** Section 22 of the Act of 1963 vis-à-vis proviso to Order 6 Rule 17 of the Code – Section 22 of the Act will have overriding effect.

**धारा 22 –** धारा 22 अधिनियम, 1963 विरूद्ध आदेश 6 निमय 17 संहिता का परंतुक – धारा 22 अधिनियम का अभिभावी प्रभाव रहेगा। **63* 123**

## SUCCESSION ACT, 1925
## उत्ताधिकार अधिनियम, 1925

**Section 63 –** (i) Marriage, burden of proof – Burden is on the person who asserts that there was no valid marriage.

(ii) Execution of Will, validity and proof of.

**धारा 63 –** (i) विवाह का प्रमाण भार – उस व्यक्ति पर होता है जो यह अभिकथन करता है कि वैध विवाह नहीं था।

(ii) वसीयत के निष्पादन की वैधता और प्रमाण। **33* 53**

**Section 295 –** Probate proceedings – Jurisdiction of Probate Court, limitation thereon.

**धारा 295 –** प्रोबेट कार्यवाहिंयाँ – प्रोबेट न्यायालय के क्षेत्राधिकार की परिसीमा।

**64* 123**

## TRADEMARKS ACT, 1999
## संपत्ति चिन्ह अधिनिमय, 1999

**Section 134 –** See section 62 of the Copyright Act, 1957 and section 20 of the Civil Procedure Code, 1908.
**धारा 134** – देखें प्रतिलिप्याधिकार अधिनियम, 1957 की धारा 62 और सिविल प्रक्रिया संहिता, 1908 की धारा 20 | **20** **31**

## TRANSFER OF PROPERTY ACT, 1882

## संपत्ति अंतरण अधिनियम, 1882

**Sections 52 and 122 –** Gift deed, validity of.

Devolution of property – Section 8 of Hindu Succession Act, applicability of.

**धाराएं 52 और 122** – दान पत्र की वैघता – मामले के तथ्यों के क्रम में बतलाई गई।

संपत्ति का न्यायगमन – धारा 8 हिन्दू उत्तराधिकार का लागू होना। **65 (iii) & (iv)** **124**

# PART – IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

1. The Negotiable Instruments (Amendment) second Ordinance, 2015 1
2. The Negotiable Instruments (Amendment) Act, 2015 3

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# सम्पादकीय

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

सम्माननीय पाठक गण,

नववर्ष की आप सभी को हार्दिक शुभकामनाएँ। वर्ष 2016 आप सभी के लिये स्वास्थ्यवर्धक, ज्ञानवर्धक, सम्पदावर्धक, शुभ और मंगलमय हो ऐसी मैं प्रभु से कामना करता हूं।

इस वर्ष आपने अपने लिये कुछ नये लक्ष्य अवश्य बनाये होंगे अच्छे लक्ष्य बनाकर सतत् उनको प्राप्त करने के लिये काम करते रहने से हम एक सार्थक और उददे्श्यपूर्ण जीवन पा सकते हैं जो कि हर व्यक्ति की इच्छा हेाती है।

माननीय मुख्य न्यायाधिपति महोदय की प्रेरणा से एक नवीन कार्यक्रम कुकिंग और केटरिंग सेवा के चतुर्थ श्रेणी कर्मचारीगण के लिये मध्यप्रदेश राज्य फूड क्राफ्ट इंस्टीट्यूट जबलपुर में दिनांक 28.12.2015 से रखा गया था जिसमें उक्त विषय के बारे में उक्त संस्थान ने प्रशिक्षण दिया। निःसंदेह यह नवीन प्रयोग लाभदायक साबित होगा।

दिनांक 04 जनवरी 2016 से 08 जनवरी 2016 तक सिविल जज वर्ग 2 वर्ष 2013 बैच का प्रथम रिफ्रेशर कोर्स जबलपुर में हुआ। दिनांक 09 जनवरी 2016 से 12 जनवरी 2016 तक उज्जैन में उज्जैन और उसके आसपास के जिले रतलाम, मंदसौर, नीमच, देवास और शाजापुर के 55 अभिभाषकगण के लिये एक कार्यशाला आयोजित की गई है। दिनांक 16 जनवरी 2016 और 17 जनवरी 2016 को इंदौर में एक कार्यशाला Professionalism at Work Place विषय पर रखी गई है। दिनांक 23 और 24 जनवरी 2016 को जबलपुर में प्रदेश के सदस्य, मोटर दुर्घटना दावा अधिकरणों के लिये एक कार्यशाला रखी गई है। दिनांक 06 और 07 फरवरी 2016 को प्रदेश के सभी प्रधान मजिस्ट्रेट जे. जे. बोर्ड के लिये एक कार्यशाला जबलपुर में रखी गई है। दिनांक 20 फरवरी और 21 फरवरी 2016 को एक कार्यशाला Professionalism at Work Place विषय पर ग्वालियर में रखी गई है। एन. आई. एक्ट पर एक कार्यशाला 27 फरवरी 2016 को जबलपुर में रखी गई है। इस तरह इन दो माहों में विभिन्न कार्यक्रम आयोजित किये गये है।

इस अंक में एक लेख दाण्डिक विचारण के कुछ महत्वपूर्ण बिंदु विषय पर और एक लेख धारा 125 दण्ड प्रक्रिया संहिता पर शामिल किया गया है। साथ ही तेरहवे वित्त आयोग द्वारा आवंटित राशि 35.49 करोड़ रूपये का उपयोग संस्थान ने किस प्रकार व किन किन मदों में किया है उसके बारे में भी एक लेख शामिल किया गया है।

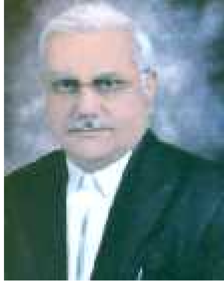
धारा 6 हिंदु उत्तराधिकार अधिनियम में वर्ष 2005 में हुए संशोधन को भविष्यलक्षी मानने के बारे में एक न्याय दृष्टांत प्रकाश वि. फूलावती भी लिया गया है जिसके अनुसार धारा 6 के संशोधन का लाभ दिनांक 09.09.2005 को जीवित सहदायिकों की जीवित पुत्रियों को मिलेगा चाहे उनका जन्म कभी भी हुआ हो और 20.12.2004 के पहले विधि अनुसार किये गये विभाजन इस संशोधन से अप्रभावी रहेंगे।

इस अंक में जनवरी 2016 से अप्रैल 2016 तक का अकादमी का कैलेंडर भी शामिल किया गया है ताकि हमारे सम्माननीय पाठकगण संस्थान के कार्यक्रमों के बारे में एक नजर में पता लगा सकें।

पत्रिका के बारे में आपके अमूल्य सुझाव सादर आमंत्रित है।

***A great man does***
***What he ought to do,***
***An ordinary man does***
***What he wants to do***

## HON'BLE SHRI JUSTICE KESHAV KUMAR TRIVEDI DEMITS OFFICE



Hon'ble Shri Justice Keshav Kumar Trivedi demitted office on His Lordship's attaining superannuation. Was born on 10.01.1954 at Nagpur, then capital of C.P. and Berar. Grandfather was District and Sessions Judge in British India and father was a Senior Administrative Officer of Madhya Pradesh. Uncles late Shri Sachchidanand Awasthy and late Shri R.P. Awasthy were Judges of the High Court of Madhya Pradesh. Did graduation in Arts in 1975 from St. Aloysius College and LL.B. from University of Teaching Department, Jabalpur University in 1978. Enrolled as an Advocate on 11th August, 1979 and started practice at Rajnandgaon and shifted to Jabalpur on 9th May, 1980 and joined the Chamber of Late Shri S. Awasthy (former Judge). Started independent practice from 01.01.1983 and since then practiced in Civil, Constitutional, Service, Arbitration, Criminal and Company Laws. Worked as a part time Lecturer in U.T.D. in 1986-1987. Was appointed as Deputy Government Advocate from 27.07.1987 to 30.09.1991. Represented various Local Bodies and Statutory Corporations. Was appointed as Standing Counsel for Election Commission of India w.e.f. 2003.

Took oath as Additional Judge, High Court of Madhya Pradesh on 27.05.2011 and as Permanent Judge on 23.05.2013.

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

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

**Workshop on – Consumer Protection Act, 1986 held in the Academy**
**($19^{th}$ & $20^{th}$ December, 2015)**

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

**Short-term training programme for the Class IV Employees of the High Court engaged in cooking and catering work held at Food Craft Institute, Department of Tourism, Govt. of M.P., Jabalpur**

**(28.12.2015 to 01.01.2016)**

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

**Workshop for Advocates held at Ujjain**
**(09.01.2016 to 12.01.2016)**

# **PART - I**

## दाण्डिक प्रकरणों का शीघ्र निराकरण – कुछ महत्वपूर्ण बिन्दु

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

1. दाण्डिक प्रकरणों को आरोप रचना या अपराध विवरण सुनाने के लिए स्थगित नहीं करना चाहिए समन मामलों में उन्मोचन का कोई प्रक्रम या स्टेज नहीं होती है अतः यह सर्वोत्तम प्रयास करना चाहिए कि प्रथम तिथि पर ही आरोप लगा दिये जावें या अपराध की विशिष्टियाँ धारा 251 दण्ड प्रक्रिया संहिता के तहत सुना दी जावें।

   यदि अभियुक्त अनुपस्थित हो और उसका हाजिरी माफी का आवेदन धारा 317 दण्ड प्रक्रिया संहिता के तहत प्रस्तुत किया जावें तब अधिवक्ता के माध्यम से आरोप विरचित करने या अपराध की विशिष्टियां सुनाने की कार्यवाही पूर्ण की जा सकती है। इस संबंध में न्यायदृष्टांत ***राज्य विरूद्ध लखनलाल, 1960 एम.पी.एल.जे. 133 (डी.बी.) : एआईआर 1960 एम.पी. 186 : 1960 सीआरएलजे 833*** से मार्गदर्शन लिया जा सकता है।

   अभियुक्त के विद्वान अधिवक्ता से आग्रह करके यह कार्यवाही अभियुक्त की अनुपस्थिति में भी पूर्ण करवाने का प्रयत्न करना चाहिए।

   आरोप एवं अपराध की विशिष्टियां पहले से तैयार करके रखना चाहिए इस संबंध में मॉडल आदेश पत्र भी अपने लेपटॉप में सेव किया जा सकता है, मॉडल आरोप भी सेव किये जा सकते है और नवीन तकनीक का प्रयोग करके समय बचाया जा सकता है। आरोप के Auto Text बना कर save किए जा सकते है।

2. धारा 294 दण्ड प्रक्रिया संहिता के प्रावधान सदैव मस्तिष्क में रखना चाहिए और औपचारिक दस्तावेजों जैसे फार्मल गिरफ्तारी, फॉर्मल जप्ती, नक्शा पंचायत नामा लाश, फार्मल नक्शा मौका आदि स्वीकार करने के लिए प्रतिरक्षा पक्ष से आग्रह करना चाहिए ताकि कई औपचारिक दस्तावेज से संबंधित गवाह लेने का समय बचाया जा सकता है।

   आदेश पत्र में धारा 294 दण्ड प्रक्रिया संहिता के अनुपालन का तथ्य अवश्य लिखना चाहिए।

3. आरोप विरचित करने के आदेश पत्र में विस्तृत कारण दिया जाना अपेक्षित नहीं है यदि अभियुक्त को उन्मोचित किया जा रहा हो तब कारण लिखना होते है इस संबंध में न्यायदृष्टांत ***लालू प्रसाद यादव विरूद्ध स्टेट ऑफ बिहार, ए.आई.आर. 2007 एस.सी. (सप्लीमेंट) 1873*** से मार्गदर्शन लिया जा सकता है।

**आरोप रचना के बारे में एक मॉडल आदेश पत्र इस प्रकार हो सकता है:—**

**दिनांक 28.01.2016**

राज्य द्वारा ए.डी.पी.ओ./ए.पी.पी, श्री एक्स उपस्थित।

अभियुक्त विक्रम सहित श्री वाय अभिभाषक उपस्थित।

आरोप तर्क सुने अभिलेख का अवलोकन किया।

प्रथम दृष्टया अभियुक्त द्वारा धारा 294, 454, 323, 498—ए एवं 506 प्रथम भाग भा.द.सं. के अपराध कारित करना प्रतीत होता है अतः उसे उक्त धाराओं के आरोप विरचित कर पढ़कर सुनाये व समझाये गये।

अभियुक्त ने उक्त अपराध अस्वीकार किये।

अभियोजन और अभियुक्त का ध्यान धारा 294 द.प्र.सं. पर आकर्षित किया गया दोनों पक्षों ने एक दूसरें के किसी दस्तावेज को स्वीकार नहीं किया।

मामला अभियोजन प्रमाण के लिए नियत किया जाता है।

अभियोजन ने साक्षी भारती शर्मा, भागवती बाई, रतना बाई, डॉ. डी., ए.के. बाजपेयी निरीक्षक, प्रभुदयाल ठाकुर प्रधान आरक्षक का कथन करवाना व्यक्त किया।

अभियोजन आगामी तिथि पर गवाह भारती शर्मा, भागवाती बाई, रतना बाई को स्वयं उपस्थित रखे या नियमानुसार तलब करावें।

शेष गवाहों को इसके बाद तलब किया जा सकता है। मामला अभियोजन प्रमाण के लिए दिनांक 28.02.2016 को पेश हो।

**ए.बी.सी.**
**न्यायिक मजिस्ट्रेट**
**प्रथम श्रेणी, जबलपुर**

लेकिन जहाँ किसी आरोप को ड्राप किया जा रहा हो या न लगाया जा रहा हो वहाँ संक्षिप्त कारण देना चाहिए इस संबंध में न्यायदृष्टांत ***आर.एस. मिश्रा विरूद्ध स्टेट ऑफ उड़ीसा, ए.आई.आर. 2011 एस.सी. 1103*** अवलोकनीय है।

4. न्यायाधीश को आरोप विरचित करते समय अत्यन्त सावधान रहना चाहिए और कब सामान्य आशय की सहायता से आरोप बनता है, कब सामान्य उद्देश्य की सहायता से आरोप बनता है किस अभियुक्त की अपराध में क्या भूमिका है इसको ध्यान में रखते हुए सुस्पष्ट आरोप विरचित करना चाहिए और जहाँ यह

संशय हो कि दो में से कौन सा आरोप बनेगा वहाँ वैकल्पिक आरोप विरचित करना चाहिए जैसा कि धारा 221 दण्ड प्रक्रिया संहिता में प्रावधान है।

सही आरोप विरचित करने से निर्णय के समय कठिनाई नहीं होती है और अनावश्यक आरोप संशोधन नहीं करना पड़ता है अतः मजिस्ट्रेट को आरोप विरचित करने का कार्य अत्यन्त सावधानी से करना चाहिए और इस संबंध में न्यायदृष्टांत ***सजन शर्मा विरूद्ध स्टेट, ए.आई.आर. 2011 एस.सी. 632*** को ध्यान में रखना चाहिए जिसमें माननीय सर्वोच्च न्यायालय ने यह प्रतिपादित किया है कि आरोप विरचित करना और अभियुक्त परीक्षण दाण्डिक विचारण के दो महत्वपूर्ण प्रक्रम है कई न्यायालय यह कार्य बहुत अवैध या उपेक्षापूर्ण तरीके से करते है इसे हतोत्साहित किया जाना चाहिए।

5. आरोप या अपराध की विशिष्टियाँ सुनाने के ठीक बाद मजिस्ट्रेट को स्वयं अभियोजन की साक्ष्य सूची पर ध्यान केन्द्रित करना चाहिए और अनुश्रुत गवाह, फॉर्मल गिरफ्तारी, फार्मल जप्ती, नक्शा मौका, नक्शा पंचायत नामा लाश आदि से संबंधित औपचारिक गवाहों को साक्ष्य में न बुलाया जावें इसका ध्यान रखना चाहिए केवल तात्विक साक्षी ही बुलाया जायें ऐसा नियंत्रण रखना चाहिए।

   सर्वप्रथम परिवादी और दो चक्षु साक्षी या प्रत्यक्ष साक्षी को ही तलब करना चाहिए या साक्ष्य में बुलाना चाहिए ताकि प्रकरण में यदि समझौता हो जाये तो शेष गवाह तलब न करना पड़े।

6. प्रत्येक आदेश पत्र में इसका विवरण लिखना चाहिए कि किन–किन गवाहों को आगामी तारीख पर साक्ष्य के लिए बुलाना है सर्वप्रथम गवाहों को समन से तलब करना चाहिए समन की तामिल पर गवाह के न आने पर जमानती वारंट से तलब करना चाहिए और उसके बाद भी न आने पर गिरफ्तारी वारंट से तलब करना चाहिए। जमानती वारंट अधिक राशि का नहीं निकालना चाहिए क्योंकि गवाह न्याय दान में सहयोग करने के लिए होता है। वैसे तो बिना न्यायालय की लिखित अनुमति के हथकड़ी लगाना माननीय सर्वोच न्यायालय के दिशा–निर्देश के अनुसार निषेध है इसके बावजूद साक्षी के गिरफ्तारी वारण्ट पर लाल स्याही से यह टीप लगाना चाहिए कि **साक्षी को हथकड़ी न लगाई जावे**।

   थाना प्रभारी द्वारा समन वारंट समय पर नहीं लौटाये जाते है या तामील ठीक से नहीं करवायी जाती है तो उनका स्पष्टीकरण लेना चाहिए और आवश्यक होने पर उनके उच्चाधिकारियों को भी कार्यवाही के लिखना चाहिए।

7. शासकीय गवाहों को या शिक्षित गवाह को समन तामिल पर न आने पर धारा 350 दण्ड प्रक्रिया संहिता का सूचना पत्र भी देना चाहिए।

   धारा 350 दण्ड प्रक्रिया संहिता में मजिस्ट्रेट को ऐसे साक्षी पर 100 रूपये तक अर्थदण्ड करने की शक्ति भी प्राप्त है और शासकीय गवाह के मामले में यह राशि उनके वेतन से कटवाकर बुलवाना चाहिए या उनके विभाग प्रमुख को ऐसा अर्थदण्ड किये जाने की सूचना करना चाहिए।

उक्त प्रक्रिया अपनाने से गवाहों की उपस्थिति बढ़ेगी धारा 350 दण्ड प्रक्रिया संहिता के सूचना पत्र के फॉर्मेट बनाकर लेपटॉप में सेव किये जा सकते है।

8. नए अभियोग पत्रों में गवाहों के 161 दण्ड प्रक्रिया संहिता के कथनों में या साक्ष्य सूची में प्रत्येक गवाह का मोबाइल नंबर या कोन्ट्रेक्ट नंबर ई–मेल, एड्रेस लिखने की प्रथा विकसित करवाना चाहिए।
   शिक्षित गवाहों को एस.एम.एस. पद्धति से भी सूचना देना चाहिए।
   अपने कोर्ट मुंशी या निष्पादन लिपिक से अन्वेषण अधिकारी, डॉक्टर, खाद्य निरीक्षक, पटवारी और ऐसे गवाह जो कई मामलों में गवाह है उनके पते और मोबाइल नंबर एक पंजी में लिखवा लेना चाहिए और इन गवाहों के प्रकरण क्लब या समेकित करने की कला विकसित करना चाहिए।
9. गवाह उपस्थिति है तो धारा 309 दण्ड प्रक्रिया संहिता के प्रावधान के अनुसार उसका मुख्य परीक्षण तत्काल ले लेना चाहिए और यदि उसका प्रतिपरीक्षण करने के लिए समय मांगा जाता है तो गवाह के कथन में एक नोट लगवा देना चाहिए कि यदि साक्षी मर गया या साक्ष्य देने में असमर्थ हो गया या मिल नहीं सका या उसकी हाजिरी इतने विलंब व्यय या असुविधा के बिना संभव नहीं है जो मामले की प्रकृति में अनुचित होगी तो यह कथन अभियुक्त के विरूद्ध पढ़ा जायेगा।
   धारा 309 दण्ड प्रक्रिया संहिता के स्पष्टीकरण दो के अनुसार गवाह के प्रतिपरीक्षण के लिए समय मांगने पर गवाह खर्च और कास्ट लगाना चाहिए।
10. धारा 317 दण्ड प्रक्रिया संहिता का आवेदन स्वीकार करने में नर्म रूख लेना चाहिए क्योंकि वर्तमान में सार्वजनिक आवागमन के साधन दिनों दिन कम होते जा रहे हैं लेकिन प्रकरण की प्रगति नहीं रूकना चाहिए यह सर्वोच्च लक्ष्य होना चाहिए अर्थात् चाहे अभियुक्त का हाजिरी माफी का आवेदन आवें लेकिन मामला जिस कार्यवाही के लिए नियत है वह अवश्य होना चाहिए।
11. जिन मामलों में गवाह आये है और स्थगन चाहा जाता है उसमें अपेक्षाकृत पास की तारीख नियत करना चाहिए ताकि विलंब करने वाले पक्षकार को अनुचित लाभ न मिले यहाँ वास्तविक कारणों से स्थगन और टालने के लिए स्थगन में अन्तर समझा जाना चाहिए।
12. अभिभाषक अन्य न्यायालय में व्यस्त है तब लंच टाइम में या पाँच बजे के बाद भी बैठना पड़े तो बैठकर कथन लेना चाहिए ताकि इस आधार पर समय मांगने वाले पक्षकार को यह संदेश जाये कि प्रकरण हर दशा में चलाना होगा।
13. प्रायः न्यायालयों में प्रस्तुतकार या निष्पादन लिपिक 1 से 5 तारीख के बीच बहुत कम संख्या में प्रकरण लगाते है इस कारण माह की शुरूआत ही अत्यन्त धीमी होती है इससे बचने के लिए 1 से 5 तारीख के बीच भी पर्याप्त काम लगावे। रीडर/निष्पादन लिपिक को उसके मानचित्र या अन्य जानकारी बनाने के लिए स्वतंत्र कर दें और बोर्ड का पूरा नियंत्रण अपने हाथ में रखें लेकिन ये 3 या 5 दिन अनुपयोगी साबित न हो इसका ध्यान रखें।

14. अनुपस्थिति के प्रकरणों को नियंत्रित करे। अनुपस्थिति के प्रकरणों में जमानत देने में अधिक कठोर रूख न लेवें इन प्रकरणों को तात्विक साक्षीगण की साक्ष्य लेने के बाद ही रिकार्ड रूम में भेजें इन मामलों में अभियुक्त को फरार घोषित कर उसका स्थायी वारंट जारी करने के साथ–साथ धारा 82, 83 दण्ड प्रक्रिया संहिता की कार्यवाही भी करना चाहिए। पुलिस का ऐसा प्रतिवेदन आने पर की अभियुक्त की कोई चल अचल सम्पत्ति नहीं है अभियोजन साक्षीगण से उसकी सम्पत्ति के बारे में पूछतांछ करना चाहिए और उसकी उपस्थिति के लिए हर संभव प्रयास करना चाहिए।

15. अभिभाषक गण को उनकी सीट या बैठक से बुलवा लें कई बार न्यायालय की स्थिति और अभिभाषक की बैठक की स्थिति न्यायालय परिसर में ऐसी होती है जहाँ तक पुकार नहीं पहुंच पाती है।

16. प्रत्येक मामले में रिमांड के प्रक्रम से ही अभियुक्त का प्रतिनिधित्व किसी अभिभाषक द्वारा हो रहा है यह देखें और यदि ऐसा नहीं है तो विधिक सहायता दिलावे।

17. जैसे–जैसे अभियोजन साक्ष्य होती जावें अपने लैपटॉप में एक फोल्डर बनाकर उसमें अभियुक्त परीक्षण तैयार करवाते रहे यह कार्य non-working Saturday को किया जा सकता है ऐसा करने से अभियुक्त परीक्षण के लिए लम्बी तारीख लगाने की आवश्यकता नहीं होगी।

18. 314 दण्ड प्रक्रिया संहिता के तहत बहस का ज्ञापन देने के लिए अभिभाषक गण को प्रेरित करें ताकि मौखिक बहस को सीमित किया जा सकता है उन्हें इस तरह समझाने का प्रयास करें कि बहस के सारे बिन्दु अभिलेख पर आ जावेगें। मौखिक बहस में कभी भी गवाहों के कथन या प्रथम सूचना पढ़कर न सुनाने दें बल्कि उसका तात्विक भाग कौन सा है यह पूछे । बहस सुनने के पूर्व यदि प्रकरण का ठीक से अध्ययन कर लिया जाये तो आसानी रहती है।

19. दाण्डिक मामलों में विचारणीय प्रश्न तक निर्णय तैयार करके रखवा लें क्योंकि विचारणीय प्रश्न तक के निर्णय में बहुत ज्यादा परिवर्तन की संभावना नहीं रहती है और यह समय जिस दिन मूल निर्णय लिखाया जाना हो उस दिन बच जायेगा नवीन टेक्नालॉजी जैसे कम्प्यूटर और लैपटॉप का इस तरह प्रयोग किया जा सकता है और समय बचाया जा सकता है।

20. प्रत्येक गवाह को गवाह खर्च अवश्य मिले इसका ध्यान रखें और इसके लिए लगातार गवाह खर्च का बजट बढ़ाने के लिए पत्र लिखें।

21. ऐसे एम.जे.सी. प्रकरण जिनमें अभियुक्त अर्थदण्ड की चूक के कारण कारावास भुगत चुका है और अब अर्थदण्ड वसूली की संभावना नहीं है उनमें अर्थदण्ड राइट ऑफ करने के लिए सत्र न्यायाधीश महोदय से निवेदन करें अर्थदण्ड वसूली के लिए चल सम्पत्ति जैसे – टी.वी., मोबाईल, मोटर साईकिल, टेप, फ्रीज आदि का कुर्की वारंट थाना प्रभारी को भेजें और अचल सम्पत्ति के लिए वारंट कलेक्टर को भेजें और लगातार पत्र व्यवहार जारी रखें ताकि इन प्रकरणों की संख्या कम हो सके।

22. 327 दण्ड प्रक्रिया संहिता के तहत समुचित मामलों में इन कैमरा ट्रायल या बन्द कमरे में विचारण अवश्य करना चाहिए जैसा *की **साक्षी विरूद्ध यूनियन ऑफ इंडिया, ए.आई.आर 2004 एस.सी 3566*** में निर्देश दिया है। धारा 16 घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 में भी बंद कमरे में विचारण का प्रावधान है। इन केमरा ट्रायल चलाने का उल्लेख आदेश पत्र में समय डालते हुए करना चाहिए कि किस समय से किस समय तक प्रकरण में बन्द कमरे में विचारण चला।

    बन्द कमरे में विचारण चलने के तथ्य के बारे में एक सहज दृश्य बोर्ड बनवाकर भी बोर्ड पर रखना चाहिए ताकि उस दौरान आकस्मिक निरीक्षण होने के दशा में संबंधित अधिकारी को उस बोर्ड को देख कर बन्द कमरें में विचारण चलने के तथ्य का आसानी से पता चल सके।

23. आपके न्यायालय कक्ष में कोई भी अभिभाषक यदि बैठे हो तो उन्हें तत्काल पूछ लें कि उनका क्या कार्य है अनावश्यक किसी भी अभिभाषक को इन्तजार न करना पड़े इसका ध्यान रखें चाहे तो चल रही कार्यवाही दो मिनट के लिए रोककर उनको फ्री कर दे।

24. किसी दिन विशेष में नियत सभी प्रकरण बोर्ड डायरी में अवश्य चढ़ाये जाये इसका ध्यान रखे चाहे उनकी संख्या कितनी ही हो और प्रत्येक प्रकरण एक बार आपकी नजर से अवश्य गुजरना चाहिए।

25. जिन मामलों में कार्यवाही स्थगित है या रिकार्ड की प्रतीक्षा के लिए है ऐसे औपचारिक प्रकरण किसी एक दिन ही लगावें।

26. किसी भी मामले में निर्णय या आदेश के लिए तारीख बहुत सोच समझकर लगावें और जिस दिन निर्णय या आदेश की तारीख है उस दिन हर हाल में निर्णय या आदेश घोषित हो जावें ऐसी तैयारी होना चाहिए।

    बहुत अपवाद स्वरूप परिस्थितियों में यदि निर्णय बढ़ाना हो तो सही कारण लिखते हुए बढ़ाये लेकिन निर्णय घोषित कर देने और बाद में निर्णय लिखाना कष्ट का कारण बनता है।

27. किसी भी प्रकार का अंतरिम आवेदन पत्र पेश होने पर उसे मोशन जैसा सुने यदि अस्वीकार करने योग्य हो तो जबाव बहस के लिए नियत करने की बजाय सुनकर तत्काल निराकृत कर दें।

28. विनम्रता कभी न छोड़े। असंसदीय भाषा का प्रयोग बिल्कुल न करें विवादों को टालने का प्रयास करें।

29. प्रतिपरीक्षण में प्रश्न दोहरायें न जावें इसके लिए सावधान रहे विसंगत प्रश्न न पूछे जावें इसका ध्यान रखें।

30. यदि मामला जमानत देने योग्य हो तब अनुतोष देने में न घबरावें।

31. सदैव विधिक रूप से अपडेट रहें यदि विधिक स्थिति स्पष्ट रहेगी तो तेज गति से आदेश करने में संशय नहीं रहेगा।

32. ऐसे अभियुक्त जो बार–बार अनुपस्थित हो जाते है उनको मामलों की धारा 317 (2) दण्ड प्रक्रिया संहिता के तहत पृथक कर सकते है।

33. जिन मामलों में परिवादी स्वयं पक्ष विरोधी हो गया हो और कहानी का समर्थन नहीं करता हो और शेष साक्ष्य लेने से प्रकरण के गुण–दोष पर कोई प्रभाव न पड़ता हो वहाँ साक्ष्य समाप्त करते हुए विधि अनुसार प्रकरण का निराकरण कर देना चाहिए।

34. सुपुर्द नामा आवेदन, जमानत आवेदन में केस डायरी बुलवाना यह कार्यवाहियाँ यथासंभव उसी दिन कर लेना चाहिए जिस दिन आवेदन पेश होता है और ऐसे आवेदनों का निराकरण भी उसी दिन कर देना चाहिए।

35. निर्णय में साक्ष्य का क्रमबंधन अवश्य करना चाहिए गवाहों के कथनों की पूरी नकल उतारना समय की बर्बादी है इससे बचना चाहिए।

36. न्यायदृष्टांत ***सुन्दर भाई अम्बालाल देसाई विरूद्ध स्टेट ऑफ गुजरात, ए.आई.आर 2003 एसी.सी 638*** के प्रकाश में प्रत्येक मजिस्ट्रेट को धारा 451 दण्ड प्रक्रिया संहिता की शक्तियों का प्रयोग समय पर कर लेना चाहिए ताकि 50 बल्क लीटर से अधिक मात्रा की शराब के मामले, ऐसी नकद धन राशि जिसमें नोटों का कोई पहचान चिन्ह नहीं है, मूल्यवान गहनें, वाहनों आदि की अपहानि को रोका जा सके और मामलों में अनावश्यक पेचीदगी न बढ़े।

37. प्रत्येक महत्वपूर्ण आदेश पत्र पर पक्षकार या उसके अभिभाषक या दोनों जैसी भी स्थिति को हस्ताक्षर लेना चाहिए जैसे – निर्णय या आदेश के लिए नियत तारीख, निर्णय या आदेश घोषित करने की तारीख, अंतिम अवसर देने की तारीख के आदेश पत्र आदि।

38. स्थगन चाहने पर आवेदन की अपेक्षा करना चाहिए ताकि इस संबंध में विवाद न रहे कि स्थगन मांगा गया था या नहीं साथ ही प्रत्येक आदेश पर स्पीकिंग या बोलता हुआ लिखना चाहिए।

39. न्यायदृष्टांत ***सुरेश विरूद्ध स्टेट ऑफ हरियाणा, (2015) 2 एस.सी.सी 227, स्टेट ऑफ एम.पी. विरूद्ध मेहताब, (2015) 2 एससीसी (क्रिमिनल) 764*** के अनुसार आहत को प्रतिकर अवश्य दिलवाना चाहिए और अभियुक्त प्रतिकर देने की स्थिति में न हो तो राज्य से प्रतिकर दिलवाना चाहिए इसे ध्यान रखे।

40. न्यायदृष्टांत ***बब्लू कुमार विरूद्ध स्टेट ऑफ बिहार, 2015 ए.आई.आर एस.सी.डब्ल्यू 4655*** के मामले में विचारण न्यायालय और लोक अभियोजक के कर्तव्य स्पष्ट किये गये है जिन्हें ध्यान में रखना चाहिए इस मामले में यह कहा गया है कि विचारण न्यायालय का यह कर्तव्य है कि वह देखे कि जो गवाह अभियोजन ने उल्लेखित किये है वे प्रस्तुत भी किये है गवाहों के समन जारी किये गये थे वे वास्तव में तामील हुए है। एक ऋजु विचारण के लिए ये सब तथ्य देखना विचारण न्यायालय का विधिक दायित्व है।

41. जहाँ आवश्यक हो वहाँ आदेश पत्र में समय भी अंकित करना चाहिए।

42. धारा 125 दण्ड प्रक्रिया संहिता के तहत वसूली के प्रकरणों में चल संपत्ति जैसे – टी.वी., फ्रिज, वाशिंग मशीन, मोटर साईकिल, टेप, मोबाईल का कुर्की वारण्ट थाना प्रभारी को भेजना चाहिए और अचल संपत्ति का कुर्की वारण्ट कलेक्टर को भेजना चाहिए।

43. धारा 446 (2) दण्ड प्रक्रिया संहिता के तहत यदि राशि वसूल नहीं हो रही हो तो प्रतिभू को 6 माह तक सिविल कारागार में रखने के प्रावधान है समूचित मामले मे इनका प्रयोग करना चाहिए।

44. न्यायालय के आदेश पत्र के पवित्र दस्तावेज होने की उपधारणा होती है अतः आदेश पत्र में सभी तथ्य और कारण सही–सही लिखना चाहिए ।

45. धारा 138 एन. आई. एक्ट के मामले मे या समन मामले में निर्णय की तारीख पर यदि अभियुक्त अनुपस्थित हो जाता है तब भी निर्णय सुनाया जा सकता है क्योंकि समन मामले में अभियुक्त को दंड के प्रश्न पर सुनने जैसा कोई प्रावधान नहीं है धारा 353 (7) दण्ड प्रक्रिया संहिता के प्रकाश में इस प्रकार निर्णय सुनाने में कोई अनियमितता भी नहीं है।

46. अशमनीय अपराध में शमन हो जाने पर इस तथ्य को दंड के बिन्दु पर विचार करते समय ध्यान में रखा जा सकता है इस संबंध में ***शाजी उर्फ पप्पू विरूद्ध राधिका, (2011) 10 एस.सी.सी 705, रामलाल विरूद्ध स्टेट ऑफ जे एण्ड के, (1999) 2 एस.सी.सी 213, ईश्वर सिंह विरूद्ध स्टेट ऑफ एम.पी., (2008) 15 एस.सी.सी 667*** अवलोकनीय है।

47. धारा 256 दण्ड प्रक्रिया संहिता की शक्तियों का प्रयोग अत्यंत सावधानी से करना चाहिए और इस संबंध में न्यायाधीशगण के लिए पठन सामग्री भाग –2 पेज 355 से 358 पर दिये गये मार्गदर्शक सिद्धात ध्यान रखना चाहिए। धारा 249 दण्ड प्रक्रिया संहिता के तहत शक्तियों का प्रयोग करते समय ज्योति जर्नल भाग–1 वर्ष 2011 पेज 187 पर वर्णित लेख का अवलोकन कर सकते है।

48. मासिक निरीक्षण अवश्य करना चाहिए और इस संबंध में न्यायाधीशगण के लिए पठन सामग्री भाग–2 पेज 244 से मार्गदर्शन लिया जा सकता है जिसमें मासिक निरीक्षण के मुख्य सिद्धांत बतलाये गये है।

49. प्रत्येक आदेश पत्र पर अपने हस्ताक्षर के नीचे अपने नाम एवं पद नाम की सील या मोहर अवश्य लगवाना चाहिए ताकि किसी कार्यवाही विशेष के समय कौन पीठासीन अधिकारी पदस्थ थे यह आसानी से पता लग जावे।

50. धारा 258 दण्ड प्रक्रिया संहिता की शक्तियों का प्रयोग पुलिस रिर्पोट पर संस्थित समन मामलों में किया जाना चाहिए इन शक्तियों के प्रयोग से भी कई अनावश्यक मामले समाप्त किये जा सकते है, साथ ही परिवाद मामले में धार 257 दण्ड प्रक्रिया संहिता के तहत समुचित मामलों में परिवाद वापस ले लेने के लिए आग्रह करना चाहिए।

51. साक्ष्य लेखन के समय कई बार बचाव पक्ष द्वारा दिये गये सुझाव को साक्षी इन्कार करता है और न्यायाधीश या मजिस्ट्रेट उस तथ्य को लिखाने लगते है तब गवाह उस बात को न समझने के कारण अनावश्यक बहस करने लगते है ऐसे मौकों पर प्रश्न और उत्तर के रूप में पूरा सुझाव लिखवाया जा सकता है जैसे – प्रश्न के रूप में सुझाव लिखवा दे व उत्तर में यह लिखवा दे कि उपरोक्त बात गलत है। ऐसा करके समय बचाया जा सकता है।

52 गिरफ्तारी वारण्ट में सभी अपराध या धाराओं का स्पष्ट उल्लेख करना चाहिए और वारण्ट प्रथम उपस्थिति के लिए है या पूर्व की जमानत भंग करने के कारण जारी हुआ है इसका भी उल्लेख कर देना चाहिए क्योंकि जमानती मामलों में धारा 436 दण्ड प्रक्रिया संहिता के तहत जमानत अभियुक्त का अधिकार होता है और कई बार रिमान्ड डियूटी के समय ऐसे वारण्ट पेश होने पर संबंधित मजिस्ट्रेट को कठिनाई होती है।

53. जैसे ही किसी स्थान मे पदस्थ हो वहाँ के प्रकरण को कोशिश करके धीरे–धीर पूरे अवलोकन कर लेना चाहिए जिससे आरोप पत्र में कोई महत्वपूर्ण त्रुटि, किसी गवाह का प्रति परीक्षण अपूर्ण रहना, कोई अन्तरवर्ती आवेदन लंबित रहना, किसी गवाह के कथन पर पीठासीन अधिकारी के हस्ताक्षर न होना, कोई महत्वपूर्ण दस्तावेज फोटो प्रति के रूप में होना ऐसे कई महत्वपूर्ण तथ्य प्रारंभ में ही ध्यान मे आ जायेंगे जिन्हें आप आवश्यक होने पर ठीक कर सकेंगे और मामले के अंतिम अवस्था जैसे निर्णय के समय कठिनाई नहीं आयेगी।

54. जिन मामलों में मेडिकल रिर्पोट देने वाले डॉक्टर साक्ष्य में न आ पा रहें हो वहाँ न्यायदृष्टांत ***सुभाष विरूद्ध स्टेट ऑफ एम.पी, आई.एल.आर 2009 एम.पी 3226*** से मार्गदर्शन ले उस मेडिकल रिर्पोट को किसी ऐसे डॉक्टर या नर्स या अन्य कर्मचारी से प्रमाणित करवाया जा सकता है जो संबंधित डॉक्टर के हस्ताक्षर और हस्तलिपि पहचानता हो क्योंकि डॉक्टर ने ऐसी रिपोर्ट अपनी पदीय कतर्व्यों के निर्वाहन के दौरान दी है जिसे धारा 32 (2) एवं धारा 67 भारतीय साक्ष्य अधिनियम के तहत प्रमाणित कराकर विचार में लिया जा सकता है।

55. Everything is easy if you are busy,

Everything is not easy if you are lazy.

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**आप कब–कब सही थे ............**
**इसको कोई याद नहीं रखता ।**
**लेकिन,**
**आप कब गलत थे .................**
**इसे कोई नहीं भूलता ।।**
**– एक विद्वान**

# धारा 125 दं.प्र.सं. : उद्देश्य, प्रकृति, प्रक्रिया और विस्तार

**ममता जैन**
अपर जिला एवं सत्र न्यायाधीश
जबलपुर

हमारा संविधान भारत के सभी नागरिकों को सामाजिक, आर्थिक एवं राजनैतिक न्याय प्रदान करने की घोषणा करता है, किंतु यह देखने में आता है कि अधिकांश मामलों में पुरूषों की अपेक्षा महिलाओं को कम महत्व दिया जाता है और महिलाओं, बच्चों, वृद्ध लोगों की कमाई के साधन नहीं होते हैं या कम होते हैं, जिनकी वजह से उन्हें आपराधिक जीवन या लाचारीपूर्ण जीवन जीने को मजबूर होना पड़ता है। इनसे बचने के लिए अन्य कानूनों के साथ ही साथ ऐसे लोगों के भरणपोषण की व्यवस्था के संबंध में दं.प्र.सं., 1973 के अध्याय 9 में प्रावधान किए गए हैं। धारा 125 दं.प्र.सं. के अनुसार यदि पर्याप्त साधनों वाला कोई व्यक्ति–

(क) अपनी पत्नी का, जो अपना भरणपोषण करने में असमर्थ है, या

(ख) अपनी धर्मज या अधर्मज अवयस्क सन्तान का चाहे विवाहित हो या न हो, जो अपना भरणपोषण करने में असमर्थ है, या

(ग) अपनी धर्मज या अधर्मज सन्तान का (जो विवाहित पुत्री नहीं है), जिसने वयस्कता प्राप्त कर ली है, जहां ऐसी सन्तान किसी शारीरिक या मानसिक असामान्यता या क्षति के कारण अपना भरणपोषण करने में असमर्थ है, या

(घ) अपने पिता या माता का, जो अपना भरणपोषण करने में असमर्थ है, भरणपोषण करने में उपेक्षा करता है या भरणपोषण करने से इन्कार करता है तो प्रथम वर्ग मजिस्ट्रेट, ऐसी उपेक्षा या इन्कार के साबित हो जाने पर, ऐसे व्यक्ति को यह निर्देश दे सकता है कि वह अपनी पत्नी या ऐसी सन्तान, पिता या माता के भरणपोषण के लिए ऐसी मासिक दर पर, जिसे मजिस्ट्रेट समय–समय पर निर्देश दे, भत्ता दे।

पूर्व में उक्त प्रावधानों में अधिकतम 500/–रूपए तक भरणपोषण राशि दिलाने का प्रावधान था, जिसे म.प्र. राज्य द्वारा वर्ष 1998 के संशोधन द्वारा 500/–रूपए के स्थान पर 3,000/– रूपए किया गया। तदोपरांत केंद्रीय संशोधन द्वारा वर्ष 2001 में 500/–रूपए की उक्त अधिकतम सीमा हटा दी गई। अतः म.प्र. राज्य का राशि के संबंध में किया गया उक्त संशोधन केंद्रीय संशोधन से असंगत होने से विधिक नहीं रह गया है और अब भरणपोषण के रूप में ऐसी कोई राशि, जो मजिस्ट्रेट उचित समझे दिलाने का आदेश दे सकता है (अवलोकनीय न्यायदृष्टांत *मनोज यादव बनाम पुष्पा, ए.आई.आर. 2011 सु.को. 614)*। म.प्र.राज्य द्वारा वर्ष 2004 में धारा 125 दं.प्र.सं. में वर्णित व्यक्तियों में पितामह और पितामही को भी शामिल किया गया है और वे भी भरणपोषण राशि पाने के पात्र हैं, किंतु वह तब, जबकि उनके पुत्र या पुत्रियां जीवित नहीं हैं और वे स्वयं का भरणपोषण करने में समर्थ नहीं हैं।

## उद्देश्य एवं प्रकृति

धारा 125 दं.प्र.सं. की कार्यवाही अर्द्ध दीवानी और अर्द्ध आपराधिक हैं या नहीं, इस पर दृष्टिपात करने के पूर्व उक्त प्रावधान का उद्देश्य देखना आवश्यक है। इस प्रावधान का उद्देश्य उस व्यक्ति को दंडित करना नहीं है, जिसने कि अपनी पत्नी, बच्चे या अभिभावकों का भरणपोषण करने में उपेक्षा की है, वरन् इसके पीछे विधायिका का उद्देश्य अभित्यक्त महिला, बच्चे या अभिभावकों को आवारागर्दी या भुखमरी के खिलाफ त्वरित उपाय प्रदान करना और इस हेतु दायित्वाधीन व्यक्ति से दायित्व का निर्वहन कराना है, (कृपया देखें न्यायदृष्टांत ***कैप्टन रमेशचंद्र कौशल बनाम श्रीमती वीणा कौशल व अन्य, ए.आई.आर. 1978 सु.को. 1807, सावित्री बनाम गोविन्दसिंह, ए.आई.आर. 1986 सु.को. 984*** एवं ***नन्हीबाई बनाम नेतराम, 2001 (3) एम.पी.एल.जे. 170 = 2001 क्रि.लॉ ज.4325)***। दीवानी प्रकृति का उपाय वह है, जिसके द्वारा एक व्यक्ति दूसरे व्यक्ति के खिलाफ अपने दीवानी अधिकारों को प्राप्त कर उनका प्रवर्तन कराता है, जबकि आपराधिक प्रकृति का उपाय वह है जिसके द्वारा व्यक्ति को किए गए अपराध के लिए दंडित किया जाता है। चूंकि धारा 125 दं.प्र.सं. का उद्देश्य व्यक्ति को दंडित करना नहीं है और संक्षिप्त प्रक्रिया का पालन कर त्वरित उपाय प्रदान करना है। अतः इन्हें अर्द्ध दीवानी और अर्द्ध आपराधिक माना गया है, (कृपया देखें न्यायदृष्टांत ***नंदलाल मिश्रा बनाम कन्हैयालाल, ए.आई.आर. 1960 सु.को. 882, पंढरीनाथ सखाराम बनाम कु. सुरेखा पंढरीनाथ व अन्य, 1999 क्रि.लॉ.ज. 2919*** एवं ***जमनाबाई बनाम शिवनारायण, 1999 (1) एम.पी.वीकली नोट्स 126)***।

अध्याय 9 दं.प्र.सं. की कार्यवाहियां अर्द्ध सिविल होने से अभिवचनों का संशोधन (***गुलाम नबी बनाम रईसाबी, 1983 एम.पी.वी.नोट्स 396***), पक्षकारों का संयोजन, प्रकरण का पुनर्स्थापन ***(श्रीमती मंदाकिनी बी.पेजिरे बनाम भाऊ साहेब व एक अन्य, 2009 क्रि.ला.ज. 70 (बाम्बे), शबीउल हसन जाफरी बनाम जरीन फातमा, 2000 क्रि.लॉ ज. 3051 (इला.), केहारीसिंह बनाम उ.प्र.राज्य, 2005 क्रि.लॉ ज. 2330, साकिर अलाउददीन उर्फ अली खान बनाम खदीजा बीबी, 1991 क्रि.लॉ ज. 2035 (कल.)*** एवं ***श्रीमती अरूणा कौर बनाम डॉ. सरत, 1993 क्रि.लॉ.ज. 1506 (खंडपीठ)],*** राजीनामा आदि में सिविल प्रावधानों का उपयोग किया जाता है, किंतु इसका आशय यह नहीं कि ऐसी कार्यवाहियों के समय न्यायिक मजिस्ट्रेट, सिविल न्यायालय की समस्त शक्तियां रख उनका प्रयोग करे (***रामचंद्र सौदागर बनाम जीवनबाई, 1958 क्रि.लॉ.ज. 1437***)। चूंकि ऐसी कार्यवाहियों की प्रकृति अर्द्ध दीवानी और अर्द्ध आपराधिक होती है, अतः ऐसी कार्यवाहियों में सिविल तथा आपराधिक कानून के सिद्धान्तों का कठोरता से पालन आवश्यक नहीं है एवं अभिवचनों और सबूत की कठोर तकनीकों को त्याग देना चाहिए (इस संबंध में न्यायदृष्टांत **गिरीशचंद्र बनाम *सुशीलाबाई, 1987 (2) एम.पी.वीकली नोट 214*** एवं ***जमना बाई बनाम शिवनारायण, 1999 (1) एम.पी.वीकली नोट्स 126*** अवलोकनीय हैं)। सिविल अभिवचनों के नियम धारा 125 दं.प्र.सं. के तहत कार्यवाहियों में लागू नहीं होते हैं, (न्यायदृष्टांत ***मोह. हनीफ बनाम अमीनाबाई, 1986 (2) एम.पी.वीकली नोट्स 65)***। इसी वजह से धारा 125 दं.प्र. सं. की कार्यवाहियों में सर्वोत्तम साक्ष्य का नियम

लागू नहीं होता, (*पेंडियाला सुरेश कुमार बनाम सोमपल्ली अरूणबिंदु व एक अन्य, 2005 क्रि.लॉ. ज. 1455*)। इस प्रकार यह स्पष्ट है कि अध्याय 9 की कार्यवाही अर्द्ध दीवानी और अर्द्ध आपराधिक है।

न्यायदृष्टांत *एहजाज हुसैन बनाम शमा परवीन, 1986 (2) एम.पी.वीकली नोट्स 91* में अवधारित किया गया कि ऐसी कार्यवाही सिविल प्रकृति की होने से कार्यवाही में पक्षकार की उपस्थिति आवश्यक नहीं है व उसका प्रतिनिधित्व अधिवक्ता द्वारा किया जा सकता है। न्यायदृष्टांत **सुनीता कछवाहा व अन्य बनाम अनिल कछवाहा, 2014 (3) जे.एल.जे. 404** में मजिस्ट्रेट द्वारा की जाने वाली जांच के क्षेत्र पर विचार करते हुये यह अवधारित किया गया है कि ऐसी कार्यवाही संक्षिप्त प्रकृति की होती है, अतः न्यायालय को वैवाहिक विवादों के विभिन्न क्षणों के विस्तार तक जाने की आवश्यकता नहीं है। न्यायदृष्टांत *बादशाह बनाम सौ.उर्मिला बादशाह, ए.आय.आर. 2014 सु.को. 869* में धारा 125 के प्रावधानों का सोद्देश्य निर्वचन (purposive interpretation) किये जाने की आवश्यकता पर बल दिया गया है।

## क्षेत्राधिकार

दं.प्र.सं. की धारा 125 के मुताबिक भरणपोषण के लिए आवेदन पेश करने के लिए सक्षम न्यायालय न्यायिक मजिस्ट्रेट प्रथम श्रेणी का न्यायालय है। भरणपोषण का आवेदन ऐसे जिले में पेश किया जा सकता है, जहां कि आवेदक है या आवेदक या उसकी पत्नी निवास करती है अथवा जहां आवेदक ने अंतिम बार अपनी पत्नी या अधर्मज संतान की मां के साथ निवास किया है। विवाद की स्थिति वहां पैदा होती है, जहां परिवार न्यायालय भी अस्तित्व में है। परिवार न्यायालय अधिनियम, 1984 की धारा 7 के अनुसार वैसे न्यायालय के न्यायाधीश जब दं.प्र.सं. के अध्याय 9 के तहत कार्यवाही करते हैं, तो न्यायिक मजिस्ट्रेट प्रथम श्रेणी के क्षेत्राधिकार का प्रयोग करते हैं और जब इस अध्याय के अलावा कार्यवाहियां करते हैं, तो जिला न्यायाधीश के रूप में कार्य करते हैं। दं.प्र.सं. के अध्याय 9 के तहत परिवार न्यायालय द्वारा पारित आदेश के खिलाफ रिवीजन आपराधिक रिवीजन के रूप में दर्ज की जावे या नहीं, इस संबंध में ऐसे आदेश के खिलाफ रिवीजन आपराधिक रिवीजन के रूप में दर्ज किया जाना न्यायदृष्टांत *राजेश शुक्ला बनाम माना शुक्ला, 2005 क्रि.लॉ. ज. 3800* में माननीय म.प्र.उच्च न्यायालय द्वारा इस आधार पर विनिश्चित किया गया कि वह आदेश परिवार न्यायालय द्वारा न्यायिक मजिस्ट्रेट प्रथम श्रेणी की शक्तियों का प्रयोग करते हुए पारित किया जाता है। न्यायदृष्टांत *शबाना बानो बनाम इमरान खान, ए.आई.आर. 2010 सु.को. 305 = (2010) 1 एस.सी.सी. 666* में पूर्व के न्यायदृष्टांत *डेनियल लतीफी बनाम यूनियन ऑफ इंडिया, (2001) 7 एस.सी.सी. 740 = ए.आई.आर. 2001 सु.को. 3958* एवं *इकबाल बानो बनाम उत्तरप्रदेश राज्य, (2007) 6 एस.सी.सी. 785 = ए. आई.आर. 2007 एस.सी. 2215* को विचार में लेते हुए यह अवधारित किया है कि परिवार न्यायालय अधिनियम के अंतर्गत स्थापित परिवार न्यायालय को दं.प्र.सं. की धारा 125 के अधीन प्रस्तुत आवेदन के संबंध में इददत अवधि गुजर जाने व आवेदक द्वारा पुर्नविवाह करने तक एकमेव क्षेत्राधिकार है।

अतः अब यह स्थिति स्पष्ट है कि जिन स्थानों पर परिवार न्यायालय अधिनियम के अधीन परिवार न्यायालय स्थापित है, वहां धारा 125 दं.प्र.सं. के अधीन आवेदनों की सुनवाई का एकमेव क्षेत्राधिकार उस परिवार न्यायालय/न्यायालयों को है और जहां ऐसा कोई परिवार न्यायालय स्थापित नहीं है, वहां ऐसी अधिकारिता न्यायिक मजिस्ट्रेट प्रथम श्रेणी के न्यायालय को है। धारा 126 (1) के खंड (इ) व (ब) सिर्फ पत्नी व बच्चे को लागू हैं जिसके तहत वे आवेदन वहां भी पेश कर सकते हैं, जहां अनावेदक या उसकी पत्नी रहते हैं या जहां अनावेदक ने अपनी पत्नी या अधर्मज संतान की मां के साथ अंतिम बार निवास किया है। ऐसी स्थिति में पिता को भरणपोषण का आवेदन उस क्षेत्राधिकार के न्यायालय में पेश करना होगा, जहां अनावेदक रहता है। इस संबंध में न्यायदृष्टांत ***मु. जागीर कौर बनाम जसवंतसिंह, ए.आई.आर. 1963 एस.सी. 1521*** व ***विजयकुमार प्रसाद बनाम बिहार राज्य व अन्य, (2004) 5 एस.सी.सी. 196 = 2004 क्रि.लॉज. 2047*** अवलोकनीय हैं। चूंकि मध्यप्रदेश में पितामह एवं पितामही को भी भरणपोषण पाने वालों में शामिल किया गया है, अतः उक्त विधिक स्थिति के आलोक में पितामह और पितामही के संदर्भ में धारा 126 (1) का खंड (क) लागू होगा और वे भी उसी क्षेत्राधिकार के न्यायालय में आवेदन पेश कर सकेंगे, जहां अनावेदक है।

## अन्तरिम भरणपोषण

न्यायदृष्टांत ***अनुपम तालुकदार बनाम श्रीमती पियाली, 2009 क्रि.लॉ.ज. 1846*** एवं ***सुरेश बनाम ललिता. 2002 क्रि.लॉ.ज. 380*** (**राजस्थान**) में अवधारित किया गया है कि अंतरिम भरणपोषण के आवेदन को निराकृत करने के लिए न्यायालय को गवाही लेने की आवश्यकता नहीं है। न्यायदृष्टांत ***रेणु बनाम हीरालाल, 2002 क्रि.लॉ.ज. 2599 (एम.पी.)*** में अवधारित किया है कि जहां पत्नी स्वेच्छया अलग रह रही है, वहां वह अंतरिम भरणपोषण पाने की पात्र नहीं है। जब तक अंतरिम भरणपोषण के आवेदन पर पारित आदेश संशोधित/परिवर्तित नहीं हो जाता तब तक वह प्रवर्तनीय है और अनावेदक पत्नी द्वारा विलंब कारित किये जाने की प्रवृत्ति के आधार पर पति राशि अदा किये जाने के दायित्व से मुक्त नहीं हो सकता, [***अजय शर्मा बनाम श्रीमती अर्चना शर्मा, आई.एल.आर. (2012) म.प्र. 272***]

अंतरिम भरणपोषण के आदेश को अन्तर्वर्ती आदेश नहीं माना गया है अतः ऐसे आदेश के खिलाफ पुनरीक्षण पोषणीय है। इस संबंध में न्यायदृष्टांत ***आकांक्षा श्रीवास्तव बनाम वीरेन्द्र श्रीवास्तव, 2010 (3) एम.पी.एल.जे. 151 (डी.बी.) एवं मुख्त्यार अली बनाम जज फेमिली कोर्ट, इलाहाबाद, 1999 क्रि.लॉ.ज. 321*** (इलाहाबाद) अवलोकनीय हैं।

## तामीली एवं साक्ष्य

दं.प्र.सं. की धारा 126 से यह स्पष्ट है कि साक्ष्य विरोधी पक्ष की उपस्थिति में या व्यक्तिगत उपस्थिति से छूट दिए जाने की दशा में उसके प्लीडर की उपस्थिति में ली जाएगी। अतः यह आवश्यक है कि भरणपोषण का आवेदन पेश होने पर विरोधी पक्ष को नोटिस/समंस जारी किया जावे और यदि यह पाया जाता है कि विरोधी पक्ष तामीली से जानबूझकर बच रहा है या न्यायालय में हाजिर होने में जानबूझकर उपेक्षा कर रहा है, तो मामले को एकपक्षीय रूप से सुनकर मामला विनिश्चित किया जा

सकता है। यह प्रावधान इस ओर इंगित करता है कि मजिस्ट्रेट विरोधी पक्ष को उपस्थिति के लिए अभियुक्त की भांति वारंट या दं.प्र.सं. के अध्याय 6 में हाजिर होने को विवश करने के लिए कुर्की, उद्घोषणा आदि आदेशिकाओं द्वारा बाध्य नहीं कर सकता। अनावेदक को नोटिस/समंस तामीली की रीतियों में रजिस्टर्ड पोस्ट से तामीली को वैधानिक तामीली मानने/न मानने की व्यावहारिक समस्या पैदा हो सकती है। न्यायदृष्टांत ***बालन नायर बनाम भवानी अम्मा वलसालम्मा, 1987 क्रि.लॉ.ज. 399*** में मान. केरल उच्च न्यायालय की पूर्ण पीठ द्वारा व न्यायदृष्टांत बालका बाबूराम बनाम ***बालका रामनम्मा, 1997 कि.लॉ.ज. 4324*** में माननीय आंध्रप्रदेश उच्च न्यायालय की खंडपीठ द्वारा रजिस्टर्ड पोस्ट से तामीली को उचित माना गया है।

## अवयस्क की दशा में वादमित्र की आवश्यकता व पत्नी – व्याख्या

अब प्रश्न यह उठता है कि क्या अवयस्क पत्नी द्वारा धारा 125 दं.प्र.सं. के तहत आवेदन वादमित्र के जरिए पेश किया जावे ? अध्याय 9 दं.प्र.सं. में अवयस्क पत्नी को भी भरणपोषण की पात्रता है। इस अध्याय में ऐसी कोई व्यवस्था नहीं है कि अवयस्क पत्नी को भरणपोषण का आवेदन पेश करने के लिए वादमित्र के जरिए न्यायालय के समक्ष आना चाहिए। न्यायदृष्टांत ***गुलाम मुस्तफा बनाम तेहारा बेगम, 1980 क्रि.लॉ. ज. 124*** में इस बिंदु पर विचार कर यह बताया गया है कि यदि विधायिका की मंशा अवयस्क द्वारा अध्याय 9 दं.प्र.सं. के तहत सहायता पाने के लिए वादमित्र की आवश्यकता संबंधी होती, तो निश्चित ही उस अध्याय में अवयस्क द्वारा वादमित्र के मार्फत आवेदन पेश करने का उल्लेख होता। अतः 18 वर्ष से कम उम्र की पत्नी वादमित्र के बिना भरणपोषण के लिए न्यायालय में आवेदन पेश कर सकती है।

कई बार आवेदक द्वारा इस आधार पर भरणपोषण की राशि दिलाए जाने की वांछा की जाती है कि वह और अनावेदक पति–पत्नी की तरह रह रहे हैं और उन्होंने नातरा विवाह कर लिया है, तो यहां यह उल्लेख करना आवश्यक हो जाता है कि उक्त प्रावधानों के तहत ''पत्नी'' से आशय विधिक रूप से विवाहित पत्नी से है [***सविता बेन सोमभाई भाटिया बनाम गुजरात राज्य, 2005 क्रि.लॉ.ज. 2141 (सु.को.)***]। नातरा विवाह से विवाहित पत्नी को वैध विवाहिता पत्नी नहीं माना गया है, (***गजराज बनाम फूलकुंवर उर्फ फूलवंतीबाई व एक अन्य, 2005 (2) विधि भास्वर 193***)। पत्नी द्वारा भरणपोषण का आवेदन पेश किए जाने पर विवाह को साबित करने के लिए द्विविवाह के अपराध की भांति विवाह के कठोर सबूत की आवश्यकता नहीं है [***कुमारीबाई बनाम आनंदराम, 1998 कि.लॉ. ज. 4100 (एम.पी.)***], किंतु यदि पूर्व विवाह के आधार पर विवाह शून्य होने की आपत्ति मामले में उठाई जाती है, तो पूर्व विवाह के संबंध में कठोर सबूत पेश होने चाहिए। (***के. विमला बनाम के. वीरास्वामी, 1991 ए.आई.आर. एस.सी.डब्ल्यू. 754)***। द्वितीय विवाह के लिये अकाटय प्रमाण आवश्यक होता है और जहां दस्तावेजी साक्ष्य उपलब्ध है, मौखिक साक्ष्य द्वितीय विवाह को प्रमाणित करने के लिये पर्याप्त नहीं है, [***शशीकला बाई (श्रीमती) बनाम महेन्द्र सिंह, 2014 (IV) एम.पी.जे.आर. 164***]।

धारा 125 दं.प्र.सं. के द्वितीय स्पष्टीकरण के मुताबिक ''पत्नी'' में ऐसी भी स्त्री शामिल है, जिसका विवाह विच्छेद हो चुका है और जिसने पुनर्विवाह नहीं किया है। न्यायदृष्टांत *बाई ताहिरा बनाम अली हुसैन, 1979 क्रि.लॉ. ज. 151 (सु.को.), रोहताश सिंह बनाम रमेन्द्री व अन्य, ए.आई.आर. 2000 सु.को. 952* व *डी.वेलूसामी बनाम डी. पटचैयाम्मल, ए.आई.आर. 2011 सु.को. 479* में भी ऐसा ही अवधारित किया गया है। भले ही विवाह विच्छेद पारस्परिक सहमति से हुआ हो और पत्नी इस बात के लिए सहमत हुई हो कि वह भरणपोषण नहीं मांगेगी, तो उसे उक्त आधार पर भरणपोषण दिलाए जाने से इंकारी नहीं की जा सकती क्योंकि ऐसा करार विधि और सार्वजनिक नीति के खिलाफ होने से प्रवर्तनीय नहीं है [कृपया देखें ***महेशचंद्र द्विवेदी बनाम उ.प्र.राज्य, 2009 क्रि.लॉ.ज. 139 (इलाहाबाद)***]। आपसी करार के आधार पर विवाह संबंध विच्छेदित करने पर भी पत्नी भरणपोषण की पात्र है, यदि भरणपोषण करने में असमर्थ है *[यशवंत शिल्पकार बनाम समता शिल्पकार व एक अन्य, 2003 (2) एम.पी.एच.टी. 286*]। तलाक होने पर अलग रहना आपसी सहमति से अलग रहना नहीं माना जा सकता व ऐसी दशा में भी पत्नी भरणपोषण की पात्र है [***मोल्याबाई बनाम विश्रामसिंह, 1992 क्रि.लॉ ज. 69 (म.प्र.)*** ]। यदि जारतापूर्ण जीवन व्यतीत करने के आधार पर तलाक की आज्ञप्ति पारित की गई है तो पत्नी भरणपोषण राशि पाने की पात्र नहीं है [***राजकुमार दुबे उर्फ राजू बनाम श्रीमती रेखा दुबे उर्फ गोथल बाई, आई.एल.आर. (2012) म.प्र. 794***]।

## भरणपोषण करने में असमर्थ व पर्याप्त साधन – अर्थ

पत्नी का भरणपोषण करने में असमर्थ होने का अर्थ है कि वह उतनी राशि कमाने में असमर्थ है जितने से वह उस तरह रह सके, जैसे कि वह अपने पति के साथ रहती थी [***चतुर्भुज बनाम सीता बाई, 2008 क्रि.लॉ. ज. 727* (सु.को.)**]। धारा 125 दं.प्र.सं. के तहत भरणपोषण पाने की एक पूर्ववर्ती शर्त यह है कि आवेदक/आवेदिका स्वयं का भरणपोषण करने में असमर्थ हो व यदि कोई महिला अपना पेट पालने के लिए मजदूरी या कोई छोटा–मोटा व्यवसाय करती है या वह शिक्षित स्नात्कोत्तर उपाधि प्राप्त है तो मात्र उस आधार पर भरणपोषण राशि पाने से वंचित नहीं होती, [***सुनीता कछवाहा व अन्य बनाम अनिल कछवाहा (पूर्वोक्त)*** ]। इस प्रावधान में वर्णित शब्द "his" में नर या नारी दोनों ही शामिल हैं। अतः विवाहित पुत्री भी अपने माता–पिता का भरणपोषण करने के लिए दायी है। (***डॉ. श्रीमती विजया मनोहर अर्बत बनाम काशीराव राजाराम व एक अन्य, ए.आई.आर. 1987 सु.को. 1100***) किंतु सौतेली मां सौतेले पुत्र से भरणपोषण नहीं पा सकती [***रेवालाल व एक अन्य बनाम श्रीमती कमलाबाई, 1986 क्रि. लॉ.ज. 282 (एम.पी.)***]।

न्यायालय को भरणपोषण की रकम पक्षकारों की सामाजिक, आर्थिक हैसियत, पति की हैसियत के तुल्य सभ्य जीवन के अनुरूप नियत करना चाहिए। (न्यायदृष्टांत ***मीनाक्षी गौर बनाम चित्तरंजन गौर व एक अन्य, ए.आई.आर. 2009 सु.को. 1377*** एवं ***भुवान मोहन सिंह बनाम मीना, ए.आई.आर. 2014 सु.को. 2875***)। ऐसी असमर्थता पर विचार करते समय आवेदिका की व्यक्तिगत आय को देखा जाना चाहिए, न कि उसके पिता की आय को (***रामदयाल वैश्य बनाम अनीता कुमारी, 2004 क्रि.लॉ. ज. 3669***)। यदि व्यक्ति कमाने के लिए शारीरिक रूप से सक्षम है, तो दं.प्र.स. की धारा 125

के संबंध में यह माना जाएगा कि वह पर्याप्त साधनों वाला व्यक्ति है। न्यायदृष्टांत ***शीला बाई (श्रीमती) व एक अन्य बनाम अशोक कुमार, आई.एल.आर. (2014) म.प्र. 832*** में अवधारित किया गया है कि यदि पति स्वस्थ और योग्य शरीर वाला व्यक्ति है तो वह उसकी पत्नी और बच्चों के भरणपोषण के दायित्व से नहीं बच सकता। अतः यदि पति साधु भी हो गया है, तो भी अपनी पत्नी या बच्चों के भरणपोषण का उसका दायित्व समाप्त नहीं होता (**हरदेवसिंह बनाम उत्तरप्रदेश राज्य, 1995 कि.लॉ.ज. 1652**)।

## मुस्लिम महिला व संतानों का भरणपोषण

दं.प्र.सं. का अध्याय 9 के प्रावधान किसी धर्म विशेष पर प्रावधान लागू होने का उल्लेख नहीं करते, न ही मुस्लिम पत्नी या संतानों को वैसे उपाय ग्रहण करने से रोक लगाते हैं। मुस्लिम विधि में विवाह एक संविदा के रूप में माना जाता है। न्यायदृष्टांत ***वली मोहम्मद बनाम बतुलबाई, 2003 (2) एम.पी.एल.जे. 513*** में अवधारित किया गया है कि तलाकशुदा महिला के भरणपोषण के संबंध में मुस्लिम स्त्री (विवाह विच्छेद पर अधिकारों का संरक्षण) अधिनियम, 1986 का प्रभाव न तो भूतलक्षी है व न ही इसका प्रभाव अधिनियम लागू होने से पहले किसी मुस्लिम पति द्वारा तलाकशुदा पत्नी को भरणपोषण अदा करने के संबंध में दिये गये दं.प्र.सं. की धारा 125 या 127 के अधीन आदेशों को रद्द करने पर होगा। उक्त अधिनियम की धारा 5 के अनुसार तलाकशुदा स्त्री और उसके पूर्व पति की पारस्परिक सहमति पर दं.प्र.स. की धारा 125 से 128 के प्रावधान आकृष्ट होने का उल्लेख है, किंतु यदि धारा 3 और 5 का पालन नहीं भी किया है, तो भी धारा 125 की कार्यवाहियां दूषित नहीं होती, जैसा कि न्यायदृष्टांत ***अ.मजीद बनाम कमरून्निसा, 1990 क्रि.लॉ. ज. 2799 (म.प्र.)*** में बताया गया है।

माननीय सर्वोच्च न्यायालय ने न्यायदृष्टांत ***मु.जोहरा खातून बनाम मो. इब्राहिम, 1986 सु.को. 587*** में अवधारित किया है कि मुस्लिम स्त्री विवाह विच्छेद के बाद भी भरणपोषण पाने की पात्र है। न्यायदृष्टांत ***शबाना बानो बनाम इमरान खान, 2010 क्रि.लॉ.ज. 521*** में माननीय सर्वोच्च न्यायालय ने अवधारित किया है कि धारा 3(1) (a) मुस्लिम महिला (तलाक पर अधिकारों का संरक्षण) अधिनियम, 1966 के तहत भरणपोषण की राशि इद्दत की अवधि तक ही सीमित नहीं है वरन् अनावेदक को आवेदिका के भविष्य के युक्तियुक्त खर्चे भी देने होंगे। न्यायदृष्टांत ***इकबाल बानो बनाम उ.प्र.राज्य व एक अन्य (पूर्वोक्त)*** में अवधारित किया गया है कि मुस्लिम महिला धारा 125 के अधीन आवेदन पेश कर सकती है, यदि जवाब में तलाक की बात उठाई जाती है, तो मात्र वही पर्याप्त नहीं होगा। तलाक विधिनुसार दिया गया, यह साबित करना होगा और यदि न्यायालय पाता है कि तलाक हुआ है, तो उस आवेदिका को मुस्लिम महिला (तलाक पर संरक्षण) अधिनियम के तहत मान सकता है व भरणपोषण दिला सकता है, जो इद्दत की अवधि तक सीमित नहीं होगा।

## भरणपोषण करने में उपेक्षा व इंकारी

धारा 125(1) दं.प्र.सं. के अनुसार भरणपोषण करने में अनावेदक की उपेक्षा या भरणपोषण से इंकारी पर भरणपोषण का आदेश दिया जा सकता है, जब इंकारी का प्रश्न तब उठता है, जब

भरणपोषण की मांग की गई हो, जबकि भरणपोषण करने में उपेक्षा अनावेदक के आचरण और व्यवहार से दर्शित होती है। यदि पत्नी जारता की दशा में रह रही है या पारस्परिक सहमति से उभयपक्ष पृथक–पृथक रह रहे हैं, तो पत्नी भरणपोषण राशि पाने की पात्र नहीं है। धारा 125 (3) दं.प्र.सं. के स्पष्टीकरण से यह स्पष्ट है कि यदि पति ने अन्य स्त्री से विवाह कर लिया है या वह रखैल रखता है, तो स्त्री का अपने पति के साथ रहने से इंकार करने का न्यायसंगत आधार माना जाएगा।

जारता साबित करने का भार पति पर होता है, जिससे आशय पत्नी के एकल कृत्य से नहीं है वरन् पति को साबित करना होगा कि लगातार उसकी पत्नी का आचरण जारतापूर्ण रहा है। इस संबंध में न्यायदृष्टांत ***के. वीराह बनाम मुथुलक्ष्मी, 1999 क्रि.लॉ.ज. 624 (मद्रास), सौ. चंदा पी. बडाते बनाम प्रीतम जी. बडाते व एक अन्य, 2002 क्रि. लॉ.ज. 1397 बाम्बे*** *एवं* ***निर्मलदास आर. अलहट बनाम सौ. सुनीता एन. अलहट व अन्य, 2006 क्रि.लॉ.ज. 2635*** अवलोकनीय हैं। यदि आवेदिका अनावेदक से पृथक रह रही है तो जब तक वह पृथक रहने का कोई वैध कारण प्रमाणित नहीं करती, तब तक वह भरणपोषण की पात्र नहीं है, [शशीकला बाई बनाम महेन्द्र सिंह (पूर्वोक्त)]। कुछ न्यायदृष्टांतों में निम्नलिखित कारणों को भी पति से अलग रहने का न्यायसंगत आधार माना गया है :–

(1) पति का अन्य महिला के साथ पति–पत्नी के रूप में निवासरत होना (***राजाथी बनाम सी.गणेशन, ए.आई.आर. 1999 सु.को. 2374***)

(2) नपुंसकता (Impotency) [***अशोक कुमार बनाम भा ठम अति.सत्र न्यायाधीश, वाराणसी 1996 क्रि.लॉ.ज. 392*** (***सु.को.***) एवं ***सिराज मोहम्मद खान बनाम हफीजुन्निसा, 1981 क्रि.लॉ.ज. 1430 (सु.को.),***

(3) ससुराल जाने पर दहेज की मांग और अपहानि पहुंचाने की संभावना [***सिराज मो.खान बनाम हफीजुन्निसा (पूर्वोक्त)*** ]

(4) पति द्वारा दूसरा विवाह [ ***गंगाबाई बनाम श्रीराम, 1991 क्रि.लॉ.ज. 2018 (एम.पी.)***]

(5) सास की क्रूरता [ ***राधामनी वि. सोनू, 1986 क्रि.लॉ.ज. 1129 (एम.पी.)]***

## आदेश का प्रवर्तन

दं.प्र.सं. की धारा 125 (3) में अंतरिम या अंतिम दोनों ही प्रकार के आदेशों के प्रवर्तन की व्यवस्था की गई है। यदि आदेश का अनुपालन करने में अनावेदक पर्याप्त कारण के बिना असफल रहता है, तो मजिस्ट्रेट को अधिकारिता है कि वह आवेदक द्वारा रकम देय होने की तिथि से एक वर्ष के भीतर आवेदन पेश करने पर दं.प्र.सं. की धारा 421 में प्रावधानित प्रक्रिया अनुसार व्यतिक्रमी की जंगम सम्पत्ति की कुर्की और विक्रय द्वारा भरणपोषण की राशि उद्‌गृहण का वारंट जारी करे, जिसके निष्पादन के बाद प्रत्येक माह के न चुकाए गए पूरे भरणपोषण या अंतरिम भरणपोषण के भत्ते और कार्यवाहियों के खर्चे या उसके किसी भाग के लिए ऐसे व्यक्ति को एक माह तक की अवधि के लिए अथवा यदि वह उसे पूर्व में चुका दिया जावे, तो चुका देने के समय तक के लिए कारावास का दण्डादेश दिया जा

सकता है। ऐसी कार्यवाहियां या तो आदेश पारित करने वाले मजिस्ट्रेट द्वारा या धारा 128 के अनुसार उस मजिस्ट्रेट द्वारा की जा सकती है, जिसके क्षेत्राधिकार में वह व्यक्ति है, जिसके विरूद्ध भरणपोषण का आदेश दिया गया है, किंतु ऐसा मजिस्ट्रेट पक्षकारों की पहिचान के बारे में तथा दिए भत्तों और खर्चों के न दिए जाने के बारे में समाधान होने पर ही आदेश दे सकता है (न्यायदृष्टांत ***वल्लभदास रामचंद्र बनाम अयोध्याबाई, 1987 एम.पी.एल.जे. 534***)।

वसूली की कार्यवाही में सामान्यतः अनावेदक के खिलाफ धारा 421 दं.प्र.सं. में वर्णित प्रक्रिया अनुसार उसका चल और अचल सम्पत्ति से राशि वसूली हेतु वारंट जारी किया जाना चाहिए तथापि यह आदेशात्मक नहीं है और आपवादिक दशाओं में प्रकरण की प्रकृति के अनुसार ऐसा वारंट जारी किए बगैर सीधे कारावास का आदेश भी दिया जा सकता है। जहां न्यायालय संतुष्ट है कि अनावेदक के पास उद्गृहीत करने योग्य कोई चल या अचल सम्पत्ति नहीं है, तब धारा 421 के अधीन औपचारिक रूप से अस्तित्वहीन सम्पत्ति के लिए वारंट जारी करना आवश्यक नहीं है, (न्यायदृष्टांत ***भूरे बनाम गोमतीबाई, 1981 क्रि.लॉ.ज. 789***)।

एक वर्ष में राशि भुगतान करने में अनेकों व्यतिक्रम होने पर प्रत्येक माह के भंग के लिए एक माह का कारावास या एक से अधिक माह का कारावास दिया जा सकता है या नहीं, इस संबंध में न्यायदृष्टांत ***अजब राव बनाम रेखाबाई व एक अन्य, 2005 (4) एम.पी.एल.जे. 579*** में अवधारित किया है कि–

> "Once the machinery of law was set in motion for recovery of arrears for the amount falling due in future till termination, the Court can always order recovery of the same. A person who is entitled to maintenance cannot be asked to file fresh application every month for recovery of maintenance allowance. Where the applicant persistently evaded payment of maintenance, the action of magistrate sentencing him for delay in non-payment of maintenance after issuing distress warrant is justified. As the provision under section 125 of the Code is a social legislation obstacles have to be overcome and technicalities ignored in order to implement it. In the case of arrears of maintenance for several months, magistrate had jurisdiction to sentence the applicant to imprisonment".

मान. सर्वोच्च न्यायालय ने न्यायदृष्टांत ***गोरक्षानाथ खांडू बगल बनाम महाराष्ट्र राज्य, 2005 क्रि.लॉ.ज. 3158*** में न्यायदृष्टांत ***शाहदा खातून बनाम अमजद अली, 1999 क्रि.लॉ.ज. 5060 (सु.को.)*** को विभेदित करते हुए अवधारित किया है कि 12 माह की अवशेष राशि का एक आवेदन पेश होने पर व्यतिक्रम में 12 माह तक का कारावास हो सकता है। इस प्रकार यह स्पष्ट है कि एक ही आवेदन पर से अनावेदक को एक माह से अधिक भरणपोषण की राशि अवशेष होने पर तद्नुरूप कारावास से दंडित किया जा सकता है, जो कि एक माह से अधिक हो सकता है।

यदि किसी अवधि के लिए अनावेदक ने कारावास की सजा भुगत ली है, तो उस अवधि के अवशेष की अदायगी से वह मुक्त नहीं हो जाता और वह राशि भी वसूली योग्य रहती है (*कुलदीप कौर बनाम सुरेन्द्रसिंह, ए.आई.आर. 1989 सु.को. 232* व *सुब्रत रॉय सहारा बनाम यूनियन ऑफ इंडिया व अन्य, ए.आई.आर. 2014 सु.को. 3241*)। यदि प्रवर्तन में पति भरण पोषण के आदेश को व पत्नी का उसके साथ रहने की शर्त पर भरणपोषण करने की आपत्ति उठाता है, तो ऐसी आपत्ति पहले विनिश्चित की जानी चाहिए। यदि आपत्ति विनिश्चित किए बगैर वारंट जारी किया जाता है, तो वह अनुचित है **[***दिलशाद हाजी बनाम उ.प्र.राज्य, 2006 क्रि.लॉ.ज. 228 (इलाहाबाद)***]**। भरणपोषण की वसूली के लिए वेतन कुर्क हो सकता है, (*भगवत बाबूराव गायकवाड़ बनाम बाबूराव भैया गायकवाड़ व एक अन्य, 1994 क्रि.लॉ.ज. 2393 बाम्बे*) किंतु भविष्य का वेतन कुर्क नहीं हो सकता (*अली खान बनाम हजरम बी, 1981 क्रि.लॉ.ज. 682 सु.को.*)। न्यायदृष्टांत *अनिल जैन बनाम शिल्पा जैन, 2014* **(IV)** *एम.पी.जे.आर. 185* में अवधारित किया गया है कि भरणपोषण के आदेश के निष्पादन में वेतन कुर्क किये जाने के पूर्व मजिस्ट्रेट का ऐसा निष्कर्ष आवश्यक है कि भरणपोषण राशि अदा नहीं की गई है। इसके अलावा वेतन कुर्की का आदेश करने से पूर्व संबंधित को सुनवाई का अवसर दिया जाना भी आवश्यक है। उक्त मामले में भी भविष्य का वेतन कुर्क न किया जा सकना भी अवधारित किया गया है।

राजीनामा होना भरणपोषण आदेश के प्रवर्तन से इंकारी का आधार नहीं है [*एस.राजेन्द्रन बनाम रेवथी, 1994 क्रि.लॉ ज. 3017 (मद्रास)*]। धारा 125 दं.प्र.सं. के अधीन पारित आदेश जब तक वरिष्ठ न्यायालय द्वारा या धारा 125 (4) या (5) या 127 के अधीन रद्द न हो जावे, तब तक उसकी वैधता बनी रहती है **[***भूपिंदरसिंह बनाम दलजीत कौर, 1979 क्रि.लॉ. ज.198 (सु.को.)***]**। यदि भरणपोषण की राशि एक वर्ष से अधिक समय से नहीं वसूली जा सकी है, तो पत्नी तीन वर्ष की बकाया भरणपोषण की राशि के लिए दीवानी दावा लगा सकती है **[जंगम श्रीनिवास राव बनाम जंगम राजेश्वरी, 1990 क्रि.लॉ.ज. 2506 (आंध्रप्रदेश)]**। ऐसा ही न्यायदृष्टांत *पूंगोडी व एक अन्य बनाम थंगावेल, ए.आय.आर. 2014 सु.को. 24* में भी अवधारित किया गया है। भरणपोषण न देने पर कारावास सश्रम नहीं हो सकता **[***मोइदीनकुट्टी कुंथनकुट्टी बनाम केरल राज्य, 2008 क्रि.लॉ.ज. 3402 (केरल)***]**।

## अन्य महत्वपूर्ण बातें

(1) धारा 13 के अधीन विवाह विच्छेद की डिक्री होने मात्र के आधार पर पक्षकार को भरणपोषण के प्रावधान का लाभ दिए जाने से इंकारी नहीं की जा सकती, [न्यायदृष्टांत *मांगीलाल बनाम गीताबाई, 1988 क्रि.लॉ.ज. 1591 (म. प्र.)*]। किंतु जहां पत्नी बिना किसी कारण के पृथक रह रही है और उसके खिलाफ दाम्पत्य अधिकारों के पुनर्स्थापन की डिक्री हो चुकी है, जिसका वह पालन नहीं कर रही है, तो वह भरणपोषण पाने की पात्र नहीं है, जैसा कि न्यायदृष्टांत *बालकराम बनाम श्रीमती दुर्गाबाई व अन्य, 2007 (1) एम.पी.डब्ल्यू.एन. 10* में अवधारित किया गया है।

(2) धारा 24 या 25 हिन्दू विवाह अधिनियम के अधीन भरणपोषण अथवा निर्वाहिका की राशि दिलवाए जाने का आवेदन लंबित होने या ऐसी राशि दिलवाए जाने मात्र के आधार पर उक्त प्रावधान का लाभ दिए जाने से इंकारी नहीं की जा सकती। यह अवश्य है कि ऐसी राशि को अंतरिम भरणपोषण की राशि या अंतिम आदेश की राशि नियत करते समय विचार में लिया जा सकता है और समायोजन किया जा सकता है (न्यायदृष्टांत ***सुदीप चौधरी बनाम राधा चौधरी, ए.आई.आर.1999 सु.को. 536***)। प्रत्येक मामले में राशि समायोजन बाबत् कोई निश्चित नियम निर्धारित नहीं हो सकता, इसके लिये प्रत्येक प्रकरण के तथ्य व परिस्थितियों के आलोक में न्यायिक विवेक का प्रयोग करना चाहिये, जैसा कि न्यायदृष्टांत ***अशोकसिंह बनाम श्रीमती मंजूला, 2008 (2) एम.पी.एच.टी. 275*** में बताया गया है।

(3) अंतरिम भरणपोषण की अर्जी पर यदि पक्षकार के हस्ताक्षर नहीं हैं और अधिवक्ता के हस्ताक्षर हैं, तो उसे निरस्त नहीं किया जा सकता (न्यायदृष्टांत ***बलराम अरगिद्दा बनाम ए.चंद्रम्मा व एक अन्य, 1997 क्रि.लॉ.ज. 1305***)।

(4) धारा 125 दं.प्र.सं. का आवेदन निराकरण करने के लिए शपथपत्र पर साक्ष्य नहीं ली जा सकती (न्यायदृष्टांत ***रामा प्रसन्ना तिवारी बनाम श्रीमती आशिमा व एक अन्य, 2005 (2) एम.पी.एच.टी. 192***) किंतु अंतरिम भरणपोषण का आवेदन शपथपत्रों के आधार पर निराकृत किया जा सकता है।

(5) अविवाहित पुत्री तब तक भरणपोषण पाने की पात्र है, जब तक शादी न हो जाए [न्यायदृष्टांत ***नूर सबा खातून बनाम मो. कासिम, 1997 (3) क्राइम्स 106 (एस.सी.) =1997 क्रि.लॉ.ज. 3972*** व ***विश्वबंधु लिंघइया बनाम विश्वबंधु कविथा, 2003 क्रि.लॉ.ज. 961 (आंध्रप्रदेश)***]। मुस्लिम स्त्री संतान अपने पिता से वयस्कता या शादी तक भरणपोषण पाने की पात्र है (***जसरथ बनाम मु. गुड़डी व एक अन्य, 2003 (1) एम.पी.जे.आर. 51*** व ***अब्दुल हामिद बनाम कु. गजाला परवीन, 2003 (1) एम.पी.डब्ल्यू.एन. 106***)। पिता अपनी धर्मज या अधर्मज संतान का भरणपोषण करने का दायी है। (***मनोजकुमार गौतम बनाम लक्ष्मीबाई व एक अन्य, 2003 (1) एम.पी. एल.जे. 257*** व ***सुमित्रादेवी बनाम भीकन चौधरी, ए.आई.आर. 1985 एस.सी. 765***)।

(6) विलम्ब के आधार पर धारा 125 दं.प्र.सं. का आवेदन निरस्त नहीं किया जा सकता (**गोला सीथारमुलु बनाम गोला रथनम्मा व एक अन्य, 1991 क्रि.लॉ.ज. 1533**) भरणपोषण के लिये आवेदन प्रस्तुत करने हेतु कोई परिसीमा तय नहीं है फिर भी ऐसा आवेदन एक युक्तियुक्त समय के भीतर प्रस्तुत कर दिया जाना चाहिये, [***शशीकला बाई (श्रीमती) बनाम महेन्द्र सिंह (पूर्वोक्त)***]। आवेदिका/पत्नी पर सबूत का भार है कि वह विलंब को संतोषजनक स्पष्टीकरण दर्शावे। इस संबंध में न्यायदृष्टांत ***डी.वेलूसामी बनाम डी. पटचैयाम्मल (पूर्वोक्त)*** अवलोकनीय है।

(7) पत्नी व बच्चे को भरणपोषण की अदायगी किए जाने की शर्त अभियुक्त को जमानत पर छोड़ने की पूर्ववर्ती शर्त नहीं हो सकती **[*मुनीश भसीन व अन्य बनाम स्टेट (एन.सी.टी. देहली) व एक अन्य, (2009) 4 एस.सी.सी. 45*]**।

(8) धारा 23 हिन्दू दत्तक व भरणपोषण अधिनियम के बीच कोई विसंगति नहीं है और दोनों एक साथ जारी रह सकते है। (*भगवानदत्त बनाम कमलादेवी, ए.आई.आर. 1975 एस.सी. 83*)।

(9) धारा 125 दं.प्र.सं. के आवेदन में भरणपोषण का आदेश राजीनामे के आधार पर भी किया जा सकता है, जिसका प्रवर्तन हो सकता है [***शैलेष प्रधान बनाम हराबाती प्रधान, 1989 क्रि.लॉ.ज. 1661 (उड़ीसा)***]। राजीनामे के आधार पर पारित आदेश के बाद भी राशि बढ़ाने हेतु धारा 127 दं.प्र.सं. के तहत आवेदन पेश किया जा सकता है, **[पद्मनाभम बनाम बामा, 1988 क्रि.लॉ.ज. 1386 (मद्रास)]**। राजीनामे की वैध शर्तें पक्षकारों पर बाध्यकर है, **[हाशिम बनाम श्रीमती रूकैया बानो, 1979 क्रि.लॉ.ज. 1143 इलाहाबाद)**।

(10) विधवा बहू और उसके बच्चों के आवेदन पर सास–ससुर को भरणपोषण का आदेश नहीं दिया जा सकता **[*वेदप्रकाश बनाम लीना कहार, 1996 क्रि.लॉ.ज. 2703 पंजाब और (हरियाणा)*]**।

(11) भरणपोषण राशि बच्चों को वयस्क होने तक ही दिलाई जा सकती है। उनके वयस्क होने पर धारा 125 (3) में प्रवर्तन नहीं हो सकेगा। (न्यायदृष्टांत ***अरनेन्द्रकुमार पाल बनाम माया पाल, 2010 क्रि.लॉ.ज. 395 सु.को***)।

(12) यदि मुस्लिम पति अपनी पत्नी के जीवित रहते अपनी पत्नी की बहिन से शादी करता है, तो ऐसा विवाह अनियमित होने पर भी जब तक शून्य या समाप्त (terminate) न हो जाये तब तक ऐसी दूसरी पत्नी व उसके बच्चे ऐसे व्यक्ति से भरणपोषण पा सकते हैं **[*चांद पटेल बनाम बिसमिल्लाह बेगम व एक अन्य, (2008) 4 एस.सी.सी. 774 = ए.आई.आर. 2008 सु.को. 1915*)]**।

(13) चूंकि धारा 125 दं.प्र.सं. के तहत कार्यवाहियां संक्षिप्त प्रकृति की और त्वरित उपाय प्रदत्त किये जाने संबंधी होती हैं, अतः धारा 125 दं.प्र.सं. के तहत राजीनामा के आधार पर या अन्यथा पारित कोई आदेश हिन्दू दत्तक और भरणपोषण अधिनियम की धारा 18 के तहत पत्नी को उपलब्ध उपाय को प्रतिबंधित नहीं करता, (***नागेन्द्रप्पा नाटिकर बनाम नीलम्मा, ए.आई.आर. 2013 एस.सी. 1541***)।

(14) धारा 125 (2) दं.प्र.सं. परोक्ष रूप से न्यायालय से यह अपेक्षा करती है कि वह भरणपोषण का आदेश दो में से किसी तारीख से, सुसंगत तथ्यों के प्रकाश में प्रभावी बनावे अर्थात् आदेश की तारीख से या आवेदन की तारीख से। न्यायालय को उसके आदेश के समर्थन में दोनों ही आदेशों में कारण अभिलिखित करना चाहिये, **[*सरोजबाई (श्रीमती) बनाम जयकुमार जैन, 1994 एम.पी.एल.जे. (फुल बेंच)* व *जैमिनीबेन व एक अन्य बनाम हिरेनभाई रमेशचंद्र व एक अन्य, ए.आय.आर. 2015 सु.को. 300*)]**।

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# UTILIZATION OF GRANT-IN-AID FOR JUDICIAL EDUCATION : AN OVERVIEW

***(With reference to the recommendations of FC-XIII)***

**Institutional Report**

**INTRODUCTION:**

The Academy in one of its previous issues of JOTI Journal (April 2012) had published a Report on Grant-in-Aid for Judicial Education which was in reference to the recommendations made by the XIII Finance Commission to the Central Government. In its recommendations, an amount of Rs. 15 crore for ***Strengthening the State Judicial Academy*** and Rs. 20.49 crore for ***Training of Judicial Officers*** were allocated to the Madhya Pradesh State Judicial Academy for improving the Justice Delivery System for the award period 2010-2015.

Although the Plan Period started from the financial year 2010-2011, but the Schemes approved under the Plan could be implemented only from the financial year 2011-2012 onwards.

The background regarding the recommendations made by the XIII Finance Commission, allocation of funds as well as various schemes under which the grant has to be utilized was extensively discussed in the previous Article.

For utilizing the Grant in Aid provided by the Central Government under the recommendations of the XIII Finance Commission, Action Plan under both the heads were prepared in which various schemes relating to Justice Delivery System were incorporated and after approval of the same by the HLMC, the Academy expended the allocated amount accordingly in the award period. Now, we will discuss point wise allocation and expenditure of the grant under both the Plans:

**STRENGTHENING OF STATE JUDICIAL ACADEMY:**

**Amount allocated – Rs. 15 crore**

**Amount expended – Rs. 11, 85, 46, 694**

Under this Plan, four Schemes were approved and they were implemented accordingdly. The details are as under:

- **Development of Video Conferencing Facility with all District Training Centres of JOTRI (now MPSJA):**

With a view to interact with all the Judicial Officers working in the far-flung places through video-conferencing and to impart training to all the Judicial Officers by the Academy on the same day and at the same time, all the District Court Headquarters and the Benches of Hon'ble the High Court have been connected with MPSJA.

This scheme is interlinked with the scheme of ***Training by Videoconferencing at all District Centres of JOTRI (now MPSJA)*** in the other approved Action Plan – ***Training of Judicial Officers.***

For implementing this scheme, an amount of Rs. 7,09,74,028 has been expended.

- **Construction/Development of Regional Training Centre at Gwalior:**

To ease the Judicial Officers of the State from wasting time consumed for the to and fro journey while attending trainings at MPSJA, Jabalpur as also to save the public money, initially, Training Centres at Gwalior and Indore were proposed to be developed for conducting some of the training programmes/ workshops of short-term duration on regional basis. However, only training centre at Gwalior could be constructed and construction of the same at Indore, could not be materialized due to some technical problems.

The furnishing work of the Regional Training Centre at Gwalior is underway and after its completion, the training programmes shall be conducted.

- **Development of:**

**(i) Library (Computer Lab) at JOTRI (now MPSJA)**

Computer Lab was set up in the State Judicial Academy for the benefit of judicial officers and court staff in order to train them not only in the use of computes but also in the use of CIS and for trouble-shooting.

**(ii) Rejuvenation/Stress Management Centre at JOTRI (MPSJA)**

In the Academy, regular training programmes for Judicial Officers of all cadres are being conducted and the duration of the programmes varies from one week to one month, apart from the fact that they are discharging their duties in a charged atmosphere with heavy work load in their respective place of postings. As fitness and health problems have become a major issue, a Stress Management Centre was developed in the Academy to provide them a platform where they can learn basics about various techniques of fitness so that they may put their heart and soul into their work.

- **Development of Infrastructure of the building of State Judicial Academy (MPSJA) – Furniture & Equipments to furnish the new building of MPSJA, Jabalpur**

The new building of the Academy, consisting of the Auditorium, Conference room, class rooms, chambers of the Officers and rooms of the staff as well as 50 guest rooms for accommodating the trainee Judicial Officers, has been furnished with all ultra-modern amenities with state of the art equipments for comfortable stay of the Judges in the Academy.

**Under this Plan, approximately 80% of the fund has been utilized i.e. an amount of Rs. 11,85,46,694 was expended from the allocated amount of Rs. 15,00,00,000.**

**TRAINING OF JUDICIAL OFFICERS:**

**Amount allocated – Rs. 20.49 crore**

**Amount expended – Rs. 15,82,63,576**

Under this Plan, thirteen Schemes were approved and they were implementated accordingly. The details of some of the schemes are as under:

- **Training by Video Conferencing at all District Training Centres of JOTRI (now MPSJA)**

This scheme is interlinked with **Development of Video Conferencing Facility with all District Training Centres of JOTRI (now MPSJA**) in the other approved Action Plan – ***Strengthening of State Judicial Academy***.

- **Tours for study of best practices to other States**

With the object to find out the best practices adopted in other States or Countries, to reduce the arrears of cases and to enhance the quality of work and to get information about the steps taken by other Hon'ble High Courts in this regard alongwith study of working rules and regulation of subordinate Courts, 16 teams of Judges comprising of five Judges with equal spreading of numbers from all ranks in each team were sent to different States. Tour Groups were sent to other States namely; Mumbai, Pune, Nashik (in Maharashtra), Ahmedabad, Bharuch, Surendranagar (in Gujarat), Chennai, Madurai, Coimbatore (in Tamil Nadu), Bangalore (in Karnataka), Ernakulum, Kottayam, Allapuzha (in Kerala) and Delhi during the Plan Period.

Thereafter, these Groups submitted compiled reports with suggestions to Hon'ble the High Court.

The scheme for sending 20 Judges to Singapore for seven days was also proposed but due to administrative constraints, the said tour was cancelled.

- **Specialised trainings in other Institutes (FSL, Cyber Crime, Forest, Management, Revenue, Accounts, Language, etc.)**

Apart from judicial knowledge, Judicial Officers are also required to be equipped with knowledge in other specialized subjects and as such type of programmes could not be arranged in the Academy on account of non-availability of resource persons on specialized subjects and lack of other facilities, therefore, Judicial Officers were sent to other Institutes like Medico-Legal Institute, Bhopal, Forensic Science Laboratory, Sagar, Sardar Vallabhai Patel National Police Academy, Hyderabad, CBI Academy, Ghaziabad, State Forest Research Institute, Jabalpur etc.

In addition, the Academy also conducted specialized training programmes and imparted trainings to the Advocates, Judges of the Labour Courts etc. Courses on Cyber Laws, Role of various stakeholders under the Juvenile Justice (Care & Protection of Children) Act, 2000 in which Principal Magistrates of Juvenile Justice Boards, Officers from the Special Juvenile Police Unit and Officers from the Women Empowerment Department participated. Programmes on Mediation were also conducted for the Judges of the District Judiciary.

Being the administrative head of the district administration, District Judges of the State were called for two days Colloquium to sensitize their role in Administration of Justice. Likewise, the Chief Judicial Magistrates were also imparted training regarding their role in Criminal Justice Administration as they are the heads of Criminal Justice Administration.

To create awareness amongst Judges and Lawyers relating to differently abled persons and also to sensitize the Magistrates regarding procedure laid down in the Mental Health Act, a daylong symposium was organized for the Judges and the Lawyers.

- **Books/Reading Material including Software to all the Judicial Officers, JOTRI and all the District & Regional Centres of JOTRI (now MPSJA)**

As Judicial Officers have no good library, therefore, with a view to enhance and update their legal knowledge and to acquaint them with the latest developments in the field of law, Books/Reading Material including software i.e. IndLaw were provided to them. They were also provided with M.P. Local Acts.

Madhya Pradesh State Judicial Academy was not having sufficient number of quality books. As the Academy has to impart training relating to Court working as well as on other aspects, good quality books are required, Therefore, books and Indlaw software were also provided to the Academy as well as to District and Regional Training Centres of MPSJA.

- **Almirahs for safe custody of Purchased Books**

For safe keeping of the law books provided to the Judicial Officers, 1137 bookshelves of Godrej make were purchased and supplied to the Judicial Officers.

- **Books/Reading Material to the Staff of all Subordinate Courts**

Being an integral part of the Judiciary, Staff of subordinate Courts are also required to have some sort of knowledge on procedural law, Rules, Regulations, Service Law, Establishment, Accounts, etc. Therefore, some relevant books/Reading Material were provided to them to enhance their efficiency and to make them aware of the recent developments in the aforesaid field.

- **Regional Training Programmes for Judicial Officers**

The Academy organized Regional Workshops on specific subjects having day-to-day relevance in the Justice Delivery System like Protection of Women from Domestic Violence Act, 2005 alongwith recent laws relating to Crime against Women & Children; Prevention of Corruption Act, 1988; Narcotic Drugs and Psychotropic Substances Act, 1985; Electricity Act, 2003; Negotiable Instruments Act, 1881; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Land Acquisition Act, 1894 alongwith the new Act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Family Laws, Motor Vehicles Act, 1988 alongwith Appeals and Revisions etc.

As per the approved Scheme, these programmes were conducted in almost all the district Headquarters where Judicial Officers of nearby districts were called for training covering all the Judicial Officers of the State. In all 48 Regional Training Programmes were conducted under the approved scheme.

- **Training Programmes for staff at district level**

With a view to enhance the efficiency of the employees of the subordinate Courts, training programmes in all the 50 district districts were conducted in their respective district headquarters on closed Saturdays and Sundays.

A reading material न्यायिक कर्मचारीगण के लिए पठनसामग्री was published by the Academy and was distributed amongst all the employees of the District Courts.

For implementing the aforesaid schemes, two Faculty Members and additional staff like Accountant, Law Researchers, Data Entry Operators, Stenographers, Assistant Grade III and Peons were appointed in the Academy.

Under this Plan, an amount of Rs. 15,82,63,576 has been expended from the allocated amount of Rs. 20,49,00,000 which is approximately 77% utilization of the fund.

Thus, the Academy has been successful in implementing all the approved schemes with the continuous guidance and support of the High Court and the object behind allocating the fund by the Central Government under the recommendations of the XIII Finance Commission could be realized which made the Academy one of the front runners of Judicial Education in the country in terms of infrastructure, academic activities etc.

The amount allocated and expended for implementing the various schemes are shown below in tabulation sheets

**Strengthening of State Judicial Academy (2010-2015)**
**Amount allocated: Rs. 15 crore**

| S. No. | Particulars | Amount allocated in the award period (2010-2015) (in Rs.) | Expenditure upto FY 2010-2011, 2011-2012 & 2012-2013 (in Rs.) | Expenditure during last FY 2013-2014 (in Rs.) | Expenditure during current FY 2014-2015 (in Rs.) | Total expenditure 2010-2015 (in Rs.) |
|---|---|---|---|---|---|---|
| 1. | Development of Video Conferencing Facility with all District Training Centres of JOTRI (interlinked to Scheme No. 1 of the Plan – Training of Judicial Officers) | 2,00,00,000 | 2,00,00,000 | NIL | NIL | 2,00,00,000 |
| 2. | Construction/ Development of Regional Training Centres at Gwalior | 6,00,00,000* | 54,10,400 | NIL | 2,45,89,600 | 3,00,00,000 |

| 3. | Development of:<br>(i) Library at JOTRI, Jabalpur<br>(ii) Rejuvenation/ Stress Management Centre at JOTRI (interlinked with scheme No. 4) | 1,00,00,000<br><br>1,00,00,000* | 44,77,936<br><br>NIL | NIL<br><br>NIL | 15,43,493<br><br>1,00,00,000 | 60,21,429<br><br>1,00,00,000 |
|---|---|---|---|---|---|---|
| 4. | Development of Infrastructure of the building of State Judicial Academy (JOTRI) – Furniture & Equipments to furnish the new building of JOTRI, Jabalpur [interlinked with scheme No. 3 (ii)] | 5,00,00,000* | NIL | NIL | 5,25,25,265 | 5,25,25,265 |
| | **TOTAL (in Rs.)** | **15,00,00,000** | **2,98,88,336** | NIL | **8,86,58,358** | **11,85,46,694** |

* As Regional Training Centre at Indore could not be constructed, the amount of Rs. 3,00,00,000 was diverted for construction of Stress Management Centre and furnishing of the new building of MPSJA.

## Training of Judicial Officers (2010-2015)

## Amount allocated: Rs. 20.49 crore

| S. No.. | Particulars | Amount allocated in the award period (2010-2015) (in Rs.) | Expenditure upto FY 2010-2011, 2011-2012 & 2012-2013 (in Rs.) | Expenditure during last FY 2013-2014 (in Rs.) | Expenditure during current FY 2014-2015 (in Rs.) | Total expenditure 2010-2015 (in Rs.) |
|---|---|---|---|---|---|---|
| 1. | Training by Video Conferencing at all District Training Centres of JOTRI (interlinked to Scheme No. 1 of the Plan – Strengthening of State Judicial Academy) | 5,09,74,028 | 3,96,02,803 | 81,48,687 | 32,22,538 | 5,09,74,028 |
| 2. | Tours for study of best practices:<br>(i) Tour to other States<br>(ii) Tour to Foreign Countries | <br><br>50,00,000<br>90,00,000 | <br><br>18,64,060<br>NIL | <br><br>11,54,521<br>NIL | <br><br>5,20,234<br>NIL | <br><br>35,38,815<br>NIL |
| 3. | Specialised trainings in other Institutes (FSL, Cyber Crime, Forest, Management, Revenue, Accounts, Language, etc.) | 1,20,00,000 | 40,40,699 | 29,45,663 | 29,85,535 | 99,71,897 |
| 4. | Books/Reading Material including Software to all the Judicial Officers | 5,00,00,000 | 3,34,16,515 | 7,25,880 | 1,58,57,605 | 4,06,62,355 |
| 4A. | Almirahs for safe custody of Purchased Books | 1,80,00,000 | NIL | NIL | 1,80,00,000 | 1,80,00,000 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 5. | Books/Reading Material including Software with operational facility to JOTRI and all the District & Regional Centres of JOTRI | 1,00,00,000 | 50,00,000 | NIL | 34,04,705 | 84,04,705 |
| 6. | Books/Reading Material to the Staff of all Subordinate Courts | 46,80,000 | NIL | 20,12,538 | 41,356 | 20,53,894 |
| 7. | Regional Training Programmes for Judicial Officers | 96,00,000 | 24,92,252 | 17,68,151 | 23,71,858 | 66,32,261 |
| 8. | Training Programmes for staff at district level | 48,00,000 | 13,95,173 | 11,07,008 | 20,93,561 | 45,95,742 |
| 9. | Development of Faculties | 15,00,000 | NIL | NIL | NIL | NIL |
| 10. | Additional Permanent Faculty for training purpose | 90,00,000 | 2,24,158 | 30,78,021 | 21,61,064 | 5463243 |
| 11. | Additional staff (Accountant, Asst. Accountant, Stenographers, Data Entry Operator, Law Researchers, Peons)<br>(i) For already approved staff<br>(ii) For new proposed post of Administrative Officer | 1,01,39,600<br><br>7,70,000 | 5,53,969<br><br>NIL | 19,81,012<br><br>NIL | 23,45,830<br><br>NIL | 4880811<br><br>NIL |
| 12. | Vehicles on hire (for two vehicles) | 16,00,000 | 44,940 | 5,60,910 | 3,93,120 | 998970 |
| 13. | Miscellaneous | 78,36,372 | 2,86,855 | NIL | 18,00,000 | 20,86,855 |
| | **TOTAL (in Rs.)** | **20,49,00,000** | **8,89,21,424** | **2,34,82,391** | **5,51,97,406** | **15,82,63,576** |

**MADHYA PRADESH STATE JUDICIAL ACADEMY, HIGH COURT OF M.P., JABALPUR**
**HALF YEARLY TRAINING CALENDAR FOR THE YEAR 2016**
**(JANUARY, 2016 – MAY, 2016)**

| S. No. | Name of the Programme | Target Group | Date & Duration | Venue | Theme |
|---|---|---|---|---|---|
| 1. | Workshop on – Professiondism at Work Place | Registry Officers & Staff | 16.01.2016 & 17.01.2016 (two days) | Indore | As per the direction of Hon'ble the Chief Justice, the capabilities and performance with regard to professional standards to be observed by the Employer and the employee and to remind them about the necessity of professionalism, workshops are to be organized for Officers as well as officials of the Principal Seat as well as Benches of the High Court so as to enhance their effectiveness and excellence in the working. |
| 2. | Workshop on – Juvenile Justice (Care & Protection of Children) Act, 2000 | Principal Magistrates working under the Act | 06.02.2016 & 07.02.2016 (two days) | MPSJA | Judges dealing with the juvenile under the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000 must have not only knowledge of law but they must recognize one of the fundamental truth upon which the juvenile court is based as children require special protection under the law, For that purpose, the judicial officers must be sufficiently immersed and gain depth of understanding that equals the substantive knowledge expected of social workers and psychologists who deal with the children and their behaviour. They should receive special training, which is comprehensive and multidisciplinary. They must also become culturally sensitive so as to appropriately evaluate each child who comes before the Court on the basis of his or her own character and individual value system.<br>Moreover, Judges have to be sensitized regarding the latest amendments carried out in the Act. |
| 3. | Workshop for System Officers and System Assistants | System Officers and System Assistants | 13.02.2016 & 14.02.2016 (two days) | MPSJA | As the entire District Judiciary of the State has been computerized, System Officers and System Assistants were appointed in every district under e-Court Project. To acquaint them regarding nature of their duties and responsibilities, they are required to be imparted training. |

| 4. | Workshop on – Professionalism at Work Place | Registry Officers & Staff | 20.02.2016 & 21.02.2016 (two days) | Gwalior | *Same at S. No. 1* |
|---|---|---|---|---|---|
| 5. | Workshop on –<br>(i) Claim Cases under Motor Vehicles Act<br>(ii) Key issues relating to appeals and revisions | Judges of the District Judiciary working under the Act | 23.01.2016 & 24.01.2016 (two days) | MPSJA | The object behind organizing this Workshop is to focus on various legal and procedural issues concerning effective and expeditious dispensation of justice in cases arising under the Act. |
| 6. | Workshop on, Negotiable Instruments Act, 1881 | Judicial Magistrates working under the Act | 27.02.2016 (one day) | MPSJA | This Workshop has been conceived and designed for the Principal Magistrates dealing cases arising under Negotiable Instruments Act, particularly Section 138 of the Act in the background of phenomenal increase in the number of cases relating to dishonour of cheques. In some of the districts of Madhya Pradesh, Courts are flooded with cases arising u/s 138 of N.I. Act. The situation is quite alarming and the judges are finding it very difficult to dispose of these cases with promptitude, particularly, within the time frame of six months as provided under Section 143 (3) of the Act. Apart that the Judges have to be sensitized regarding the latest amendments carried out in the Act. |

| 7. | Workshop on – Key issues of recent laws relating to Crime against Women & Children including Protection of Women from Domestic Violence Act, 2005 | Judicial Magistrates dealing with such type of cases | 05.03.2016 (one day) | MPSJA | Crime against women has been on the rise and through this workshop an attempt is made to focus on various issues on the subject to enable the Judges to work with proper mindset and sensitization as they have a pivotal role in this respect and are expected to respond to the needs of the society. |
|---|---|---|---|---|---|
| 8. | Workshop on, Negotiable Instruments Act, 1881 | Judicial Magistrates working under the Act | 12.03.2016 (one day) | MPSJA | *Same at S. No. 6* |
| 9. | Workshop on – Key issues of recent laws relating to Crime against Women & Children including Protection of Women from Domestic Violence Act, 2005 | Judicial Magistrates dealing with such type of cases | 19.03.2016 (one day) | MPSJA | *Same at S. No. 7* |
| 10. | Workshop for Trainers of subordinate staff of District Judiciary | 50 Trainers from the subordinate staff of District Judiciary | 26.03.2016 to 30.03.2016 (five days) | MPSJA | The staff of the District Judiciary was imparted training in their respective District Headquarters in the years 2012-2015 under the XIII Finance Commission Grants. As it is not possible to conduct regular training programmes to all the Staff of the District Judiciary, 50 members from all the Districts (one from each district) are to be developed as trainers so that they can percolate their knowledge to the other Class III & Class IV employees of the district. |

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| 11. | Workshop for Advocates | Advocates of nearby regions | 01.04.2016 to 04.04.2016 (four days) | MPSJA | To motivate the Advocates to join the judiciary by facing competitive exams at H.J.S. level as also to sharpen their professional skills as an advocate and to equip them with requisite knowledge and skills. |
| 12. | Workshop for Principal District Judges | Principal District Judges of the State | 09.04.2016 & 10.04.2016 (two days) | MPSJA | The Principal District Judges are the role models of District Judiciary. Their role is very crucial pertaining to administration of justice. So looking to the role and importance under the administration of justice, workshop for all the District Judges of the State has to be organized. |
| 13. | Workshop for District Registrars and Protocol Staff | District Registrars and Protocol Staff | 23.04.2016 (one day) | MPSJA | As per the resolution of the meeting of the Committee for Overall Working of Judicial Officers' Training & Research Institute (now MPSJA) held on 04.11.2015, a joint workshop for District Registrars and Protocol Staff is to be organized who had not undergone the training conducted by the Academy earlier |
| 14. | Workshop for Chief Judicial Magistrates | Chief Judicial Magistrates of the State | 30.04.2016 (one day) | MPSJA | Chief Judicial Magistrates are the head of the Magisterial Courts and their role in administration of criminal justice at the level of district judiciary is significant. Therefore, looking to their role and importance a workshop may be conducted. |

# PART - II
## NOTES ON IMPORTANT JUDGMENTS

1. **ADVOCATES ACT, 1961 – Sections 35 and 49**
   **BAR COUNCIL OF INDIA RULES, 1975 – Part VI, Section II, Regulation 33**
   **Professional misconduct by an Advocate – Appeared for and against the same client – Though the proceedings are different in nature but the property involved in both the cases was the same – So possibility of misuse of the instructions cannot be ruled out – Arguments advanced on behalf of the concerned advocate that he has committed no misconduct, held, unacceptable.**
   अधिवक्ता अधिनियम, 1961– धाराएं 35 और 49
   भारतीय अधिवक्ता परिषद नियम, 1975– भाग 6 धारा 2, विनियम 33
   एक अभिभाषक द्वारा व्यावसायिक दुराचरण– एक ही पक्षकार की ओर से और उसके विरूद्ध उपस्थित होना– यद्यपि कार्यवाहियां भिन्न प्रकृति की हैं किंतु दोनों मामलों में अंतरग्रस्त संपत्ति समान है– इस कारण दिये गये निर्देशों के दुरूपयोग की संभावना से इंकार नहीं किया जा सकता –संबंधित अभिभाषक की ओर से किया गया यह तर्क कि उसने कोई दुराचरण नहीं किया– अभिनिर्धारित किया गया कि (ऐसा तर्क) स्वीकार योग्य नहीं है।

   **Chander Prakash Tyagi v. Benarasi Das (Dead) by. LRs & ors.**
   **Judgment dated 17.03.2015 passed by the Supreme Court in Civil Appeal No. 2581 of 2005, reported in AIR 2015 SC 2297**

**Extracts from the Judgment:**

Regulation 33 of Section II of Part VI of Bar Council of India Rules, which is said to have been violated by the appellant, reads as under:

> "An advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party, shall not act, appear or plead for the opposite party."

The spirit contained in the rule 33, quoted above, is that where a lawyer has committed breach of his duty in respect of fiduciary obligation arising out of the relationship between himself and his client, he is guilty of misconduct of conflict of interest. The above rule restrains a lawyer from acting for another client on the ground of conflict of interest as the duty of the lawyer owed to his former client, not to act prejudicially to his interest, does not come to an end with the termination of the earlier case of his client with whom he had shared confidential information. The basis of Rule 33 is that there is likelihood or possibility of misuse of the instructions given to the lawyer by his former client.

In ***F.C. Rangadurai v. D. Gopalan and others, AIR 1979 SC 281,*** this Court has held that where advocate finds there would be conflict of interest in taking up a case of his client, he should not accept the brief of such client, against interest of his earlier client. Defining the word "misconduct", this Court in ***Noratanmal Chourasia v. M.R. Mulri and another, AIR 2004 SC 2440*** has explained that misconduct is a transgression of some established and definite rule of action.

In ***O.P. Sharma and others v. High Court of Punjab and Haryana, AIR 2011 SC 2101,*** this Court has made following observations in paragraphs 37 to 39 relating to ethical standards in the judicial system, and the same are reproduced as under:

> "37. A court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, Judges and the rest of the staff ought to act in accordance with morals and ethics.
>
> 38. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system.
>
> 39. An advocate should be dignified in his dealings to the court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules."

In ***Dhanraj Singh Choudhary v. Nathulal Vishwakarma, AIR 2012 SC 628,*** discussing the nobility of the profession of lawyers, this Court has made following observations:

> "Any compromise with the law's nobility as a profession is bound to affect the faith of the people in the rule of law and, therefore, unprofessional conduct by an advocate has to be viewed seriously. A person practising law has an obligation to maintain probity and high standard of professional ethics and morality."

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**2. CIVIL PROCEDURE CODE, 1908 – Sections 2 to 33, 47, 151 & 152 and Order 20**

**Amendment of decree – Power of Executing Court, scope of – Executing Court cannot go behind the decree – Modifying the terms of the original decree is not permissible in law.**

**In a decree as to mandatory injunction to handover the balcony occupied by defendants to plaintiff, no dimensions and sketch in respect of balcony were mentioned as they were missing in plaint also – In the execution proceedings, plaintiff filed an amended site plan and sought amendment of decree on account of non-disclosure of precise location of suit property, i.e. balcony – Trial Court refused proposed amendment on the ground that it would amount to going behind the decree and modifying the terms of the original decree – Order of the Trial Court held, proper.**

सिविल प्रक्रिया संहिता, 1908 – धाराएं 2 से 33, 47, 151 और 152 तथा आदेश 20

आज्ञप्ति में संशोधन – निष्पादन न्यायालय की शक्तियों का क्षेत्र – निष्पादन न्यायालय आज्ञप्ति के पीछे नहीं जा सकती मूल आज्ञप्ति में परिवर्धन विधि में अनुमत नहीं है।

आज्ञापक व्यादेश की आज्ञप्ति में बालकनी जो प्रतिवादी के आधिपत्य में थी, वादी को सौंपने की आज्ञप्ति थी, बालकनी का कोई माप या स्केच दर्ज नहीं था और ये (तथ्य) वाद में भी नहीं थे – निष्पादन कार्यवाही में वादी ने संशोधित साईट प्लान पेश किया और डिक्री में संशोधन चाहा क्योंकि उसमें वाद संपत्ति अर्थात बालकनी के विवरण दर्ज नहीं थे – विचारण न्यायालय ने प्रस्तावित संशोधन खारिज किया जो इस आधार पर था कि मूल आज्ञप्ति के शर्तों में परिवर्धन आज्ञप्ति के पीछे जाना होगा – विचारण न्यायालय का आदेश उचित होना अभिनिर्धारित किया गया।

**Ramesh v. Harbans Nagpal and others**

**Judgment dated 23.03.2015 passed by the Supreme Court in Civil Appeal No. 3105 of 2015, reported in (2015) 8 SCC 716**

**Extracts from the Judgment:**

On 30.04.2007 application was preferred on behalf of Respondent No.1- Plaintiff for execution of the aforesaid decree. Soon thereafter he filed an application dated 07.08.2007 under Section 151 C.P.C. for amendment of the decree. It was stated therein as under:

> "1. That the Site Plan does not show the précised location of the place surrendered or ordered to be given in possession of the plaintiff by the defendants.
>
> 2. That although the order and decree sheet clears whatever is to be given to the plaintiff and as against the defendants.
>
> 3. That it is highly improper to go beyond the decree sheet and the decree passed by the Court and therefore, it is appurtenant to describe to the bailiff as to where he has to act and what he has to do so that the time of Court and the bailiff is not wasted and decree of this Hon'ble Court be obeyed and ought to be under law."

The aforesaid application was dismissed by the trial court vide its order dated 15.10.2007 holding that there was no clerical error or accidental omission in the decree and that taking on record the amended site plan at that stage would amount to going behind the decree and modifying the terms of the original decree. In the meantime the appellant-defendant No.2 got the knowledge of ex parte decree dated 07.02.2007 and preferred an application under Order IX Rule 13 CPC for setting aside the same, which application is still pending consideration.

Respondent No.1- plaintiff being aggrieved by the order dated 15.10.2007 preferred CMM No.846 of 2008 in the High Court of Delhi. The High Court in its order dated 14.01.2010 observed that as per the earlier site plan there was a protruding chhajja measuring 33" beyond the staircase and that the said chhajja shall be handed over to the decree holder who shall then erect a wall over the portion measuring 33" beyond the staircase as shown in the initial site plan. It further directed the executing court to issue warrants of execution in terms of the order of the High Court. The appellant preferred Review Petition No.58 of 2010 seeking review of the aforesaid order dated 14.01.2010 (***Harbans Nagpal v. Yash, CM (M) No. 846 of 2008***). The said review petition was, however, dismissed by the High Court vide its order dated 02.06.2010 (***Harbans Nagpal v. Yash, Review Petition No. 58 of 2010 in CM (M) No. 846 of 2008***).

We have gone through the record and considered the rival submissions. In our view, no dimensions were given in the plaint nor did the plaint refer to any sketch. The judgment and decree also did not refer to any dimensions of the chhajja in question nor did it incorporate or refer to any sketch from which dimensions could be gathered. In the premises the view taken by the trial court was absolutely correct, in that any exercise would amount to going behind the decree. The application preferred under Section 151 CPC was also vague and

lacking in any particulars. The High Court was, therefore, not justified in passing the instant directions. We, therefore, allow the appeal and set aside both the orders under appeal. It is open to Respondent NO.1-plaitniff to take such steps as are open to him in law. We may also observe that the application for setting aside the ex parte decree preferred by the appellant shall be considered on its own merits.

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**3. CIVIL PROCEDURE CODE, 1908 – Section 2(2), Order 2 Rule 2 and Order 8 Rule 6-A to 6-D**

**(i) Order when may amount to decree – If by virtue of order of the Court, the rights have finally been adjudicated, it would assume the status of a decree.**

**(ii) Counter-claim, nature and object of – Counter-claim in a suit is in the nature of a cross-suit and the defendant is required to pay the requisite Court fee on the valuation of his counter-claim – Plaintiff is obliged to file a written statement and in case there is default, the Court can pronounce the judgment against the plaintiff in relation to the counter-claim – By a statutory command, even if the suit is dismissed, counter-claim shall remain alive for adjudication – The purpose of the scheme relating to counter-claim is to avoid multiplicity of proceedings – When a counter-claim is dismissed on merit, it forecloses the rights of the defendant.**

सिविल प्रक्रिया संहिता, 1908 – धारा 2 (2), आदेश 2 नियम 2 और आदेश 8 निमय 6–ए से 6–डी

(i) आदेश कब डिक्री के समान माना जा सकेगा – यदि न्यायालय के आदेश से अधिकारों का अंतिम रूप से न्यायनिर्णयन हो जाता है तब वह डिक्री की प्रस्थिति ले लेगा।

(ii) प्रतिदावे की प्रकृति और उद्देश्य – एक वाद में प्रतिदावा प्रति वाद की प्रकृति का होता है और प्रतिवादी को उसके प्रतिदावे पर मूल्यांकन अनुसार आवश्यक न्यायालय शुल्क भुगतान करना होता है – वादी का यह दायित्व है कि वह लिखित कथन प्रस्तुत करे और चूक होने की स्थिति में प्रतिदावे के संबंध में न्यायालय वादी के विरूद्ध निर्णय सुना सकता है – विधान के आदेश द्वारा, यहाँ तक कि यदि वाद खारिज हो जाय, प्रतिदावा न्यायनिर्णयन के लिए बचा रहता है – प्रतिदावे की योजना का उद्देश्य कार्यवाहियों के बाहुल्य को रोकना है – जब प्रतिदावा गुणदोष पर खारिज होता है तब यह प्रतिवादी के अधिकारों को प्रतिबंधित (या समाप्त) कर देता है।

**Rajni Rani and another v. Khairati Lal and others**
**Judgment dated 14.10.2014 passed by the Supreme Court in Civil Appeal No. 6862 of 2014, reported in 2015 (4) MPLJ 12 (SC)**

**Extracts from the Judgment:**

On a plain reading of the aforesaid provisions it is quite limpid that a counter-claim preferred by the defendant in a suit is in the nature of a cross-suit and by a statutory command even if the suit is dismissed, counter-claim shall remain alive for adjudication. For making a counter-claim entertainable by the court, the defendant is required to pay the requisite court fee on the valuation of the counter-claim. The plaintiff is obliged to file a written statement and in case there is default the court can pronounce the Judgment against the plaintiff in relation to the counter-claim put forth by the defendant as it has an independent status. The purpose of the scheme relating to counter-claim is to avoid multiplicity of the proceedings. When a counter-claim is dismissed on being adjudicated on merits it forecloses the rights of the defendant. As per Rule 6A(2) the court is required to pronounce a final judgment in the same suit both on the original claim and also on the counterclaim. The seminal purpose is to avoid piece-meal adjudication. The plaintiff can file an application for exclusion of a counterclaim and can do so at any time before issues are settled in relation to the counter-claim. We are not concerned with such a situation.

In the instant case, the counter-claim has been dismissed finally by expressing an opinion that it is barred by principles of Order 2, Rule 2 of the CPC. The question is what status is to be given to such an expression of opinion. In this context we may refer with profit the definition of the term decree as contained in section 2(2) of CPC:

> "(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within 1 [ * * *] Section 144, but shall not include –
>
> (a) any adjudication from which an appeal lies as an appeal from an order, or
>
> (b) any order of dismissal for default.
>
> **Explanation –** A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;"

In ***R. Rathinavel Chettiar and another v. V. Sivaraman and others, (1999) 4 SCC 89*** dealing with the basic components of a decree, it has been held thus:-

"Thus a "decree" has to have the following essential elements, namely:

(i) There must have been an adjudication in a suit.

(ii) The adjudication must have determined the rights of the parties in respect of, or any of the matters in controversy.

(iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant."

From the aforesaid enunciation of law, it is manifest that when there is a conclusive determination of rights of parties upon adjudication, the said decision in certain circumstances can have the status of a decree. In the instant case, as has been narrated earlier, the counter-claim has been adjudicated and decided on merits holding that it is barred by principle of Order 2, Rule 2 of C.P.C. The claim of the defendants has been negatived. In ***Jag Mohan Chawla and another v. Dera Radha Swami Satsang and others, (1996) 4 SCC 699*** dealing with the concept of counter-claim, the Court has opined thus:-

"... is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit."

Keeping in mind the conceptual meaning given to the counter-claim and the definitive character assigned to it, there can be no shadow of doubt that when the counter-claim filed by the defendants is adjudicated and dismissed, finality is attached to it as far as the controversy in respect of the claim put forth by the defendants is concerned. Nothing in that regard survives as far as the said defendants are concerned. If the definition of a decree is appropriately understood it conveys that there has to be a formal expression of an adjudication as far as that Court is concerned. The determination should conclusively put to rest the rights of the parties in that sphere. When an opinion is expressed holding that the counter-claim is barred by principles of Order 2, Rule 2 C.P.C., it

indubitably adjudicates the controversy as regards the substantive right of the defendants who had lodged the counter-claim. It cannot be regarded as an ancillary or incidental finding recorded in the suit. In this context, we may fruitfully refer to a three-Judge Bench decision in ***M/s. Ram Chand Spg. & Wvg. Mills v. M/s. Bijli Cotton Mills (P) Ltd., Hathras and others, AIR 1967 SC 1344*** wherein their Lordships was dealing with what constituted a final order to be a decree. The thrust of the controversy therein was that whether an order passed by the executing court setting aside an auction sale as a nullity is an appealable order or not. The Court referred to the decisions in ***Jethanand and Sons v. State of Uttar Pradesh, AIR 1961 SC 794*** and ***Abdul Rahman v. D.K. Kassim and Sons, AIR 1933 PC 58*** and proceeded to state as follows:-

> "In deciding the question whether the order is a final order determining the rights of parties and, therefore, falling within the definition of a decree in Section 2(2), it would often become necessary to view it from the point of view of both the parties in the present case — the judgment-debtor and the auction-purchaser. So far as the judgment-debtor is concerned the order obviously does not finally decide his rights since a fresh sale is ordered. The position however, of the auction-purchaser is different. When an auction-purchaser is declared to be the highest bidder and the auction is declared to have been concluded certain rights accrue to him and he becomes entitled to conveyance of the property through the court on his paying the balance unless the sale is not confirmed by the court. Where an application is made to set aside the auction sale as a nullity, if the court sets it aside either by an order on such an application or suo motu the only question arising in such a case as between him and the judgment-debtor is whether the auction was a nullity by reason of any violation of Order 21, Rule 84 or other similar mandatory provisions. If the court sets aside the auction sale there is an end of the matter and no further question remains to be decided so far as he and the judgment-debtor are concerned. Even though a resale in such a case is ordered such an order cannot be said to be an interlocutory order as the entire matter is finally disposed of. It is thus manifest that the order setting aside the auction sale amounts to a final decision relating to the rights of the parties in dispute in that particular civil proceeding, such a proceeding being one in which the rights and liabilities of the parties arising from the auction sale are in dispute and wherein they are finally determined by the court passing the order setting it aside. The parties in such a case are only the judgment-debtor

> and the auction-purchaser, the only issue between them for determination being whether the auction sale is liable to be set aside. There is an end of that matter when the court passes the order and that order is final as it finally, determines the rights and liabilities of the parties, viz., the judgment-debtor and the auction-purchaser in regard to that sale, as after that order nothing remains to be determined as between them."

After so stating, the Court ruled that the order in question was a final order determining the rights of the parties and, therefore, fell within the definition of a decree under Section 2(2) read with Section 47 and was an appealable order.

We have referred to the aforesaid decisions to highlight that there may be situations where an order can get the status of a decree. A Court may draw up a formal decree or may not, but if by virtue of the order of the Court, the rights have finally been adjudicated, irrefutably it would assume the status of a decree. As is evincible, in the case at hand, the counter-claim which is in the nature of a cross-suit has been dismissed. Nothing else survives for the defendants who had filed the counter-claim. Therefore, we have no hesitation in holding that the order passed by the learned trial Judge has the status of a decree and the challenge to the same has to be made before the appropriate forum where appeal could lay by paying the requisite fee. It could not have been unsettled by the High Court in exercise of the power under Article 227 of the Constitution of India. Ergo, the order passed by the High Court is indefensible.

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***4. CIVIL PROCEDURE CODE, 1908 – Section 11**

***Res judicata* – The subject-matter and the parties are the same in both the suits but cause of action, issues involved and relief claimed in the subsequent suit are different – Previous suit was filed by the plaintiff for declaration and subsequent suit was filed for partition – Therefore, subsequent suit is not hit by the principle of res judicata [*Deva Ram and another v. Ishwar Chand and another, AIR 1996 SC 378* relied on].**

**सिविल प्रक्रिया संहिता, 1908 – धारा 11**

*रेस ज्यूडिकेटा* या पूर्व निर्णय – दोनों वादों में वादग्रस्त संपत्ति और पक्षकार समान है किन्तु वाद कारण, अंतरग्रस्त वादप्रश्न और चाहा गया अनुतोष पश्चातवर्ती वाद में भिन्न है – वादी द्वारा पूर्व वाद घोषणा के लिए प्रस्तुत किया गया था और बाद का वाद विभाजन के लिए प्रस्तुत किया गया था – बाद का वाद रेस ज्यूडिकेटा के सिद्धांत से बाधित नहीं होता है (*देवराम और अन्य विरूद्ध ईश्वरचंद और अन्य, एआईआर 1996 एससीसी 375* पर विश्वास किया गया।)।

**Sabdal Singh & another v. Shivraj Singh Thakur & others**
**Judgment dated 19.08.2015 passed by the High Court of M.P.in Civil Revision No. 327 of 2012, reported in 2015 (4) MPLJ 309**

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***5. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 7 Rule 11(d)**
**Can a suit be rejected on the ground of *res judicata* under Order 7 Rule 11 (d) CPC? Held, No, as it is a mixed question of law and fact – It cannot be decided only on the averments of the plaint – Taking of evidence is necessary for deciding such plea.**

सिविल प्रक्रिया संहिता, 1908 – धारा 11 और आदेश 7 नियम 11 (डी)

क्या एक वाद को पूर्व न्याय या रेस जूडिकेटा के आधार पर आदेश 7 नियम 11 (डी) सी.पी.सी. के अधीन खाारिज किया जा सकता है? अभिनिर्धारित किया गया, नहीं क्योंकि यह विधि और तथ्य का एक मिश्रित प्रश्न होता है – यह (रेस जूडिकेटा का बिन्दु) केवल वाद पत्र के अभिकथनों के आधार पर निराकृत नहीं किया जा सकता– ऐसे अभिवाक के निर्धारण के लिए साक्ष लेना आवश्यक होता है ।

**Vaish Aggarwal Panchayat v. Inder Kumar and others**
**Judgment dated 25.08.2015 passed by the Supreme Court in Civil Appeal No. 2089 of 2015 reported in AIR 2015 SC 3357**

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***6. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 8 (1)**

**(i) Transposition of party, requirement of – Law explained.**

***Facts of the case:***

**Initially the suit plot was allotted in favour of father of petitioner – However, the sale deed was not executed – The father of the petitioner raised a dispute under section 64 of the M.P. Co-operative Societies Act, 1960 on the basis of which the Deputy Registrar cancelled the allotment of the plot in question made in favour of respondents 1 & 2 and permitted the respondent Society to file a suit for cancellation of sale deed – Respondent No. 3 Society filed the suit seeking relief of cancellation of sale deed executed in favour of respondents No. 1 & 2 – Father of petitioner was not impleaded as party in the suit – He was later on impleaded as defendant by the Court allowing his application under Order 1 Rule 10 CPC – Petitioner thereafter filed an application seeking his transposition as plaintiff in the suit – Trial Court rejected the application – Held, the suit has been filed by the respondent Society for the benefit of petitioner and there is no conflict of interest between the petitioner and the respondent No. 3 Society and it is evident that respondent No. 3 Society was not prosecuting the proceeding in the suit with due diligence, therefore,**

**application preferred by the petitioner for transposition as plaintiff is liable to be allowed.**

**(ii) Label of application, effect of – It is trite law that label of an application is not decisive of the matter and its contents should be seen.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 1 नियम 8 (1)

(i) पक्षकार के पक्षांतरण की आवश्यकता – विधि समझाई गई।

(ii) आवेदन के शीर्षक (या अंकन) का प्रभाव – यह स्थापित विधि है कि एक आवेदन पर उल्लेखित शीर्षक (या प्रावधान) मामले में निर्णायक नहीं होता है बल्कि उसमें उल्लेखित तथ्य देखना चाहिए।

**Jagdishram and others v. Girish Pandey and others**
**Order dated 14.08.2015 passed by the High Court of M.P. in W.P. No. 1546 of 2015, reported in 2015 (4) MPLJ 128**

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**7. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10 (2)**
**Suit for specific performance of contract – After coming to know about proceeding, subsequent purchaser of suit property filed an application under Order 1 Rule 10 CPC for his impleadment as a defendant – Same was rejected by the Trial Court – To avoid multiplicity of litigation, order of Trial Court set aside and application under Order 1 Rule 10 CPC allowed by Hon'ble the High Court. [*Amit Kumar Shaw and another v. Farida Khatoon and another, (2005) 11 SCC 403* relied on]**

सिविल प्रक्रिया संहिता, 1908–, आदेश 1 नियम 10 (2)

संविदा के विनिर्दिष्ट पालन का वाद– कार्यवाही की जानकारी लगने के बाद वादग्रस्त संपत्ति के पश्चातवर्ती क्रेता ने उसे प्रतिवादी के रूप में संयोजित किये जाने के लिए आदेश 1 नियम 10 सी.पी.सी.के अधीन एक आवेदन प्रस्तुत किया– उसे विचारण न्यायालय द्वारा निरस्त किया गया– वाद बाहुल्य से बचने के लिए विचारण न्यायालय का आदेश माननीय उच्च न्यायालय द्वारा निरस्त किया गया और आदेश 1 नियम 10 का आवेदन स्वीकार किया गया (अमित कुमार शाँ और अन्य विरूद्ध फरीदा खातून और एक अन्य, (2005) 11 एस.सी.सी. 403 पर भरोसा किया गया ।)

**Sanjay Singh v. Ombabu Jain and others**
**Order dated 08.10.2015 passed by the High Court of M.P. in Writ Petition No. 11526 of 2015, reported in 2015 (4) MPLJ 322**

**Extracts from the Order:**

After hearing learned counsel for the parties and after going through the record available and after examining the law laid down in this respect, it is clear that the application of the petitioner was not property considered by the trial court. In the case of *Amit Kumar Shaw and another v. Farida Khatoon and another,*

***(2005) 11 SCC 403,*** the Apex Court has categorically held after combined reading of the provisions of Order 1 Rule 10 as also Order 22 Rule 10 of the Code and keeping in view the principles laid down under Section 52 of the Act that it is not necessary that all subsequent purchasers may not be allowed to become a party in the suit if one is filed for specific performance of contract prior to obtaining the right by the subsequent transferee. While considering these aspects the Apex Court has categorically held in paragraphs 9,10, 14 and 16, which read thus:-

> "9. The object of Order 1 Rule 10 is to discourage contests on technical pleas, and to save honest and bona fide claimants from being non-suited. The power to strike out or add parties can be exercised by the Court at any stage of the proceedings. Under this Rule, a person may be added as a party to a suit in the following two cases:
>
> (1) When he ought to have been joined as plaintiff or defendant, and is not joined so, or
>
> (2) When, without his presence, the questions in the suit cannot be completely decided.
>
> 10. The power of a Court to add a party to a proceeding cannot depend solely on the question whether he has interest in the suit property. The question is whether the right of a person may be affected if he is not added as a party. Such right, however, will necessarily include an enforceable legal right.
>
> 14. An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order 1 Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.
>
> 16. The doctrine of lis pendens applies only where the lis is pending before a Court. Further pending the suit, the transferee is not entitled as of right to be made a party to the suit, though the Court has a discretion to make him a party. But the transferee pendente lite can be added as a proper party if his interest in the subject matter of the suit is substantial and not just peripheral. A transferee pendente lite to the extent he has acquired interest from the defendant is vitally interested in the litigation, where the transfer is of the entire interest of the defendant; the latter having no more interest in the property may not properly defend the

suit. He may collude with the plaintiff. Hence, though the plaintiff is under no obligation to make a lis pendens transferee a party, under Order 22 Rule 10 an alienee pendente lite may be joined as party. As already noticed, the Court has discretion in the matter which must be judicially exercised and an alienee would ordinarily be joined as a party to enable him to protect his interests. The Court has held that a transferee pendente lite of an interest in immovable property is a representative-in-interest of the party from whom he has acquired that interest. He is entitled to be impleaded in the suit or other proceedings where his predecessor-in-interest is made a party to the litigation; he is entitled to be heard in the matter on the merits of the case."

The aforesaid provisions of law was considered by this Court as well in the case of ***Smt. Nirmala Devi v. Dayal Singh Gaur and others, 2007 (4) MPHT 189. Again in the case of A. Nawab John and others v. V.N. Subramaniyam, (2012) 7 SCC 738*** while considering the law laid down in the case of ***Amit Kumar Shaw*** (supra), the Apex Court has reiterated the propriety of permitting subsequent purchaser to participate in the suit proceedings, if suit is for specific performance of contract.

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**8. CIVIL PROCEDURE CODE, 1908 – Order 1 Rule 10 and Order 22 Rules 3 & 9**

**(i) Nature of provision of Order 22 CPC – Not penal in nature but a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law –** ***Sardar Amarjit Singh Kalra v. Pramod Gupta, AIR 2003 SC 2588*** **(5 Judge Bench) followed.**

**(ii) Bringing L.Rs. of plaintiff or defendant on record – Order 22 stipulates the manner in which legal representatives of plaintiff or defendant ought to have been brought on record – The prescribed procedure cannot be circumvented by filing application under Order 1 Rule 10 CPC r/w/s 151 CPC – It would be unjust to non-suit the appellants on the ground of technicalities.**

**(iii) Second appeal – Dismissed due to non-prosecution – Application filed under Order 22 Rules 3 and 9 CPC not decided properly and held, appeal abated – Hon'ble Apex Court held that such order is not legal in the eye of law – Application should be decided according to prescribed procedure.**

## सिविल प्रक्रिया संहिता, 1908– आदेश 1 नियम 10 और आदेश 22 नियम 3 और 9

(i) आदेश 22 सी.पी.सी.के प्रावधान की प्रकृति– यह दण्डात्मक प्रकृति का नहीं है बल्कि एक प्रक्रिया का नियम है और पक्षकारों के तात्विक अधिकारों को प्रक्रियात्मक कानून पर कठोरता से विचार करके और एक अनुचित दृष्टिकोण लेकर पराजित नहीं किया जा सकता– *सरदार अमरजीत सिंह कालरा विरूद्ध प्रमोद गुप्ता, ए.आई.आर. 2003 एस.सी. 2588* (पांच न्यायमूर्तिगण की पीठ) का अनुसरण किया गया ।

(ii) वादी या प्रतिवादी के वेध प्रतिनिधियों को अभिलेख पर लाना– आदेश 22 में वादी या प्रतिवादी के वेध प्रतिनिधियों को अभिलेख पर लाने का एक तरीका निर्धारित किया गया है – विहित प्रक्रिया को आदेश 1 नियम 10 सहपठित धारा 151 सी.पी.सी. का आवेदन प्रस्तुत करके प्रवंचित नहीं किया जा सकता – अपीलार्थी को तकनीकी आधारों पर कार्यवाही से वंचित करना अयुक्तियुक्त होगा।

(iii) द्वितीय अपील– अभियोजित न करने के आधार पर खारिज की गयी– आदेश 22 नियम 3 और 9 सी.पी.सी. का आवेदन उचित रूप से निराकृत नहीं किया गया और अभिनिर्धारित किया गया कि अपील उपशमित हो गयी है – माननीय सर्वोच्च न्यायालय ने अभिनिर्धारित किया गया कि कानून की दृष्टि में ऐसा आदेश विधिक नहीं है– आवेदन विधिक प्रक्रिया के अनुसार निराकृत किया जाना चाहिए।

### Banwari Lal (D) by LRs. and another v. Balbir Singh

**Judgment dated 25.08.2015 passed by the Supreme Court in Civil Appeal No. 6567 of 2015, reported in AIR 2015 SC 3573**

**Extracts from the Judgment:**

Provisions of Order XXII CPC are not penal in nature. It is a rule of procedure and substantial rights of the parties cannot be defeated by pedantic approach by observing strict adherence to the procedural aspects of law. In ***Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272***, a Five Judge Bench of this Court held as under:

> "Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice. A careful reading of the provisions contained in Order 22 CPC as well as the subsequent amendments thereto would lend credit and support to the view that they were devised to ensure their continuation and culmination in an effective adjudication

> and not to retard the further progress of the proceedings and thereby non-suit the others similarly placed as long as their distinct and independent rights to property or any claim remain intact and not lost forever due to the death of one or the other in the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice. The fact that the khata was said to be joint is of no relevance, as long as each one of them had their own independent, distinct and separate shares in the property as found separately indicated in the jamabandi itself of the shares of each of them distinctly. We are also of the view that the High Court should have, on the very perception it had on the question of abatement, allowed the applications for impleadment even dehors the cause for the delay in filing the applications keeping in view the serious manner in which it would otherwise jeopardize an effective adjudication on merits, the rights of the other remaining appellants for no fault of theirs. Interests of justice would have been better served had the High Court adopted a positive and constructive approach than merely scuttled the whole process to foreclose an adjudication of the claims of others on merits. The rejection by the High Court of the applications to set aside abatement, condonation and bringing on record the legal representatives does not appear, on the peculiar nature of the case, to be a just or reasonable exercise of the Court's power or in conformity with the avowed object of the Court to do real, effective and substantial justice…"

In ***Sital Prasad Saxena (D) by LRs. v. Union of India and ors., AIR 1985 SC 1,*** it was observed that the rules of procedure under Order XXII CPC are designed to advance justice and should be so interpreted as not to make them penal statutes for punishing erring parties. On sufficient cause, delay in bringing the legal representatives of the deceased party on record should be condoned. Procedure is meant only to facilitate the administration of justice and not to defeat the same. The dismissal of the second appeal by the High Court does not constitute a sound and reasonable exercise of its powers and the impugned order cannot be sustained.

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**9. CIVIL PROCEDURE CODE, 1908 – Order 6 Rules 2, 4 and 17**
**EVIDENCE ACT, 1872 – Section 3**
**Appreciation of evidence in civil cases – Variation between pleading and proof, how to take into consideration? Fresh pleading and evidence which is in variation to the original pleadings cannot be taken unless the fresh pleadings are incorporated by way of amendment of the pleadings – Unless the plaint (or written statement) is amended and a specific plea is taken, evidence on that point could not have been taken into consideration.**

सिविल प्रक्रिया संहिता, 1908– आदेश 6 नियम 2, 4 और 17
साक्ष्य अधिनियम 1872 – धारा 3

सिविल मामलों में साक्ष्य का मूल्यांकन– अभिवचन और प्रमाण में भिन्नता को कैसे विचार में लिया जाये ? नये अभिवचन और साक्ष्य जो कि मूल अभिवचनों से भिन्न हो नहीं लिये जा सकते जब तक कि नये अभिवचन संशोधन के माध्यम से शामिल नहीं किये जाते – जब तक कि वाद (या लिखित कथन) संशोधित नहीं किया जाता और एक विशिष्ट अभिवचन नहीं लिया जाता उस बिन्दु पर आया साक्ष्य विचार में नहीं लिया जाता।

**Nandkishore Lalbhai Mehta v. New Era Fabrics Private Limited and others**
**Judgment dated 08.07.2015 passed by the Supreme Court in Civil Appeal No. 1148 of 2010, reported in (2015) 9 SCC 755**

**Extracts from the Judgment:**

It may be mentioned that in the plaint filed by the appellant, the plea set up was that at the instigation of the defendants and in collusion with them, the Mill Mazdoor Sabha has refused to give its permission to the sale of the mill premises of Defendant No. 1 to the plaintiff. It was not a case set up by the appellant that the Mill Mazdoor Sabha had agreed to the proposed sale on certain conditions offered by the respondents. In view of the settled position of law, fresh pleadings and evidence which is in variation to the original pleadings cannot be taken unless the pleadings are incorporated by way of amendment of the pleadings. In our considered opinion, the Division Bench of the High Court was perfectly justified in holding that unless the plaint is amended and a specific plea is taken that the Mill Mazdoor Sabha had agreed for the proposed sale on certain terms and conditions offered by the respondents herein, the two letters viz., Exh Nos. P-27 and P-28 could not have been taken into consideration at all.

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

**Amendment of plaint – When doctrine of relation back will not be applicable? Held, where Court allowed the amendment expressly subject to plea of limitation, said doctrine will not be applicable because it indicates that there are no special or extraordinary circumstances where a legal right that had accrued in favour of the defendant should be taken away – In this case, defendant had denied the title of plaintiff first time in the written statement on 16.05.1990 – Case remanded back to trial Court – On 01.04.2002, amendment application was filed by the plaintiff for declaration of his title which was allowed subject to plea of limitation – It was held that doctrine of relation back will not be applicable.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17

वाद में संशोधन– कब रिलेशन बैक का सिद्धांत लागू नहीं होगा ? अभिनिर्धारित किया गया, जहाँ न्यायालय अभिव्यक्त रूप से संशोधन को परिसीमा के अभिवाक के अधीन रहते हुए स्वीकार करती है तब यह सिद्धांत लागू नहीं होगा क्योंकि यह दर्शाता है कि कोई विशेष और असामान्य परिस्थितियां नहीं हैं जिसमें एक विधिक अधिकार जो कि प्रतिवादी के पक्ष में उत्पन्न हो चुका था उसे वापस लिया जाये – इस मामले में प्रतिवादी ने वादी के स्वत्व को प्रथम बार उसके लिखित कथन दिनांक 16–05–90 में इंकार किया था– मामला विचारण न्यायालय को प्रतिप्रेषित किया गया– 01–04–2002 को वादी द्वारा उसके स्वत्व की घोषणा के लिए एक संशोधन आवेदन प्रस्तुत किया गया था जिसे परिसीमा के अभिवाक के अधीन स्वीकार किया गया था– यह अभिनिर्धारित किया गया कि रिलेशन के बैक का सिद्धांत लागू नहीं होगा ।

**L.C. Hanumanthappa (since dead) represented by L.Rs. v. H.B. Shivakumar**

**Judgment dated 26.08.2015 passed by the Supreme Court in Civil Appeal No. 6595 of 2015, reported in AIR 2015 SC 3364**

**Extracts from the Judgment:**

In ***Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and ors., (2010) 14 SCC 596,*** this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11th February, 1991. An amendment application was moved under Order VI Rule 17 of the Code of Civil Procedure on 16th December, 2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held:

> "In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of

> the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.
>
> Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.
>
> Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in ***Vishwambhar v. Laxminarayan ,(2001) 6 SCC 163,*** if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation. Those principles are applicable to the present case."

In ***Prithi Pal Singh and anr. v. Amrik Singh and ors., (2013) 9 SCC 576,*** this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held:

> "In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time."

Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16th May, 1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. A reading of an isolated para in the written statement, namely, para 2 by the trial court on the facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28th March, 2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There can be no doubt that on an application of ***Khatri Hotels Private Limited & anr. v. Union of India & anr., (2011) 9 SCC 126,*** the right to sue for declaration of title first arose on the facts of the present case on 16th May, 1990 when the original written statement clearly denied the plaintiff's title. By 16th May, 1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

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

**Amendment of pleading, permissibility of – Application seeking amendment in relief clause which would tantamount to change in the nature of the suit, is impermissible.**

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

अभिवचन में संशोधन का अनुमत योग्य होना – आवेदन से अनुतोष खण्ड में संशोधन चाहा गया जो वाद की प्रकृति में संशोधन करने के समान होगा, अनुमत योग्य नहीं है।

**Moujilal v. Mallu @ Mukesh and others**

**Order dated 24.08.2015 passed by the High Court of M.P. in W.P. No. 2259 of 2015, reported in 2015 (4) MPLJ 170**

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**12. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 14 (3) and Order 16 Rule 1**

**EVIDENCE ACT, 1872 – Section 65**

**Trial Court allowed the applications under Order 7 Rule 14 (3) CPC and under section 65 of the Evidence Act but disallowed the application under Order 16 Rule 1 CPC for summoning witness on the ground that plaintiffs did not produce any list of witnesses as**

**per Order 16 Rule 1 CPC – Held, Trial Court has erred in examining the matter with a hyper-technical point of view – It needs to be remembered that procedural law is made to advance the cause of justice.**

**सिविल प्रक्रिया संहिता, 1908– आदेश 7 नियम 14 (3) और आदेश 16 नियम 1 साक्ष्य अधिनियम, 1872– धारा 65**

विचारण न्यायालय ने आदेश 7 नियम 14 (3) सी.पी.सी और धारा 65 साक्ष्य अधिनियम के आवेदन स्वीकार किये किंतु आदेश 16 नियम 1 सी.पी.सी. का आवेदन गवाह को समन करने के लिए इस आधार पर निरस्त किया कि वादी ने आदेश 16 नियम 1 सी.पी.सी के अनुसार साक्ष्य सूची प्रस्तुत नहीं की– अभिनिर्धारित किया गया, विचारण न्यायालय ने मामले को अति तकनीकी दृष्टिकोण से परीक्षित करने में त्रुटि की है– यह याद रखने की आवश्यकता है कि प्रक्रियात्मक विधि न्याय करने के लिए होती है।

**Mandir Shri Hanuman Murti and another v. Collector Mahoday, Datia and another**

**Order dated 09.09.2015 passed by the High Court of M.P. in Writ Petition No. 4523 of 2014, reported in 2015 (3) JLJ 396**

**Extracts from the Order:**

In view of the legal position enunciated in ***Mangeram v. Brij Mohan, (1983) 4 SCC 36, Vidhyadhar v. Manikrao, AIR 1999 SC 1441*** and ***Rehman Hussain v. Altaf Hussain and another, AIR 2006 Kar. 172,*** there is no difficulty to hold that court below has erred in examining the matter with a hyper technical point of view. As per said judgments, a witness can be brought by party even if no list is filed earlier or name of said witness does not figure in the said list. It needs to be remembered that procedural law is made to advance the cause of justice. The same is not made to strangulate the litigant on hyper technical ground. This Court considered this aspect in ***Dataram Singh and ors. v. Brindawan Singh and ors., 2014 (3) MPLJ 612*** and opined as under:

> "This is settled in law that all the rules of procedure are the handmaid of justice. The Apex Court in ***Sangram Singh v. Election Tribunal, Kotah, AIR 1955 SC 425*** opined that code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against. The Apex Court in ***Sushil Kumar Sen v. State of Bihar, (1975) 1 SCC 774*** opined that the mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer. The processual law

so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence – processual, as much as substantive. In ***State of Punjab v. Shamlal Murari, (1976) 1 SCC 719*** the Apex Court held that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In ***Ghanshyam Dass v. Dominion of India, (1984) 3 SCC 46*** the Apex Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle. In ***Kailash vs. Nanhku and others, (2005) 4 SCC 480*** the Apex Court held that the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

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***13. CIVIL PROCEDURE CODE, 1908 – Order 12 Rule 8**

**(i) Object of Order 12 Rule 8 CPC is to facilitate the parties of the suit to get a document on record which is not in their possession or in possession of the other party.**

**(ii) Duty of the party – If a document has been produced then it is the duty of the party who has asked for such production to get it placed on record – If however, the said document is not placed on record, then adverse inference against the party who has produced the same cannot be drawn specifically when the party who has produced the said document before the court has been examined vis-à-vis that document.**

सिविल प्रक्रिया संहिता, 1908– आदेश 12 नियम 9

(i) आदेश 12 नियम 8 सी.पी.सी. का उद्देश्य वाद के पक्षकारों को यह सुविधा देना है कि एक दस्तावेज को जो उनके कब्जे में नहीं है या अन्य पक्षकार के कब्जे में है उसे अभिलेख पर लाना है ।

(ii) पक्षकार का कर्त्तव्य –यदि दस्तावेज प्रस्तुत किया जाता है तब यह उस पक्षकार का कर्त्तव्य है जिसने वह दस्तावेज मंगवाया था कि उसे अभिलेख पर लें– यदि ऐसा दस्तावेज अभिलेख पर नहीं लिया जाता तब उस पक्षकार के विरूद्ध कोई विपरीत अनुमान नहीं निकाला जा सकता जिसमें उसे प्रस्तुत किया था विशेषकर

जब पक्षकार ने दस्तावेज न्यायालय के सामने प्रस्तुत किया और दस्तावेज पर उसका परीक्षण भी हुआ ।

**M/s Rohini Traders v. M/s J.K. Lakshmi Cement Ltd.**

**Judgment dated 03.02.2015 passed by the Supreme Court in Civil Appeal No. 10041 of 2010, reported in AIR 2015 SC 2386**

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**14. CIVIL PROCEDURE CODE, 1908 – Order 13 Rule 10 (3)**

**Question involved in suit regarding non-existence of a firm – Trial Court disallowed the application of defendant under Order 13 Rule 10 (3) CPC for summoning record from Commercial Tax Department and held that certified copies may be filed by defendant – During trial, plaintiff filed an application under the same provision for verification of certified copy produced by defendants – Same was allowed by the trial court – Order was challenged before Hon'ble the High Court which held that requisitioning of original record from the concerned department cannot be said to be in any way prejudicial to the interest of either party – Procedural laws are handmaid laws and are required to be applied to subserve the course of justice.**

सिविल प्रक्रिया संहिता, 1908– आदेश 13 नियम 10 (3)

वाद में अंतरग्रस्त प्रश्न फर्म के अस्तित्व में न होने के बारे में था – विचारण न्यायालय ने प्रतिवादी द्वारा प्रस्तुत आवेदन आदेश 13 नियम 10 (3) सी.पी.सी., वाणिज्य कर विभाग से अभिलेख तलब करने के लिए, निरस्त कर दिया और यह प्रतिपादित किया गया प्रतिवादी प्रमाणित प्रतिलिपी प्रस्तुत कर सकता है – विचारण के दौरान वादी ने उसी प्रावधान के अधीन एक आवेदन प्रतिवादी द्वारा प्रस्तुत प्रमाणित प्रतिलिपि के सत्यापन के लिए प्रस्तुत किया – उसे विचारण न्यायालय द्वारा स्वीकार किया गया – उस आदेश को माननीय उच्च न्यायालय के समक्ष चुनौती दी गयी जिसमें यह प्रतिपादित किया गया कि संबंधित विभाग से मूल अभिलेख तलब करने से यह नहीं कहा जा सकता कि किसी भी पक्ष के हितों पर प्रतिकूल असर गिरता है – प्रक्रियात्मक विधियाँ न्याय की दासियाँ हैं और इनका प्रयोग न्याय दान में सहायता हो सके इस प्रकार करना आवश्यक होता है ।

**Daljeet Singh and others v. Smt. Suman Mittal and others**

**Order dated 01.09.2015 passed by the High Court of M.P. in Writ Petition No. 4607 of 2015, reported in 2015 (III) MPWN 83**

**Extracts from the Order:**

Having heard learned counsel for the parties, in the opinion of this Court, true it is that earlier the trial Court had rejected the application moved by the petitioners/defendants under Order 13 Rule 10(3) CPC for summoning of record, but considering the fact that to verify the certified copy filed by the defendants

in the light of the documents filed by respondent/plaintiff regarding non-existence of the firm, if the trial Court has summoned the original record, no illegality was committed by the trial Court. After all, procedural laws are handmade laws and required to be applied to subserve course of justice. Therefore, requisitioning of the original record from the concerned department cannot said to be in any way prejudicial to the interest of either party. Hence, no illegality is found in the order impugned to that extent. However, trial Court has acted excessively having called upon the petitioners/defendants to pay process fee for summoning the record, as consequence requiring to prove certified copy of the documents so filed by them. As the respondent/landlord had moved the application for summoning the record, in all fairness, the plaintiff/landlord ought to have been called upon to pay process fee for summoning the record and thereafter, to prove that the aforesaid firm, namely; Messers. Sadi Darwar is not in existence by the relevant record, and after the aforesaid burden is discharged, thereafter, onus shall shift on plaintiff/respondent to disprove the same.

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**15. CIVIL PROCEDURE CODE, 1908 – Order 13 Rule 10 and Order 16 Rule 1**

**Civil suit, right of parties – Freedom to prove case, grant of.**

**The party must be given full freedom to prove his case in the manner he wants unless the said manner is impermissible – If another mode of proving something is available, that cannot be a ground to turn down the prayer made under a permissible mode.**

**Application to summon the record and handwriting expert to examine thumb impression/signature, permissibility of.**

***Facts of the case:***

**Plaintiff denied his alleged thumb impression on the document allegedly executed before Assistant Settlement Officer and to prove such fact, he filed an application to summon the concerned record and to summon the handwriting expert for examination of thumb impression etc. He was ready to pay the requisite charges for the aforesaid purpose. The Trial Court rejected the application by holding that whether it is the thumb impression of the plaintiff or not can be established by leading evidence and examining certain persons and also the fact that plaintiff was present in bandobast (settlement) proceedings or not, can be proved by producing relevant applications, notices, order sheets etc. Relying on the judgment by Division Bench in *Rambai v. Life Insurance Corporation of India, 1981 JLJ 388* and *Kishan Prasad v. M.P. Government, through Collector Vidisha, 1983 JLJ 474,* it was held that the mode prayed for by the plaintiff to prove the signature/thumb impression is in consonance with the judgment of *Rambai* (supra) and it was based on relevant consideration and parameters. Holding the impugned order improper and perverse, application under Order 13 Rule 10 and Order 16 Rule 1 of the Code were allowed.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 13 नियम 10 और आदेश 16 नियम 1**

सिविल वाद, पक्षकारों के अधिकार – मामले को प्रमाणित करने की स्वतंत्रता दिया जाना।

पक्षकार को उसके मामले को प्रमाणित करने की पूर्ण स्वतंत्रता उस रीति से जो वह चाहता है दी जाना चाहिए जब तक कि ऐसी रीति अनुमत योग्य न हो – यदि अन्य विधि किसी चीज को प्रमाणित करने के लिए उपलब्ध है तो यह अनुमत योग्य विधि से मामला प्रमाणित करने की प्रार्थना को अस्वीकार करने का एक आधार नहीं हो सकता है।

अभिलेख बुलवाने और अगूंठा निशानी/हस्ताक्षर को हस्लेक्ष विशेषज्ञ से परीक्षण कराने के आवेदन का अनुमत योग्य होना। मामले के तथ्यों के प्रकाश में समझाया गया।

## Ayodhya Prasad v. Dayaram and another

**Order dated 01.09.2015 passed by the High Court of M.P. in Writ Petition No. 2819 of 2014, reported in 2015 (III) MPWN 57**

**Extracts from the Order:**

The petitioner/defendant No.1 filed the said application under Order 13 Rule 10 (Annexure P/6) by contending that between the plaintiff and defendant No.1, a partition had taken place on 27.10.1995. The factum of said partition was duly recorded by Assistant Settlement Officer on 27.10.1995. Plaintiff Dayaram put his thumb impression on the relevant document before the said Officer. However, during cross-examination the plaintiff denied about his thumb impression aforesaid. The petitioner accordingly prayed that original record be summoned from the concerned revenue court. Another application under Order 16 Rule 1 CPC is filed with a prayer to summon the handwriting expert to examine the thumb impression and signature etc. The petitioner stated that he is ready to pay the requisite charges for summoning the said expert. These applications are rejected by impugned order. The court below rejected the said application by holding that whether it is thumb impression of the plaintiff or not can be established by leading evidence and examining certain persons. Plaintiff remained present in "Bandovast" proceedings or not, can be proved by producing relevant applications, notices, order sheets and "Vakalatnama", etc. In view of this finding, the application preferred under Order 13 Rule 10 CPC was rejected. Second application under Order 16 Rule 1 CPC was rejected because first application under Order 13 Rule 10 CPC was rejected.

A Division Bench of this Court in ***Ramibai v. Life Insurance Corporation of India, 1981 JLJ 388*** opined that signatures may be proved in any one or more of the following modes:-

"(i) By calling the person who signed or wrote a document;

(ii) By calling a person in whose presence the documents are signed or written;

(iii) By calling handwriting expert;

(iv) By calling a person acquainted with the handwriting of the person by whom the document is supposed to be signed or written;

(v) By comparing in Court, the disputed signature or handwriting with some admitted signatures or writing;

(vi) By proof of an admission by the person who is alleged to have signed or written the document that he signed or wrote it;

(vii) By the statement of a deceased professional scribe, made in the ordinary course of business, that the signature on the document is that of a particular person: A signature is also proved to have been made, if it is shown to have been made at the request of a person by some other person, e. g. by the scribe who signed on behalf of the executant;

(viii) By other circumstantial evidence."

The same view is followed in ***Kishan Prasad v. M.P. Government through Collector, Vidisha, 1983 JLJ 474.***

A plain reading of this judgment shows that the mode prayed for by the petitioner to prove the signature/thumb impression of plaintiff is in consonance with the judgment of ***Ramibai*** (supra). Thus, the prayer of petitioner was in accordance with law and judgment of this Court. In my considered opinion, the party must be given full freedom to prove his case in the manner he wants unless the said manner is impermissible. If another mode of proving something is available, that cannot be a ground to turn down the prayer made under a permissible mode.

So far the principle of law laid down in the judgment cited by counsel for respondent No. 1 is concerned, there is no quarrel on the said proposition. However, the Apex Court in ***Shalini Shyam Shetty and another v. Rajendra Shankar Patil, (2010) 8 SCC 329,*** opined that High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

In the present case, the request of the petitioner was in consonance with law. It was based on relevant considerations and parameters. Despite that, the court below has rejected it, which shows that the relevant considerations have escaped notice of the court below. Thus, the order impugned suffers from procedural impropriety and perversity.

Resultantly, petition is allowed. The impugned order is set aside. The applications filed under Order 13 Rule 10 and Order 16 Rule 1 of the Code of Civil Procedure are allowed. Learned court below is directed to proceed from the said stage in accordance with law.

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**16. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 10 and 11**

**Assignment during pendency of suit or appeal – Whether suit or appeal can be dismissed on the ground that plaintiff relinquished his right during pendency of lis? Held, No – Plaintiff has right to continue the lis – It is the option of the assignee to move an application for impleadment.**

सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 10 और 11

वाद या अपील के लंबित रहने के दौरान अंतरण – क्या वाद या अपील इस आधार पर खारिज की जा सकती है कि वादी ने कार्यवाही के लंबित रहने के दौरान उसके अधिकार त्याग दिये? अभिनिर्धारित किया गया, नहीं – वादी को कार्यवाही जारी रखने का अधिकार होता है – यह अंतरिती का विकल्प है कि वह उसे पक्षकार के रूप में संयोजित करने के लिए आवेदन पेश करें।

**Sharadamma v. Mohd. Pyrejan (d) through LRs. & anr.**

**Judgment dated 23.09.2015 passed by the Supreme Court in Civil Appeal No. 7889 of 2015, reported in 2015 AIR SCW 6011**

**Extracts from the Judgment:**

A bare reading of the provisions of Order XXII Rule 10 makes it clear that the legislature has not envisaged the penalty of dismissal of the suit or appeal on account of failure of the assignee to move an application for impleadment and to continue the proceedings. Thus, there cannot be dismissal of the suit or appeal, as the case may be, on account of failure of assignee to file an application to continue the proceedings. It would be open to the assignor to continue the proceedings notwithstanding the fact that he ceased to have any interest in the subject-matter of dispute. He can continue the proceedings for the benefit of assignee.

This Court in ***Jaskirat Datwani v. Vidyavati & ors., (2002) 5 SCC 647,*** while relying upon ***Dhurandhar Prasad Singh v. Jai Prakash University & ors., AIR 2001 SC 2552*** has laid down that even if no step is taken by assignee, suit may be continued by the original party and the person upon whom the interest has devolved will be bound by the decree, particularly when such party had the knowledge of the proceedings. Ordinarily, the person is bound by the decree until and unless it is shown that the decree was based upon fraud or collusion etc.

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**17. CIVIL PROCEDURE CODE, 1908 – Order 37 Rule 3**

**Leave to defend in summary suit – Defendant took the plea that suit is barred by limitation – He challenged the maintainability of the suit as well as bills of exchange as they were not stamped properly – Courts below refused to give him leave to defend – The Apex Court held that defendant has made out triable issues in the case – Unconditional leave to defend has been granted by the Apex Court.**

### सिविल प्रक्रिया संहिता, 1908 – आदेश 37 नियम 3

संक्षिप्त विचारण वाद में प्रतिरक्षा के लिए अनुमति – प्रतिवादी ने वाद अवधि बाधित होने का अभिवाक लिया – उसने वाद की प्रचलनशीलता और विनियम पत्र उचित रूप से स्टांपित न होने के बारे में चुनौती दी – अधीनस्थ न्यायालय ने प्रतिरक्षा की अनुमति देने से इंकार किया – सर्वोच्च न्यायालय ने प्रतिपादित किया कि प्रतिवादी ने प्रक्ररण में विचारण योग्य बिन्दु उठाये है – सर्वोच न्यायालय ने बिना किसी शर्त के प्रतिरक्षा की अनुमति दी।

**State Bank of Hyderabad v. Rabo Bank**

**Judgment dated 01.10.2015 passed by the Supreme Court in Civil Appeal No. 8194 of 2015, reported in 2015 AIR SCW 6057**

**Extracts from the Judgment:**

As regards the entitlement of a defendant to the grant of leave to defend, the law is well settled long back in the year 1949 in ***Smt. Kiranmoyee Dassi v. Dr. J. Chatterjee, AIR 1949 Cal 479,*** in the form of the following propositions:

(1) If the defendant satisfies the Court that he has a good defence to the claim on its merits, the plaintiff is not entitled to leave to sign the judgment and the defendant is entitled to unconditional leave to defend.

(2) If the defendant raised a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(3) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately made it clear that he has a defence, yet, shows such a stage of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim, the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(4) If the defendant has no defence or the defence set up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign judgment and the defendant is not entitled to leave to defend.

(5) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.

It is also noticed that the law as enunciated above, has been followed by the Courts in several cases [See also : ***Santosh Kumar v. Bhai Mool Singh, AIR 1958 SC 321, Milkhiram (India) (P) Ltd. v. Chamanlal Bros, AIR 1965 SC 1698, Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., AIR 1977 SC 577 and Sunil Enterprises & anr. v. SBI Commercial & International Bank Ltd., AIR 1998 SC 2317***].

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***18. CONSUMER PROTECTION ACT, 1986 – Section 2 (1) (d) (i) & (ii)**

**"Commercial purpose" and "consumer", connotation of – Commercial purpose would cover an undertaking, the object of which is to make a profit out of the undertakings – Availing of services of UTI by University for depositing Provident Fund money in mutual fund scheme for the betterment of their employees, cannot be termed as "profitable" or "commercial activity".**

**The intent of the University is not profiteering and the investment is for benevolent interest, therefore, the University falls within the definition of "consumer" under the Act.**

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 2 (1) (डी) (i) और (ii)

''व्यावसायिक उद्देश्य'' और ''उपभोक्ता'' का अर्थ – व्यावसायिक उद्देश्य में एक अधिकरण शामिल होगा, वह उद्देश्य जिसके लिए अधिकरण से लाभ कमाया गया है – विश्वविद्यालय द्वारा युनिट ट्रस्ट ऑफ इंडिया की सेवायें भविष्य निधि कि राशि म्युच्युअल फंड योजना में जमा करने के लिए लेना जो कि उसके कर्मचारियों के विकास के लिए है इसे ''लाभदायक'' या ''व्यावसायिक गतिविधि'' नहीं माना जा सकता। विश्वविद्यालाय का आशय लाभ कमाना और उसके लिए निवेश करना नहीं है अतः विश्वविद्यालय, अधिनिमय, (1986) के अधीन ''उपभोक्ता'' की परिभाषा में आता है।

**Punjab University v. Unit Trust of India and others**

**Judgment dated 09.07.2014 passed by the Supreme Court in Civil Appeal No. 400 of 2007, reported in 2015 (4) MPLJ 74 (SC)**

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**19 . CONTRACT ACT, 1872 – Section 128**

**(i) Liability of guarantor – Where, in the loan agreement or contract there is no clause which shows that the liability of guarantor is not co-extensive with the principal debtor, section 128 of the Indian Contract Act will apply without any exception – Any compromise arrived at between creditor and principal debtor would be binding upon the guarantor – Mere fact of ignorance cannot be a valid ground.**

**(ii) Right of purchaser in auction sale – Explained.**

संविदा अधिनियम, 1872 – धारा 128

(i) जमानतदार का दायित्व– जहाँ ऋण अनुबंध या संविदा में ऐसा कोई अनुच्छेद न हो जो यह दर्शाता हो कि जमानतदार का दायित्व मूल ऋणी के दायित्व तक सह–विस्तारित नहीं है, धारा 128 भारतीय संविदा अधिनियम बिना किसी अपवाद के लागू होगी– कोई समझौता जो ऋणदाता और मूल ऋणी के बीच हुआ वह जमानतदार पर बंधनकारी होगा– केवल जानकारी का अभाव एक वेध आधार नहीं हो सकता ।

(ii) निलाम विक्रय के केता के अधिकार – समझाये गये।

**Central Bank of India v. C.L. Vimla and others**

**Judgment dated 28.04.2015 passed by the Supreme Court in Civil Appeal No. 4043 of 2015, reported in AIR 2015 SC 2280**

**Extracts from the Judgment:**

In the case of ***Ram Kishun and ors. v. State of U.P. and ors., (2012) 11 SCC 511,*** this Court has also stated that it is the prerogative of the Creditor alone whether he would move against the principal debtor first or the surety, to realize the loan amount. This Court observed:

> "Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance".

Thus, we are of the view that in the present case the guarantor cannot escape from her liability as a guarantor for the debt taken by the principal debtor. In the loan agreement, which is the contract before us, there is no clause which shows that the liability of the guarantor is not co-extensive with the principal debtor. Therefore, Section 128 of the Indian Contract Act will apply here without any exception.

This Court has held in ***United Bank of India v. Bengal Behar Construction Company Ltd. and others, (1998) 8 SCC 653,*** that the Clauses in the letter of guarantee are binding on the guarantors as follows:

> "In view of the above, the question regarding confirmation of the decree against the guarantors now needs to be settled. ……………… we see no reason why the guarantors should not be made liable under the letters of guarantee, the terms whereof clearly stipulate that on the failure of the

> principal debtor to abide by the contract, they will be liable to pay the amount due from the principal debtor by the appellants. Clause 15 of the letter of guarantee, in terms states that any action settled or stated between the bank and the principal debtor or admitted by the principal debtor shall be accepted by the guarantors as conclusive evidence. In view of this stipulation in the letter of guarantee, once the decree on admission is passed against the principal debtor, the guarantors would become liable to satisfy the decree jointly and severally."

Thus, we see no reason why the Joint Memo, which states compromise arrived at between the Central Bank of India and the principal debtors, would not bind C.L. Vimla when under Clause (2) she has admitted that any judgment or award obtained by the Central Bank of India against the principal debtor would bind the parties.

The mere fact of ignorance cannot be a valid ground. The respondent, C.L. Vimala and her son, N.Surya Bhagavan who signed the joint memo, were residing in the same house. We see no reason why the Respondent would not know of the joint memo, when she could have by reasonable means made herself aware of the proceedings.

We cannot brush aside the fact that respondent Nos.4, 6 & 7 filed a claim petition before the Recovery Officer on 4th January, 2007 claiming their share of balance of sale proceedings after adjustment of the dues of the Central Bank which shows that the parties to the dispute have accepted the award passed by the Lok Adalat. It appears to us that the High Court did not consider the said facts and further it has escaped from the mind of the High Court that the auction purchaser has purchased the auctioned property for sale consideration of Rs.3.27 crores and 25% of the sale consideration was duly paid on 5th October, 2006 and furthermore on 19th October, 2006, the balance amount of sale consideration was duly paid by the auction purchaser. We have further noted that the sale was confirmed on 15th November, 2006. The sale certificate was also issued in favour of the auction purchaser after paying the requisite stamp duty and registration fees which, as pointed out to us on behalf of the auction purchaser, to the tune of Rs.30,73,800/-. It is also not in dispute that auction purchaser was put in possession of the property and is still in possession of the property since the sale certificate was issued and registration was made in his favour. It is submitted on behalf of the auction purchaser that he has purchased the property by availing private borrowing for the said property and he is paying nearly Rs.5 lakhs per month as interest. Therefore, in our opinion, the equity and good conscience also has to play a role in the matter in question on the given facts and after considering the conduct of the respondents (C.L. Vimla and others) in the matter. In these circumstances, we feel that it would not be proper for us at this stage to set aside the sale, as has been done by the High

Court without taking into consideration all these facts. Further, the High Court has failed to appreciate these facts and wrongly held that the auction purchaser is a party to the negligence of the Recovery Officer and, accordingly, the sale was set aside. In our opinion, the auction purchaser had nothing to do in holding the auction. Rather he deposited the money after bonafidely participating in the auction and, in fact, suffered for long time to pay a price by participating in auction proceedings.

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**20. COPYRIGHT ACT, 1957 – Section 62**
**TRADEMARKS ACT, 1999 – Section 134**
**CIVIL PROCEDURE CODE, 1908 – Section 20**

**(i) Suit for infringement of copyright or trademark – Place of suing – Section 62 of 1957 Act and section 134 of 1999 Act provide additional forum to the plaintiff where he resides or carries on business or works for gain – The object of such provisions is not to enable the plaintiff to drag defendant farther away from such place – However, applicability of section 20 of the Code is not completely ousted by the Acts of 1957 and 1999 and if cause of action has arisen wholly or in part where the plaintiff is residing or having its principal office or carries on business or personally works for gain, the suit can only be filed at such place (s).**

**(ii) Words and phrases "not withstanding anything contained in any law for the time being in force", effect of – It does not necessarily oust/exclude applicability of other laws.**

**(iii) Interpretation of statutes – Mischief rule, applicability of – Interpretation that suppresses mischief and counter-mischief has to be adopted – It is the duty of the Court to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations – The doctrine must be applied with great care and in case absurd inconvenience is caused, that interpretation has to be avoided.**

**(iv) Interpretation of statutes – Purposive interpretation – If provision is open to two interpretations, Court has to construct in such a way which furthers the object of statute.**

प्रतिलिप्याधिकार अधिनियम, 1957 – धारा 62
संपत्ति चिन्ह अधिनिमय, 1999 – धारा 134
सिविल प्रक्रिया संहिता, 1908 – धारा 20

(i) प्रतिलिप्याधिकार या संपत्ति चिन्ह के उल्लंघन के वाद के लिए – वाद का स्थान – धारा 62 अधिनियम, 1957 और धारा 134 अधिनियम, 1999 और धारा 20 सिविल प्रक्रिया संहिता के क्रम में समझाया गया।

(ii) ''तत्समय प्रवृत किसी विधि में उल्लेखित किसी बात के होते हुए भी'' शब्द और वाक्यांश का प्रभाव – यह आवश्यक नहीं होता कि यह अन्य विधियों का लागू होना समाप्त कर देता है।

(iii) कानून का अर्थान्वयन – मिसचिफ नियम समझाया गया।

(iv) कानून का अर्थान्वयन – उद्देश्य जनक अर्थान्वयन – यदि प्रावधान के दो अर्थान्वयन होते है तब न्यायालय इस प्रकार अर्थ लगायेगा कि विधान बनाने का उद्देश्य प्राप्त हो सके।

**Indian Performing Rights Society Ltd. v. Sanjay Dalia and another**
**Judgment dated 01.07.2015 passed by the Supreme Court in Civil Appeal No. 10643 of 2010, reported in AIR 2015 SC 3479**

**Extracts from the Judgment:**

Considering the very language of section 62 of the Copyright Act and section 134 of the Trade Marks Act, an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain. The object of the provisions was to enable the plaintiff to institute a suit at a place where he or they resided or carried on business, not to enable them to drag defendant further away from such a place also as is being done in the instant cases. In our opinion, the expression "notwithstanding anything contained in the Code of Civil Procedure" does not oust the applicability of the provisions of section 20 of the Code of Civil Procedure and it is clear that additional remedy has been provided to the plaintiff so as to file a suit where he is residing or carrying on business etc., as the case may be. Section 20 of the Code of Civil Procedure enables a plaintiff to file a suit where the defendant resides or where cause of action arose. Section 20(a) and section 20(b) usually provides the venue where the defendant or any of them resides, carries on business or personally works for gain. Section 20(c) of the Code of Civil Procedure enables a plaintiff to institute a suit where the cause of action wholly or in part, arises. The Explanation to Section 20 C.P.C. has been added to the effect that Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has subordinate office at such place. Thus, 'corporation' can be sued at a place having its sole or principal office and where cause of action wholly or in part, arises at a place where it has also a subordinate office at such place.

On a due and anxious consideration of the provisions contained in section 20 of the CPC, section 62 of the Copyright Act and section 134 of the Trade Marks Act, and the object with which the latter provisions have been enacted, it is clear that if a cause of action has arisen wholly or in part, where the plaintiff is residing or having its principal office/carries on business or personally works

for gain, the suit can be filed at such place/s. Plaintiff(s) can also institute a suit at a place where he is residing, carrying on business or personally works for gain de hors the fact that the cause of action has not arisen at a place where he/they are residing or any one of them is residing, carries on business or personally works for gain. However, this right to institute suit at such a place has to be read subject to certain restrictions, such as in case plaintiff is residing or carrying on business at a particular place/having its head office and at such place cause of action has also arisen wholly or in part, plaintiff cannot ignore such a place under the guise that he is carrying on business at other far flung places also. The very intendment of the insertion of provision in the Copyright Act and Trade Marks Act is the convenience of the plaintiff. The rule of convenience of the parties has been given a statutory expression in section 20 of the CPC as well. The interpretation of provisions has to be such which prevents the mischief of causing inconvenience to parties.

The intendment of the aforesaid provisions inserted in the Copyright Act and the Trade Marks Act is to provide a forum to the plaintiff where he is residing, carrying on business or personally works for gain. The object is to ensure that the plaintiff is not deterred from instituting infringement proceedings "because the court in which proceedings are to be instituted is at a considerable distance from the place of their ordinary residence". The impediment created to the plaintiff by section 20 C.P.C. of going to a place where it was not having ordinary residence or principal place of business was sought to be removed by virtue of the aforesaid provisions of the Copyright Act and the Trade Marks Act. Where the Corporation is having ordinary residence/principal place of business and cause of action has also arisen at that place, it has to institute a suit at the said place and not at other places. The provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act never intended to operate in the field where the plaintiff is having its principal place of business at a particular place and the cause of action has also arisen at that place so as to enable it to file a suit at a distant place where its subordinate office is situated though at such place no cause of action has arisen. Such interpretation would cause great harm and would be juxtaposed to the very legislative intendment of the provisions so enacted.

In our opinion, in a case where cause of action has arisen at a place where the plaintiff is residing or where there are more than one such persons, any of them actually or voluntarily resides or carries on business or personally works for gain would oust the jurisdiction of other place where the cause of action has not arisen though at such a place, by virtue of having subordinate office, the plaintiff instituting a suit or other proceedings might be carrying on business or personally works for gain.

At the same time, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have removed the embargo of suing at place of accrual of cause of action wholly or in part, with regard to a place

where the plaintiff or any of them ordinarily resides, carries on business or personally works for gain. We agree to the aforesaid extent the impediment imposed under section 20 of the CPC to a plaintiff to institute a suit in a court where the defendant resides or carries on business or where the cause of action wholly or in part arises, has been removed. But the right is subject to the rider in case plaintiff resides or has its principal place of business/carries on business or personally works for gain at a place where cause of action has also arisen, suit should be filed at that place not at other places where plaintiff is having branch offices etc.

There is no doubt about it that the words used in section 62 of the Copyright Act and section 134 of the Trade Marks Act, 'notwithstanding anything contained in CPC or any other law for the time being in force', emphasise that the requirement of section 20 of the CPC would not have to be complied with by the plaintiff if he resides or carries on business in the local limits of the court where he has filed the suit but, in our view, at the same time, as the provision providing for an additional forum, cannot be interpreted in the manner that it has authorised the plaintiff to institute a suit at a different place other than the place where he is ordinarily residing or having principal office and incidentally where the cause of action wholly or in part has also arisen. The impugned judgments, in our considered view, do not take away the additional forum and fundamental basis of conferring the right and advantage to the authors of the Copyright Act and the Trade Marks Act provided under the aforesaid provisions.

The provisions of section 62(2) of the Copyright Act and section 134 of the Trade Marks Act are pari materia. Section 134 (2) of the Trade Marks Act is applicable to clauses (a) and (b) of section 134(1) of the Trade Marks Act. Thus, a procedure to institute suit with respect to section 134(1)(c) in respect of "passing off" continues to be governed by section 20 of CPC.

The common law which was existing before the provisions of law were passed was section 20 of the CPC. It did not provide for the plaintiff to institute a suit except in accordance with the provisions contained in section 20. The defect in existing law was inconvenience/deterrence caused to the authors suffering from financial constraints on account of having to vindicate their intellectual property rights at a place far away from their residence or the place of their business. The said mischief or defect in the existing law which did not provide for the plaintiff to sue at a place where he ordinarily resides or carries on business or personally works for gain, was sought to be removed. Hence, the remedy was provided incorporating the provisions of section 62 of the Copyright Act. The provisions enabled the plaintiff or any of them to file a suit at the aforesaid places. But if they were residing or carrying on business or personally worked for gain already at such place, where cause of action has arisen, wholly or in part, the said provisions have not provided additional remedy to them to file a suit at a different place. The said provisions never intended to operate in that field. The operation

of the provisions was limited and their objective was clearly to enable the plaintiff to file a suit at the place where he is ordinarily residing or carrying on business etc., as enumerated above, not to go away from such places. The Legislature has never intended that the plaintiff should not institute the suit where he ordinarily resides or at its Head Office or registered office or where he otherwise carries on business or personally works for gain where the cause of action too has arisen and should drag the defendant to a subordinate office or other place of business which is at a far distant place under the guise of the fact that the plaintiff/corporation is carrying on business through branch or otherwise at such other place also. If such an interpretation is permitted, as rightly submitted on behalf of the respondents, the abuse of the provision will take place. Corporations and big conglomerates etc. might be having several subordinate offices throughout the country. Interpretation otherwise would permit them to institute infringement proceedings at a far flung place and at unconnected place as compared to a place where plaintiff is carrying on their business, and at such place, cause of action too has arisen. In the instant cases, the principal place of business is, admittedly, in Mumbai and the cause of action has also arisen in Mumbai. Thus, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act cannot be interpreted in a manner so as to confer jurisdiction on the Delhi court in the aforesaid circumstances to entertain such suits. The Delhi court would have no territorial jurisdiction to entertain it.

The avoidance of counter mischief to the defendant is also necessary while giving the remedy to the plaintiff under the provisions in question. It was never visualised by the law makers that both the parties would be made to travel to a distant place in spite of the fact that the plaintiff has a remedy of suing at the place where the cause of action has arisen where he is having head office/carrying on business etc. The provisions of the Copyright Act and the Trade Marks Act provide for the authors/trade marks holders to sue at their ordinary residence or where they carry on their business. The said provisions of law never intended to be oppressive to the defendant. The Parliamentary Debate quoted above has to be understood in the manner that suit can be filed where the plaintiff ordinarily resides or carries on business or personally works for gain. Discussion was to provide remedy to plaintiff at convenient place; he is not to travel away. Debate was not to enable plaintiff to take defendant to farther place, leaving behind his place of residence/business etc. The right to remedy given is not unbridled and is subject to the prevention of abuse of the aforesaid provisions, as discussed above. Parliament never intended that the subject provisions to be abused by the plaintiff by instituting suit in wholly unconnected jurisdiction. In the instant cases, as the principal place of business is at Mumbai the cause of action is also at Mumbai but still the place for suing has been chosen at Delhi. There may be a case where plaintiff is carrying on the business at Mumbai and cause of action has arisen in Mumbai. Plaintiff is having branch offices at Kanyakumari and also at Port Blair, if interpretation suggested by appellants is acceptable, mischief may be caused by such plaintiff to drag a

defendant to Port Blair or Kanyakumari. The provisions cannot be interpreted in the said manner devoid of the object of the Act.

The learned author Justice G.P. Singh in Interpretation of Statutes, 12th Edn. has also observed that it is the court's duty to avoid hardship, inconvenience, injustice, absurdity and anomaly while selecting out of different interpretations. The doctrine must be applied with great care and in case absurd inconvenience is to be caused that interpretation has to be avoided. Cases of individual hardship or injustice have no bearing for enacting the natural construction. The relevant discussion at pages 132-133 and 140-142 is extracted hereunder :

> "(a) Hardship, inconvenience, injustice, absurdity and anomaly to be avoided.
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> In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" [***Holmes v. Bradfield Rural District Council, (1949) 1 All ER 381, p. 384***] as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice". [***Simms v. Registrar of Probates, (1900) AC 323, p. 335 CPC***] If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and inconsistency. [***Grey v. Pearson, (1857) 6 HLC 61, p. 106***]. Similarly, a construction giving rise to anomalies should be avoided. [***Veluswami Thevar v. G.Raja Nainar, AIR 1959 SC 422, pp. 427, 428***]. As approved by VENKATARAMA AIYAR, J., "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." [***Tirath Singh v. Bachittar Singh, AIR 1955 SC 830***].'"
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> "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution". [***Vacher & Sons v. London Society of Compositors, (1913) AC 107***]. Explaining why great caution is necessary LORD MOULTON further observed: "There is a danger that it may degenerate into a mere judicial criticism of the propriety of the Acts of Legislature. We have to

interpret statutes according to the language used therein, and though occasionally the respective consequences of two rival interpretations may guide us in our choice in between them, it can only be where, taking the Act as a whole and viewing it in connection with existing state of the law at the time of the passing of the Act, we can satisfy ourselves that the words cannot have been used in the sense to which the argument points". [***Vacher & Sons v. London Society of Compositors, (1913) AC 107***]. According to BRETT, L.J., the inconvenience necessitating a departure from the ordinary sense of the words should not only be great but should also be what he calls an "absurd inconvenience". Moreover, individual cases of hardship or injustice have no bearing for rejecting the natural construction, [***Young & Co. v. Leamington Spa Corporation, (1993) 8 AC 517***], and it is only when the natural construction leads to some general hardship or injustice and some other construction is reasonably open that the natural construction may be departed from. It is often found that laws enacted for the general advantage do result in individual hardship; for example laws of Limitation, Registration, Attestation although enacted for the public benefit, may work injustice in particular cases but that is hardly any reason to depart from the normal rule to relieve the supposed hardship or injustice in such cases. [***Lucy v. Henleys Telegraph Works, (1969) 3 All ER 456***]. "It is the duty of all courts of justice", said LORD CAMPBELL, "to take care for the general good of the community, that hard cases do not make bad law". [***East India Company v. Odichurn Paul, 7 Moo PC 85***]. 'Absurdity' according to WILLES, J., should be understood "in the same sense as repugnance that is to say something which would be so absurd with reference to the other words of the statute as to amount to a repugnance". [***Christopherson v. Lotinga, (1864) 33 LJ CP 121***]. "Absurdity", said LORD GREENE, M.R., "like public policy, is a very unruly horse". [***Grundt v. Great Boulder Proprietary Gold Mines Ltd., (1948) 1 All ER 21***]. He proceeded to add: "There is one rule, I think which is clear that, although the absurdity or the non-absurdity of one conclusion as compared with another may be and very often is, of assistance to the court in choosing between two possible meanings of ambiguous words, it is a doctrine which must be applied with great care, remembering that judges may be fallible in this question of an absurdity and in any

event it must not be applied so as to result in twisting language into a meaning which it cannot bear. It is a doctrine which must not be used to re-write the language in a way different from that in which it was originally framed". [***Grundt v. Great Boulder Proprietary Gold Mines Ltd.*** (supra)]. The alternative construction contended for must be such which does not put an undue strain on the words used; [***Kanailal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907***] and does not require recasting of the Act or any part of it. It must be possible to spell the meaning contended for out of the words actually used. [***Shamrao V. Parulekar v. District Magistrate, Thana AIR 1952 SC 324***].

No doubt in cases of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements. [***IRC v. Mutual Investment Co. (1966) 3 All ER 265***]. If no alternative construction is open, the court cannot ignore a statutory provision "to relieve what it considers a distress resulting from its operation; a statute has to be given effect to whether the court likes it or not". [***Martin Burn Ltd. v. Calcutta Corporation, AIR 1966 SC 524***]. The function of the court is to find out what is legal and not what is right. [***Chandavarkar Sita Ratna Rao v. Ashalata S.Guram, (1986) 4 SCC 447***]. It is presumed that a legislative body intends which is the necessary effect of its enactments; the object, the purpose and the intention of the enactment is the same; it need not be expressed in any recital or preamble; and it is not competent for any court judicially to ascribe any part of the legal operation of the statute to inadvertence. [***Kariapper v. Wijesinha, (1967) 3 All ER 485***]. The Courts should as far as possible avoid a construction which results in anomalies. [***N.T. Veluswami Thevar v. G.Raja Nainar, AIR 1959 SC 422***]."

In our opinion, the provisions of section 62 of the Copyright Act and section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. He need not travel to file a suit to a place where defendant is residing or cause of action wholly or in part arises. However, if the plaintiff is residing or carrying on business etc. at a place where cause of action, wholly or in part, has also arisen, he has to file a suit at that place, as discussed above. Thus, for the aforesaid reasons mentioned by us in the judgment, we are not inclined to interfere with the orders passed by the High Court.

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**21. COURT FEES (M.P. AMENDMENT) ACT, 2008 – Schedule I Article 1-A GENERAL CLAUSES ACT, 1897 – Section 3 (25)**

**(i) Can an appellant, who filed an appeal after 02.04.2008, take advantage of court fees under Schedule I Article 1-A as substituted by M.P. Amendment Act, 2008 w.e.f. 02.04.2008? Held, Yes, irrespective of the fact that the original suit/proceeding in relation to said remedy was filed prior to the commencement of the Act –** ***Fatehchand v. Land Acquisition and Rehabilitation Officer and others, 2009 (4) MPLJ 50*** **does not lay down correct legal position –** ***State of Bombay v. M/s Supreme General Films Exchange Ltd., AIR 1960 SC 980*** **distinguished.**

**(ii) The expression 'Civil Court' occurring in Article 1-A of Schedule I of Court Fees Act encompasses the High Court being the highest Civil Court of appeal (not including the Supreme Court) in the part of India to which the Court Fees Act operates, as is applicable to the State of Madhya Pradesh.**

न्यायालय शुल्क (मध्यप्रदेश संशोधन) अधिनियम, 2008– अनुसूची 1 का अनुच्छेद 1–ए
साधारण खण्ड अधिनियम, 1897– धारा 3 (25)

(i) क्या एक अपीलार्थी जो 2 अप्रैल 2008 के बाद एक अपील प्रस्तुत करता है, न्यायालय शुल्क अधिनियम अनुसूची 1 अनुच्छेद 1– ए जो कि मध्यप्रदेश संशोधन अधिनियम, 2008 दिनांक 02–04–2008 से प्रभावशील है, का लाभ ले सकता है ? अभिनिर्धारित किया गया, हाँ इस तथ्य को विचार में लिए बिना कि मूल वाद/कार्यवाही जिसके संबंध में उपचार मांगा गया वह अधिनियम के प्रारंभ होने के पहले प्रस्तुत की गयी थी – *फतेहचंद विरूद्ध लैंड एक्वीजीशन एण्ड रिहेबिलेशन आफीसर और अन्य, 2009 (4) एम.पी.एल.जे. 50* सही विधिक स्थिति प्रतिपादित नहीं करता है । *स्टेट आफ बाम्बे विरूद्ध मैसर्स सुप्रीम जनरल फिल्मस एक्सचेंच लिमिटेड, ए.आई.आर. 1960 एस.सी. 980* को विभेदित किया गया।

(ii) अभिव्यक्ति 'सिविल न्यायालय' जो कि न्यायालय शुल्क अधिनियम की अनुसूची 1 के अनुच्छेद 1– ए में उल्लेखित है उसमें उच्च न्यायालय अपील की उच्चतम सिविल न्यायालय होने से मध्यप्रदेश राज्य में लागू न्यायालय शुल्क अधिनियम के प्रकाश में आती है (लेकिन इसमें सर्वोच्च न्यायालय शामिल नहीं है)।

**Technofab Engineering Ltd. v. Bharat Heavy Electricals Ltd. and others**

**Judgment dated 15.09.2015 passed by the High Court of M.P. in First Appeal No. 514 of 2012, reported in 2015 (4) MPLJ 426 (FB)**

**Extracts from the Judgment:**

The questions to be considered by the Full Bench have been formulated

by the Division Bench in F.A. No.514/2012 and F.A. No.1134/2012 vide order dated 28.11.2014, as follows:

> "1. Whether the ratio of the decision in ***Fatehchand v. Land Acquisition and Rehabilitation Officer and others, 2009 (4) MPLJ 50*** is correct?
>
> 2. Whether the decision of the Supreme Court in the ***State of Bombay v. M/s. Supreme General Films Exchange Limited, AIR 1960 SC 980*** has application to Article 1-A of Schedule I to the Court Fees Act, 1870 as amended by Court Fees (Madhya Pradesh Amendment) Act, 2008?"

Accordingly, the two questions articulated for our consideration, will have to be answered in favour of the appellants, who have or would institute appeal in the Civil Court or Revenue Court after coming into force of the M.P. Act No.6 of 2008 w.e.f. 02.04.2008, substituting Article 1-A of Schedule I of the Court Fees Act, 1870 as applicable to the State of Madhya Pradesh, irrespective of the fact that the original suit/proceedings instituted in relation to the said remedy was filed prior to the coming into force of the said Act.

Be that as it may, the other incidental question, which arose for our consideration, was in the context of the expression used in Article 1-A of Schedule-I as "Civil Court". The expression "Civil Court" has not been defined in the Court Fees Act or for that matter in the Civil Procedure Code, as such. The question posed was whether the High Court can be considered as a Civil Court. This doubt has been answered by relying on the definition of High Court as given in the General Clauses Act, 1897. Section 3 (25) defines the expression "High Court" which reads thus:

> "(25) "High Court", used with reference to civil proceedings, shall mean the highest Civil Court of appeal (not including the Supreme Court) in the part of India in which the Act or Regulation containing the expression operates."

In view of this definition, the expression "Civil Court" occurring in Article 1-A of Schedule-I encompasses the High Court being the highest civil court of appeal (not including the Supreme Court) in the part of India (the State of Madhya Pradesh) to which the Court Fees Act operates, as is applicable to the State of Madhya Pradesh.

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**22. CRIMINAL PROCEDURE CODE, 1973 – Sections 2 (wa), 372 and 378 (3)**
**Whether father of the deceased falls within the definition of 'victim' and has locus standi to file appeal against acquittal under section 372 CrPC? Held, Yes, but for filing of an appeal in High Court, obtaining the leave of the High Court under section 378 (3) CrPC is required.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 2 (wa), 372 और 378 (3)

क्या मृतक का पिता ''पीड़ित'' की परिभाषा के अंतर्गत आता है और दोषमुक्ति के विरूद्ध धारा 372 दप्रसं के अधीन अपील प्रस्तुत करने का हकदार होता है ? अभिनिर्धारित किया गया, हाँ, किन्तु उच्च न्यायालय में अपील प्रस्तुत करने के लिए उच्च न्यायालय की अनुमति धारा 378 (3) दप्रसं के अधीन आवश्यक होती है।

**Satyapal Singh v. State of Madhya Pradesh and others**

**Judgment dated 06.10.2015 passed by the Supreme Court in Criminal Appeal No. 1315 of 2015, reported in 2015 CrLR (SC) 1106**

**Extracts from the Judgment:**

On the legal issue:

"Whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C.",

this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

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***23. CRIMINAL PROCEDURE CODE, 1973 – Sections 53 and 198 (2)**
**INDIAN PENAL CODE, 1860 – Sections 406 and 497**

**(i) Can an accused be compelled to allow sample to be taken for DNA test from his body? Held, Yes.**

**(ii) Whether such order be passed after filing of charge-sheet? Held, Yes.**

**दण्ड प्रक्रिया संहिता, 1973– धाराएं 53 और 198 (2)**
**भारतीय दण्ड संहिता, 1860– धाराएं 406 और 497**

(i) क्या एक अभियुक्त को उसके शरीर से डी.एन.ए. परीक्षण का नमूना लेने की अनुमति देने के लिए बाध्य किया जा सकता है ? अभिनिर्धारित किया गया, हाँ।

(ii) क्या ऐसा आदेश अभियोग पत्र प्रस्तुत हो जाने के बाद पारित किया जा सकता है ? अभिनिर्धारित किया गया, हाँ।

**Dheeraj Gada (Dr.) v. State of M.P. and others**

**Order dated 17.08.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 981 of 2014, reported in 2015 (3) JLJ 314**

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***24. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 (3) and 202**
**INDIAN PENAL CODE, 1860 – Sections 420, 467 and 468**
**Whetner a Magistrate can issue direction u/s 156 (3) CrPC for registration of an FIR and investigation thereof for offences triable by Court of Sessions? Held, Yes – There is no rider under Chapter XII of Cr.P.C. prohibiting a Judicial Magistrate First Class to issue such direction – The view taken in *Kamlesh Pathak v. State of M.P., 2008 (3) MPHT 426* is based on the provision u/s 202 Cr.P.C. which is not applicable for proceedings u/s 156 (3) Cr.P.C.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156 (3) और 202

भारतीय दण्ड संहिता, 1860 – धाराएं 420, 467 और 468

क्या एक मजिस्ट्रेट सत्र न्यायालय द्वारा विचारणीय अपराध के लिए धारा 156 (3) दण्ड प्रक्रिया संहिता के अधीन एक प्रथम सूचना प्रतिवेदन दर्ज करने और अनुसंधान करने के निर्देश जारी कर सकता है ? अभिनिर्धारित किया गया, हाँ – अध्याय 12 दण्ड प्रक्रिया संहिता के अधीन ऐसी कोई बाधा नहीं है जो न्यायिक मजिस्ट्रेट प्रथम श्रेणी को ऐसे निर्देश जारी करने से निषेधित करती हो – कमलेश पाठक विरूद्ध स्टेट ऑफ एमपी, 2008 (3) एमपीएचटी 426 में दिया गया मत धारा 202 दण्ड प्रक्रिया संहिता के प्रावधान पर आधारित है जो धारा 156 (3) दण्ड प्रक्रिया संहिता की कार्यवाहियों के लिए लागू नहीं होता ।

**Sheikh Ismail v. State of M.P. and another**
**Order dated 15.12.2014 passed by the High Court of M.P. in Criminal Revision No. 2167 of 2013, reported in ILR (2015) MP 789**

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**25. CRIMINAL PROCEDURE CODE, 1973 – Sections 167 (2) and 309**
**Whether remand in police custody can be given to the investigating agency in respect of absconding accused, who is arrested only after filing of charge-sheet? Held, Yes – Refusal of remand in police custody by Magistrate on the ground that accused stood in custody after his arrest under section 309 Cr.P.C., is not justified.**

दण्ड प्रक्रिया संहिता, 1973– धाराएं 167 (2) और 309

क्या अनुसंधान अभिकरण को पुलिस अभिरक्षा का रिमाण्ड, फरार अभियुक्त के संबंध में जो कि अभियोग पत्र प्रस्तुत करने के बाद गिरफ्तार हुआ हो, दिया जा सकता है? अभिनिर्धारित किया गया है हाँ – मजिस्ट्रेट द्वारा पुलिस अभिरक्षा के रिमाण्ड से इस आधार पर इंकार कि अभियुक्त उसकी गिरफ्तारी के बाद धारा 309 द.प्र.सं. के अधीन अभिरक्षा में है न्यायसंगत नहीं है ।

**Central Bureau of Investigation v. Rathin Dandapath and others**
**Judgment dated 21.08.2015 passed by the Supreme Court in Criminal Appeal No. 1081 of 2015, reported in AIR 2015 SC 3285**

**Extracts from the Judgment:**

During investigation accused, namely Abhani Bhusan Singha, Subhendu Mondal, Aswani Chalak, Nabagopal Sanki, Pintu Roy, Gandib Ban Roy, Lob Duley, Banamali Duley, Niranjan Kotal, Rupchand Ahir, Raju Roy and Swapan Roy were arrested. On completion of investigation, the CBI submitted charge sheet dated 4.4.2011 against 21 accused, including the arrested ones and the absconders. It was mentioned in the charge sheet that further investigation of the case was kept open for the purposes of collection of further evidence and the arrest of the absconders. It was also mentioned that further collected evidence during investigation would be forwarded by filing supplementary charge sheet.

In ***State through CBI v. Dawood Ibrahim Kaskar and others, AIR 1997 SC 2494,*** a three judge bench of this Court has laid down the law on the issue relating to grant of police custody of a person arrested during further investigation. In paragraph 11 of said case, this Court has held as follows:

> "11. There cannot be any manner of doubt that the remand and the custody referred to in the first proviso to the above sub-section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted — as has been interpreted by the Bombay High Court in ***Mohd. Ahmed Yasin Mansuri v. State of Maharashtra [1994 Cri LJ 1854 (Bom)***], — to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course

> of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167."

The case of ***Dinesh Dalmia v. CBI, AIR 2008 SC 78,*** which is relied upon by the High Court, relates to granting of bail under Section 167(2) Cr PC. In said case, the accused/absconder (Dinesh Dalmia) after his arrest was produced before the Magistrate, and on the request of CBI police custody was granted on 14.2.2006 till 24.2.2006, whereafter on another application further police custody was granted till 8.3.2006. Said accused was remanded to judicial custody, and the accused sought statutory bail under sub-section (2) of Section 167 CrPC as no charge sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge sheet, and the remand of the accused to judicial custody was under Section 309 CrPC, after police remand came to an end, granted under Section 167(2) CrPC. The High Court upheld said order and this Court also affirmed the view taken by the High Court.

In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of ***Dinesh Dalmia*** (supra) in upholding refusal of remand in police custody by the Magistrate, on the ground that accused stood in custody after his arrest under Section 309 CrPC. We have already noted above the principle of law laid down by the three judge bench of this Court in ***State through CBI v. Dawood Ibrahim Kaskar,*** (supra) that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in said case that expression 'accused if in custody' in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

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**26. CRIMINAL PROCEDURE CODE, 1973 – Section 250**
**Compensation for accusation without reasonable cause, when cannot be awarded? Held, where there is no material to show that prosecution has deliberately roped in accused persons and nothing to suggest mala fides or malice – In this case, trial court has been guided basically by three factors, firstly, that the State Government has not established Forensic Science Laboratories despite the orders passed by the High Court – Secondly, there has been delay in getting the seized articles tested – Thirdly, that the**

**seizing officer had not himself verified by using his experience and expertise that the contraband article was opium.**

**दण्ड प्रक्रिया संहिता, 1973– धारा 250**

उचित कारण के बिना अभियोग के लिए प्रतिकर– कब नहीं दिलाया जा सकता ? अभिनिर्धारित किया गया, जहाँ ऐसी कोई सामग्री न हो जो यह दर्शाती है कि अभियोजन ने अभियुक्तगण को जानबूझकर फंसाया है– जहाँ कोई दुराश्य या विद्वेष नहीं है– इस मामले में विचारण न्यायालय मूल रूप से तीन कारणों से दिशा निर्देशित हुई, प्रथम, राज्य सरकार ने उच्च न्यायालय के आदेश पारित करने के बावजूद विधि विज्ञान प्रयोग शाला स्थापित नहीं की, द्वितीय, जप्त सामग्री के परीक्षण में विलम्ब किया गया है, तृतीय, जप्तीकर्ता अधिकारी ने उसके अनुभव एवं विशेष ज्ञान का उपयोग यह सत्यापित करने में नहीं किया कि जप्त सामग्री अफीम थी।

**State of Rajasthan v. Jainudeen Shekh & anr.**

**Judgment dated 25.08.2015 passed by the Supreme Court in Criminal Appeal No. 1085 of 2015, reported in AIR 2015 SC 3469**

**Extracts from the Judgment:**

On a close scrutiny of the judgment of the learned trial Judge, it is evident that he has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of ***Hardeep Singh v. State of Madhya Pradesh, AIR 2012 SC 1751.*** Thus, the view expressed by the learned trial Judge is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable.

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

**(i) Recalling of witnesses – Mere change of counsel cannot be a ground to recall witnesses.**

**(ii) Counsel appointed by an accused – No findings can be recorded that he was incompetent particularly behind his back.**

**(iii) Court has to keep in mind not only the need to give fair opportunity to the accused but also the need to ensure that the victim of crime is not unduly harassed.**

दण्ड प्रक्रिया संहिता, 1973 –धारा 311

(i) गवाहों को पुनः बुलाना– केवल अभिभाषक का बदल जाना गवाहों को पुनः बुलाने का एक आधार नहीं हो सकता है।

(ii) अभियुक्त द्वारा नियुक्त एक अभिभाषक – ऐसा निष्कर्ष अभिलिखित नहीं किया जा सकता है, विशेषकर उनकी अनुपस्थिति में, कि वह सक्षम नहीं है।

(iii) न्यायालय को उनके मस्तिष्क में न केवल अभियुक्त को ऋजु अवसर देने की आवश्यकता को ध्यान में रखना होता है बल्कि यह भी आवश्यक होता है कि यह सुनिश्चित करें कि अपराध के पीड़ित को अनावश्यक तंग न किया जाये।

**AG v. Shiv Kumar Yadav & anr.**

**Judgment dated 10.09.2015 passed by the Supreme Court in Criminal Appeal No. 1187 of 2015, reported in AIR 2015 SC 3501**

**Extracts from the Judgment:**

We may sum up our reasons for disapproving the view of the High Court in the present case:

(i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;

(ii) No finding could be recorded that the counsel appointed by the accused were incompetent particularly at back of such counsel;

(iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;

(iv) The trial Court as well as the High Court rejected the reasons for recall of the witnesses;

(v) The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;

(vi) Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;

(vii) Mere change of counsel cannot be ground to recall the witnesses;

(viii) There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;

(ix) The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall, i.e., denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;

(x) There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.

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**28. CRIMINAL PROCEDURE CODE, 1973 – Section 439**
**Grant of bail – How to exercise discretionary powers? Principles reiterated.**
**दण्ड प्रक्रिया संहिता 1973 – धारा 439**
जमानत का दिया जाना – विवेकीय शक्तियों का प्रयोग कैसे किया जाये ? सिद्धांत पुनः बतलाये गये।

**Neeru Yadav v. State of Uttar Pradesh & anr.**
**Judgment dated 29.09.2015 passed by the Supreme Court in Criminal Appeal No. 1272 of 2015, reported in 2015 CrLR (SC) 1084**

**Extracts from the Judgment:**

In ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598,*** it has been clearly laid down that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to ***Prahlad Singh Bhati v. NCT of Delhi, (2001) 4 SCC 280*** and thereafter the court proceeded to state the following principles:-

> "(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
>
> (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

> (c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.
>
> (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [***See Chaman Lal v. State of U.P., (2004) 7 SCC 525***]

In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496*** while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors:-

> "9. … among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:
>
> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
>
> (ii) nature and gravity of the accusation;
>
> (iii) severity of the punishment in the event of conviction;
>
> (iv) danger of the accused absconding or fleeing, if released on bail;
>
> (v) character, behaviour, means, position and standing of the accused;
>
> (vi) likelihood of the offence being repeated;
>
> (vii) reasonable apprehension of the witnesses being influenced; and
>
> (viii) danger, of course, of justice being thwarted by grant of bail."

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**29. ELECTRICITY ACT, 1910 – Section 39**
**ELECTRICITY ACT, 2003 – Sections 126 and 135**
**Whether criminal proceedings can be quashed merely because accused has satisfied civil liability? Held, No – "Unauthorized use of electricity" and "theft" are two different things – Civil liability arises out of unauthorized use of electricity – In case of theft of electricity, prosecution has every right to proceed against the accused in accordance with law.**

विद्युत अधिनियम, 1910–धारा 39

विद्युत अधिनियम, 2003–धाराएं 126 और 135

क्या दाण्डिक कार्यवाही केवल इसलिए अपास्त की जा सकती है कि अभियुक्त ने सिविल दायित्व की तुष्टि कर दी है ? अभिनिर्धारित किया गया, नहीं– विद्युत का अप्राधिकृत उपयोग और चोरी दो भिन्न बातें हैं– सिविल दायित्व विद्युत के अनाधिकृत उपयोग से उत्पन्न होता है– विद्युत चोरी के मामले में अभियोजन को विधि अनुसार अभियुक्त के विरूद्ध अग्रसर होने अधिकार होता है।

**Ashok Kumar Doshi v. State of M.P. and another**
**Order dated 06.11.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 6745 of 2009, reported in 2015 (III) MPWN 127**

**Extracts from the Order:**

It is noteworthy that as per Electricity Act of 2003, the civil liability and criminal liability are differently valued. Same was the case as per the Act of 1910 also. The aspect of unauthorized use of electricity and electricity theft was considered by Supreme Court in the case of Southern Electricity Supply Co. of ***Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108.*** In the said case it was held that Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126 (2) of the 2003 Act. Section 135 of the 2003 Act deals with offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. Thus, it would be clear that the expression "unauthorised use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These

cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.

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**30. EVIDENCE ACT, 1872 – Sections 3, 114 (b) and 133**
**PREVENTION OF CORRUPTION ACT, 1988 – Section 7**

***Appreciation of evidence:***

**(i) Evidence of accomplice – While it is not illegal to act upon the uncorroborated testimony of the accomplice, the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused.**

**(ii) Evidence of trap/decoy witness – It would be a derogation and perversion of the object of anti-corruption law to invariably pre-suppose that a trap/decoy witness is an interested witness with an ulterior or ordinary motive for ensuring the inculpation and punishment of the accused.**

साक्ष्य अधिनियम, 1872 – धाराएं 3, 114 (बी) और 133
भष्टाचार निवारण अधिनियम, 1988 – धारा 7
साक्ष्य का मूल्यांकन :–

(i) सहः अपराधी की साक्ष्य– यह अवैध नहीं है कि सह–अपराधी की अपुष्ट साक्ष्य पर विश्वास किया जाये, प्रज्ञा का नियम समान रूप से अनुसरित किया जा रहा है कि वह कानून के नियम की तरह माना जाता है कि सह–अपराधी की साक्ष्य पर विश्वास करना असुरक्षित है जब तक कि तात्विक बातों के बारे में उसकी साक्ष्य की पुष्टि न हो जाये।

(ii) ट्रेप साक्ष्य/गवाह – ऐसे गवाहों की साक्ष्य पर विचार करते समय इन्हें हितबद्ध साक्षी की तरह लेने से अधिनियम के उद्देश्यों पर पड़ने वाला प्रभाव समझाया गया।

## D. Velayutham v. State

**Judgment dated 10.03.2015 passed by the Supreme Court in Criminal Appeal No. 787 of 2011, reported in AIR 2015 SC 2506**

**Extracts from the Judgment:**

This Court has ratiocinated in significant length and detail on the nature of evidence commonly encountered in trap cases in anti-corruption prosecutions, appreciably drawing the distinction between accomplice evidence, and decoy/ trap witness evidence. Both categories are vitally important in this case. Accomplice evidence is addressed by Sections 133 and 114 (b) of the Evidence Act, which though does not make explicit use of the word "accomplice". In ***M. O. Shamsudhin v. State of Kerala, (1995) 3 SCC 351,*** this Court has observed that "the relation between Section 133 which is a rule of law and Illustration (b) to Section 114 which is a rule of prudence has been the subject of comment in a large number of decisions. However, it has emerged that a conviction based on the uncorroborated testimony of an accomplice is not illegal though an accomplice may be unworthy of credit for various reasons. Reading Section 133 and Illustration (b) to Section 114 of the Evidence Act together, the Courts in India have held that while it is not illegal to act upon the uncorroborated testimony of the accomplice the rule of prudence so universally followed has to amount to rule of law that it is unsafe to act on the evidence of an accomplice unless it is corroborated in material aspects so as to implicate the accused. The reasons for requiring corroboration of the testimony of an accomplice are that an accomplice is likely to swear falsely in order to shift the guilt from himself and that he is an immoral person being a participator in the crime who may not have any regard to any sanction of the oath and in the case of an approver, on his own admission, he is a criminal who gives evidence under a promise of pardon and supports the prosecution with the hope of getting his freedom". In the prosecution confronting us, Accused 2 has given testimony from the locus of an alleged accomplice to the crime. His incriminating asseverations against his co-accused would, on the evidence available in this case, require interactive corroboration: the testing and authentication of Accused 2's testimony against the strength and degree of circumstances suggestive of Accused 1's guilt.

It would therefore be a derogation and perversion of the purpose and object of anti-corruption law to invariably presuppose that a trap/ decoy witness is an "interested witness", with an ulterior or other than ordinary motive for ensuring the inculpation and punishment of the accused. The burden unquestionably is on the defence to rattle the credibility and trustworthiness of the trap witness' testimony, thereby bringing him under the doubtful glare of the Court as an interested witness. The defence cannot be ballasted with the premise that Courts

will, from the outset, be guarded against and suspicious of the testimony of trap witnesses. We are of the opinion that the law hitherto expressed by this Court upholds precisely this exposition.

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**31. EVIDENCE ACT, 1872 – Sections 3 and 24**
**INDIAN PENAL CODE, 1860 – Section 302**
**Whether village Chowkidar and Patel are Police Officers? Held, No – They are independent witnesses – Extra-judicial confession made before them is admissible in evidence – They do not have any reason to depose against accused – Extra-judicial confession also finds place in *Dehati Nalishi*, recorded soon after the incident – Appeal dimissed.**

साक्ष्य अधिनियम, 1872 – धारा 3 और 24

भारतीय दण्ड संहिता, 1860 – धारा 302

क्या गाँव का चौकीदार और पटैल पुलिस अधिकारी है ? अभिनिर्धारित किया गया नहीं – ये स्वतंत्र गवाह है – उनके समक्ष की गई न्यायिकेत्तर संस्वीकृति साक्ष्य में ग्राह्य है – उनका अभियुक्त के विरूद्ध कथन करने का कोई कारण नहीं है – न्यायिकेत्तर संस्वीकृति घटना के ठीक बाद दर्ज की गई देहाती नालिशी में भी दर्ज है– अपील खारिज की गई।

**Hemraj v. State of M.P.**
**Judgment dated 22.07.2013 passed by the High Court of M.P. in Criminal Appeal No. 103 of 2006, reported in ILR (2015) MP 437(DB)**

**Extracts from the Judgment:**

In the case of ***Baldevraj v. State of Haryana, 1991 Supp (1) SCC 14*** it has been held that extra judicial confession made by the accused before Panchayat which was found to be voluntary and there was no evidence that the Panchayat has induced the accused and the evidence of these witnesses were not found tainted. The confession so made was held to be admissible. Considering all these facts and taking note of Section 40 of the Cr.P.C., Clause 8 of the duties of village Chowkidar who as discussed above is not a police officer, the confession made before such persons would become admissible provided it is voluntary and it is also corroborated by other evidence, such as circumstantial evidence which may lead to the only conclusion that the accused was nobody else but accused before the Court.

In the present case, not only the two witnesses PW-1 and PW-2 who are independent witnesses and who have no reason to make a wrong statement against the appellant more so when the statement made before them was made by the appellant soon after the incident; the Dehati Nalishi which has been recorded soon after the incident at the instance of Dinesh, brother of the appellant, wherein there is also a mention about extra judicial confession made

by the appellant before these persons, recovery of axe which is responsible for causing injuries on the person of the deceased read with evidence of the doctor who has opined that the death of the deceased was caused on account of the injuries sustained by the axe corroborated, the extra judicial confession made by the appellant before PW-1 and PW-2. The learned Additional Sessions Judge was therefore right in holding that in this case, even though, the eye witnesses have not supported the case of the prosecution, but his guilt is proved by PW-1 and PW-2 coupled with other circumstances.

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***32. EVIDENCE ACT, 1872 – Section 45**
**NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 20**
**Application under section 45 of the Evidence Act, how to be dealt with? Signature on the cheque and address of accused were not disputed by the accused – Hence, verification of the signature of registered A/d held, not necessary – Application under section 45 of the Evidence Act rightly rejected by the Trial Court.**
**[Note : Readers are also requested to go through the judgment of** ***C.C. Alavi Haji v. Palapetty Muhammed & anr., (2007) 6 SCC 555*** **(Three Judge Bench)]**

**साक्ष्य अधिनियम, 1872 – धारा 45**
**परक्राम्य लिखित अधिनियम, 1881 – धारा 20**

धारा 45 भारतीय साक्ष्य अधिनियम के अधीन आवेदन का निराकरण कैसे किया जाये? अभियुक्त द्वारा चेक पर उसके हस्ताक्षर और उसका पता विवादित नहीं किया गया – अतः पंजीकृत अभिस्वीकृति पर उसके हस्ताक्षर का सत्यापन आवश्यक न होना अभिनिर्धारित किया गया – धारा 45 साक्ष्य अधिनियम का आवेदन विचारण न्यायालय ने उचित रूप से निरस्त किया।

(नोट – पाठकगण से निवेदन है कि वे न्यायदृष्टांत सी.सी. अलावी हाजी विरूद्ध पालापेटटी मोहम्म्द और अन्य (2007) 6 एससीसी 555 तीन न्यायमूर्तिगण की पीठ का भी अवलोकन करे।)

**Iqrar Ahmed v. Mohammed Sadiq**
**Order dated 17.04.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 2699 of 2014, reported in ILR (2015) MP 511**

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***33. EVIDENCE ACT, 1872 – Sections 50 and 68**
**SUCCESSION ACT, 1925 – Section 63**
**(i) Marriage, burden of proof – Burden is on the person who asserts that there was no valid marriage.**
**(ii) Execution of Will, validity and proof of – Proof of Will stands on a higher degree in comparison to other documents – There must be a clear evidence of attesting witness or other**

**witnesses that the contents of the Will were read over to the executant and he, after admitting the same to be correct, puts his signature in presence of witnesses and thereafter attesting witnesses put their signatures in the presence of the executant.**

**Suspicious circumstances are to be properly explained and doubts are to be cleared by the beneficiary of the Will.**

साक्ष्य अधिनियम, 1872 – धाराएं 50 और 68

उत्ताधिकार अधिनियम, 1925 – धारा 63

(i) विवाह का प्रमाण भार – उस व्यक्ति पर होता है जो यह अभिकथन करता है कि वैध विवाह नहीं था।

(ii) वसीयत के निष्पादन की वैधता और प्रमाण – वसीयत का प्रमाण अन्य दस्तावेजों की तुलना में उच्च स्तर का होता है – ऐसी स्पष्ट साक्ष्य अनुप्रमाणक साक्षी या अन्य साक्षियों की होना चाहिए कि वसीयत के तथ्य निष्पादनकर्ता के समक्ष पढ़े गये थे और उसने उन्हें सही होना स्वीकार करने के बाद गवाहों की उपस्थिति में उसके हस्ताक्षर किये थे और इसके बाद अनुप्रमाणक साक्षियों ने निष्पादन कर्ता की उपस्थिति में उनके हस्ताक्षर किये थे।

संदेहास्पद परिस्थितियों को उचित रीति से स्पष्ट करना होगा और संदेह को वसीयत के हितग्राही द्वारा दूर करना होगा।

**Dhannulal and others v. Ganeshram and another**

**Judgment dated 08.04.2015 passed by the Supreme Court in Civil Appeal No. 3410 of 2007, reported in AIR 2015 SC 2382**

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**34. HINDU LAW:**

**Doctrine of relation back, application of – Law explained.**

**Properties by inheritance *vis-à-vis* collateral's property.**

***Facts of the case:***

**Two brothers Baba and Bala who were holding joint family properties survived till the year 1909 – Wife of deceased Bala adopted her grandson Ramchandra on 24.02.1947 – Great grandson of deceased Baba, Baburao along with his daughter filed a civil suit against Ramchandra for permanent injunction and Ramchandra in turn, filed civil suit against Baburao for partition of the suit properties – By common judgment and decree, the trial court dismissed both the suits – Appellate Court and High Court dismissed both the appeals.**

**Held, properties by inheritance never went to a collateral – Further held, the Trial Court rightly held that there was no partition and properties remained joint family properties and therefore, succession did not open at the time of death of Bapusaheb in the year 1906 and his widow Lalubai had only a right of maintenance**

**and never succeeded to the property – Baba and Bala survived till 1909 and they were entitled to 50% share in the property and on the relation back principle, the adopted son Ramchandra and the appellant Baburao are entitled to 50% share in the suit property.**

हिन्दू विधि :

रिलेशन बैक का सिद्धांत लागू होना – विधि समझाई गई।

दाय द्वारा संपत्ति विरूद्ध सम्पार्शविक संपत्ति – अंतर समझाया गया।

**Lata Baburao Mane and another v. Ramachandra Balasaheb Mane (Dead) through LRs.**

**Judgment dated 18.11.2014 passed by the Supreme Court in Civil Appeal No. 174 of 2007, reported in 2015 (4) MPLJ 33 (SC)**

**Extracts from the Judgment:**

A genealogical tree is relied upon and there is no dispute to it, and it is reproduced below:

**Sursingh**

Niraji (died before 1906) | Ravaji (died without heir) | Nana (died without heir) | Rushi

Aba (died) | Baba (No heirs) (Died before 1906) | Bapusaheb (died in 1906)

Baba (widow) (died on 9-7-1909) | Bala (died on 19-2-1909) | Lalubai (died on 6-8-1919) (no issue)

Nanasaheb (died on 7-8-1950) | Krishnabai (wife) (died in 1950)

Tanubai | Subhadra

Marut Rao (died in 1997) | RAMCHANDRA (Respondent No. 1) (adopted by Krishnabai on 24-2-1947 died in 2010- LRs on record)

BABU RAO (Appellant)

Dilip (Appellant) | Pratap (died) LRs | Ranjana @ Devyani | Vandana (Appellant) | Lata (Appellant) | Ujwala | Sunita

The learned senior counsel appearing for the appellants contended that the appellants are entitled to 75% share and the present respondents namely the heirs of deceased Ramchandra Balasaheb Mane are entitled to only 25% share in the suit properties. It is further contended by him that the estate of Babusaheb was open to reversioners only in the year 1919 when his widow Lalubai died and not in 1906 when Bapusaheb died. The other contention raised by him is that on adoption of respondent Ramchandra Balasaheb Mane by Krishnabai in the year 1947, the said adoption will not relate back to the year 1909 to the extent of divesting the collateral Nanasaheb who by then succeeded to the estate of Babusaheb in the year 1919. In support of his submission the learned senior counsel placed reliance on the following decisions:

***i) Bhubaneshwari Debi v. Nilkomul Lahiri, 1885 (12) IA 137; ii) Shrinivas Krishnarao Kango v. Narayan Devji Kango and ors., 1955 (1) SCR 1; iii) Krishnamurthi Vasudeorao Deshpande and another v. Dhruwaraj, AIR 1962 SC 59 and iv) Govind Hanumantha Rao Desai v. Nagappa and Seven others, (1972) 1 SCC 515.***

Per contra learned senior counsel appearing for the respondents contended that the trial court, the appellate court and the High Court have arrived at a finding that there was no partition in the family and the suit properties were joint family properties and since the properties were not partitioned, succession never opened and Lalubai had only a right of maintenance and never succeeded to the property. It is his further contention that Babusaheb died in the year 1906 and after him Baba and Bala survived till the year 1909, and their branches are rightly found to be entitled to 50% share each, in the suit properties, on the basis of the principle that the adoption relates back to the death of the adoptive father and the concurrent findings are sustainable both in law and on facts.

The contention of the appellants is based on the premise that the dispute is with regard to the collateral's property and the relation back principle would not apply to the same. Though the plea of partition was raised by the appellants/plaintiffs, the trial court categorically held that there was no evidence to prove partition and the properties remained joint family properties. The said finding was confirmed by the first appellate court and then by the High Court. As there was no partition, succession did not open at the time of death of Babusaheb Mane in the year 1906. As rightly contended by the respondents, his widow Lalubai had only a right of maintenance and never succeeded to the property. Baba and Bala survived till the year 1909 and they were entitled to 50% share each in the properties and on the relation back principle the adopted son namely respondent Ramchandra Balasaheb Mane and the appellant Baburao Mane are entitled to 50% share each in the suit properties. The properties by inheritance never went to a collateral. The contention of the appellants is fallacious and liable to be rejected and the decisions cited are also not applicable. The findings of the courts below that the adoption of respondent Ramchandra Balasaheb Mane relates back to the death of his adoptive father and he is

entitled to 50% share in the suit properties, are based on correct appreciation of facts and law and no interference is called for.

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**35. HINDU MINORITY AND GUARDIANSHIP ACT, 1956 – Section 6**
**GUARDIANS AND WARDS ACT, 1890 – Sections 7 and 17**

**(i) Custody of a child, determination of – Best interests and welfare of the child are of paramount importance.**

**(ii) Custody of child ordinarily residing in foreign country and is brought in India, principles applicable.**
**In such a case, following two contrasting principles of law are applicable; (a) the principle of Comity of Court and (b) the principles of best interest and welfare of the child.**
**In cases where child is brought in India, firstly it must be appreciated that the 'most intimate contact' doctrine and 'closest concern' doctrine are very much alive and cannot be ignored only because their application might be uncomfortable in certain situations – It is not appropriate that a domestic Court having much less intimate contact with a child and having much less close concern with a child and his or her parents as against a foreign Court in a given case should take upon itself the onerous task of determining the best interests and welfare of the child – Even an interim or interlocutory order passed by foreign Courts have to be given respect and due weightage unless there are some special reasons for not doing so – If the jurisdiction of the foreign Court is not in doubt, 'first strike' principle would be applicable i.e. due respect and weightage must be given to a substantive order prior in point of time to a substantive order passed by another Court.**

**(iii) Repatriation as per custodial order of foreign Court, when can be ordered? Law stated.**

**(iv) Defiance of interlocutory or interim order – Must be viewed seriously as it would have deleterious effect on rule of law.**

हिन्दू अवयस्कता और संरक्षकता अधिनियम, 1956 – धारा 6
संरक्षक और प्रतिपाल्य अधिनियम, 1890 – धारा 7 और 17

(i) बच्चे की अभिरक्षा का निर्धारण – बच्चे के सर्वोत्तम हित और कल्याण महत्वपूर्ण होते है।

(ii) बच्चे की अभिरक्षा जो साधारणतः विदेश में रहता है और भारत लाया गया है उसके बारे में लागू होने वाले सिद्धान्त समझाये गये।

(iii) विदेश न्यायालय के अभिरक्षा आदेश अनुसार प्रत्यावर्तन, कब आदेश किया जा सकता है – विधि बतलाई गई।

(iv) अंतर्वर्ती या अंतरिम आदेश की अवज्ञा – गंभीरता से लिया जाना चाहिए क्योंकि यह कानून के नियम पर हानिकारक प्रभाव डालने वाला होगा।

### Surya Vadanan v. State of Tamil Nadu and others

**Judgment dated 27.02.2015 passed by the Supreme Court in Criminal Appeal No. 395 of 2015, reported in AIR 2015 SC 2243**

**Extracts from the Judgment:**

We are concerned with two principles in a case such as (i) The principle of comity of courts and (ii) The principle of the best interests and the welfare of the child. These principles have been referred to "contrasting principles of law"32 but they are not 'contrasting' in the sense of one being the opposite of the other but they are contrasting in the sense of being different principles that need to be applied in the facts of a given case.

What then are some of the key circumstances and factors to take into consideration for reaching this final goal or final objective? First, it must be appreciated that the "most intimate contact" doctrine and the "closest concern" doctrine of ***Surinder Kaur Sandhu v. Harbas Singh Sandhu, AIR 1984 SC 1224*** are very much alive and cannot be ignored only because their application might be uncomfortable in certain situations. It is not appropriate that a domestic court having much less intimate contact with a child and having much less close concern with a child and his or her parents (as against a foreign court in a given case) should take upon itself the onerous task of determining the best interests and welfare of the child. A foreign court having the most intimate contact and the closest concern with the child would be better equipped and perhaps best suited to appreciate the social and cultural milieu in which the child has been brought up rather than a domestic court. This is a factor that must be kept in mind.

Second, there is no reason why the principle of "comity of courts" should be jettisoned, except for special and compelling reasons. This is more so in a case where only an interim or an interlocutory order has been passed by a foreign court (as in the present case). In ***McKee v.McKee*** which has been referred to in several decisions of this court, the Judicial Committee of the Privy Council was not dealing with an interim or an interlocutory order but a final adjudication. The applicable principles are entirely different in such cases. In this appeal, we are not concerned with a final adjudication by a foreign court – the principles for dealing with a foreign judgment are laid down in Section 13 of the Code of Civil Procedure. In passing an interim or an interlocutory order, a foreign court is as capable of making a prima facie fair adjudication as any domestic court and there is no reason to undermine its competence or capability. If the principle of comity of courts is accepted, and it has been so accepted by this court, we must give due respect even to such orders passed by a foreign court. The High Court misdirected itself by looking at the issue as a matter of legal rights of the parties. Actually, the issue is of the legal obligations of the parties, in the context of the order passed by the foreign court.

If an interim or an interlocutory order passed by a foreign court has to be disregarded, there must be some special reason for doing so. No doubt we expect foreign courts to respect the orders passed by courts in India and so there is no justifiable reason why domestic courts should not reciprocate and respect orders passed by foreign courts. This issue may be looked at from another perspective. If the reluctance to grant respect to an interim or an interlocutory order is extrapolated into the domestic sphere, there may well be situations where a Family Court in one State declines to respect an interim or an interlocutory order of a Family Court in another State on the ground of best interests and welfare of the child. This may well happen in a case where a person ordinarily resident in one State gets married to another person ordinarily resident in another State and they reside with their child in a third State. In such a situation, the Family Court having the most intimate contact and the closest concern with the child (the court in the third State) may find its orders not being given due respect by a Family Court in the first or the second State. This would clearly be destructive of the equivalent of the principle of comity of courts even within the country and, what is worse, destructive of the rule of law.

What are the situations in which an interim or an interlocutory order of a foreign court may be ignored? There are very few such situations. It is of primary importance to determine, prima facie, that the foreign court has jurisdiction over the child whose custody is in dispute, based on the fact of the child being ordinarily resident in the territory over which the foreign court exercises jurisdiction. If the foreign court does have jurisdiction, the interim or interlocutory order of the foreign court should be given due weight and respect. If the jurisdiction of the foreign court is not in doubt, the "first strike" principle would be applicable. That is to say that due respect and weight must be given to a substantive order prior in point of time to a substantive order passed by another court (foreign or domestic).

There may be a case, as has happened in the present appeal, where one parent invokes the jurisdiction of a court but does not obtain any substantive order in his or her favour and the other parent invokes the jurisdiction of another court and obtains a substantive order in his or her favour before the first court. In such an event, due respect and weight ought to be given to the substantive order passed by the second court since that interim or interlocutory order was passed prior in point of time. As mentioned above, this situation has arisen in the present appeal – Mayura had initiated divorce proceedings in India before the custody proceedings were initiated by Surya in the U.K. but the foreign court passed a substantive order on the custody issue before the domestic court. This situation also arose in ***Ruchi Majoo v. Sanjeev Majoo, AIR 2011 SC 1952*** where Ruchi Majoo had invoked the jurisdiction of the domestic court before Rajiv Majoo but in fact Rajiv Majoo obtained a substantive order from the foreign court before the domestic court. While the substantive order of the foreign court in Ruchi Majoo was accorded due respect and weight but for reasons not related to the principle of comity of courts and on merits, custody of the child was handed over to Ruchi Majoo, notwithstanding the first strike principle.

As has been held in ***Arathi Bandi v. Bandi Jagadrakshaka Rao, (2013) 15 SCC 790*** a violation of an interim or an interlocutory order passed by a court of competent jurisdiction ought to be viewed strictly if the rule of law is to be maintained. No litigant can be permitted to defy or decline adherence to an interim or an interlocutory order of a court merely because he or she is of the opinion that that order is incorrect – that has to be judged by a superior court or by another court having jurisdiction to do so. It is in this context that the observations of this court in ***Sarita Sharma v. Sushil Sharma, AIR 2000 SC 1019*** and ***Ruchi Majoo*** (supra) have to be appreciated. If as a general principle, the violation of an interim or an interlocutory order is not viewed seriously, it will have widespread deleterious effects on the authority of courts to implement their interim or interlocutory orders or compel their adherence. Extrapolating this to the courts in our country, it is common knowledge that in cases of matrimonial differences in our country, quite often more than one Family Court has jurisdiction over the subject matter in issue. In such a situation, can a litigant say that he or she will obey the interim or interlocutory order of a particular Family Court and not that of another? Similarly, can one Family Court hold that an interim or an interlocutory order of another Family Court on the same subject matter may be ignored in the best interests and welfare of the child? We think not. An interim or an interlocutory is precisely what it is - interim or interlocutory – and is always subject to modification or vacation by the court that passes that interim or interlocutory order. There is no finality attached to an interim or an interlocutory order. We may add a word of caution here – merely because a parent has violated an order of a foreign court does not mean that that parent should be penalized for it. The conduct of the parent may certainly be taken into account for passing a final order, but that ought not to have a penalizing result.

Finally, this court has accepted the view that in a given case, it might be appropriate to have an elaborate inquiry to decide whether a child should be repatriated to the foreign country and to the jurisdiction of the foreign court or in a given case to have a summary inquiry without going into the merits of the dispute relating to the best interests and welfare of the child and repatriating the child to the foreign country and to the jurisdiction of the foreign court.

However, if there is a pre-existing order of a foreign court of competent jurisdiction and the domestic court decides to conduct an elaborate inquiry (as against a summary inquiry), it must have special reasons to do so. An elaborate inquiry should not be ordered as a matter of course. While deciding whether a summary or an elaborate inquiry should be conducted, the domestic court must take into consideration:

(a) The nature and effect of the interim or interlocutory order passed by the foreign court.

(b) The existence of special reasons for repatriating or not repatriating the child to the jurisdiction of the foreign court.

(c) The repatriation of the child does not cause any moral or physical or social or cultural or psychological harm to the child, nor should it cause any legal harm to the parent with whom the child is in India. There are instances where the order of the foreign court may result in the arrest of the parent on his or her return to the foreign country. In such cases, the domestic court is also obliged to ensure the physical safety of the parent.

(d) The alacrity with which the parent moves the concerned foreign court or the concerned domestic court is also relevant. If the time gap is unusually large and is not reasonably explainable and the child has developed firm roots in India, the domestic court may be well advised to conduct an elaborate inquiry.

***Discussion on facts:***

The facts in this appeal reveal that Surya and Mayura are citizens of the U.K. and their children are also citizens of the U.K.; they (the parents) have been residents of the U.K. for several years and worked for gain over there; they also own immovable property (jointly) in the U.K.; their children were born and brought up in the U.K. in a social and cultural milieu different from that of India and they have grown up in that different milieu; their elder daughter was studying in a school in the U.K. until she was brought to India and the younger daughter had also joined a school in the U.K. meaning thereby that their exposure to the education system was different from the education system in India. The mere fact that the children were admitted to a school in India, with the consent of Surya is not conclusive of his consent to the permanent or long term residence of the children in India. It is possible, as explained by his learned counsel, that he did not want any disruption in the education of his children and that is why he consented to the admission of the children in a school in India. This is a possible explanation and cannot be rejected outright.

Mayura has not taken any steps to give up her foreign citizenship and to acquire Indian citizenship. She has taken no such steps even with respect to her children. Clearly, she is desirous of retaining her foreign citizenship at the cost of her Indian citizenship and would also like her children to continue with their foreign citizenship, rather than take Indian citizenship. That being the position, there is no reason why the courts in India should not encourage her and the children to submit to the jurisdiction of the foreign court which has the most intimate contact with them and closest concern apart from being located in the country of their citizenship. The fact that Mayura is of Indian origin cannot be an overwhelming factor.

Though Mayura filed proceedings for divorce in India way back in August 2012, she made no serious effort to obtain any interim order in her favour regarding the custody of the children, nor did she persuade the trial court for more than two years to pass an interim order for the custody of the children. On the other hand, the foreign court acted promptly on the asking of Surya and

passed an interim order regarding the custody of the children, thereby making the first strike principle applicable.

It would have been another matter altogether if the Family Court had passed an effective or substantial order or direction prior to 13th November, 2012 then, in our view, the foreign court would have had to consider exercising self-restraint and abstaining from disregarding the direction or order of the Family Court by applying the principle of comity of courts. However, since the first effective order or direction was passed by the foreign court, in our opinion, principle of comity of courts would tilt the balance in favour of that court rather than the Family Court. We are assuming that the Family Court was a court of competent jurisdiction although we must mention that according to Surya, the Family Court has no jurisdiction over the matter of the custody of the two children of the couple since they are both British citizens and are ordinarily residents of the U.K. However, it is not necessary for us to go into this issue to decide this because even on first principles, we are of the view that the orders or directions passed by the foreign court must have primacy on the facts of the case, over the Family Court in Coimbatore. No specific or meaningful reason has been given to us to ignore or bypass the direction or order of the foreign court.

We have gone through the orders and directions passed by the foreign court and find that there is no final determination on the issue of custody and what the foreign court has required is for Mayura to present herself before it along with the two children who are wards of the foreign court and to make her submissions. The foreign court has not taken any final decision on the custody of the children. It is quite possible that the foreign court may come to a conclusion, after hearing both parties that the custody of the children should be with Mayura and that they should be with her in India. The foreign court may also come to the conclusion that the best interests and welfare of the children requires that they may remain in the U.K. either under the custody of Surya or Mayura or their joint custody or as wards of the court during their minority. In other words, there are several options before the foreign court and we cannot jump the gun and conclude that the foreign court will not come to a just and equitable decision which would be in the best interests and welfare of the two children of the couple.

The orders passed by the foreign court are only interim and interlocutory and no finality is attached to them. Nothing prevents Mayura from contesting the correctness of the interim and interlocutory orders and to have them vacated or modified or even set aside. She has taken no such steps in this regard for over two years. Even the later order passed by the foreign court is not final and there is no reason to believe that the foreign court will not take all relevant factors and circumstances into consideration before taking a final view in the matter of the custody of the children. The foreign court may well be inclined, if the facts so warrant, to pass an order that the custody of the children should be with Mayura in India.

There is also nothing on the record to indicate that any prejudice will be caused to the children of Mayura and Surya if they are taken to the U.K. and subjected to the jurisdiction of the foreign court. There is nothing to suggest that they will be prejudiced in any manner either morally or physically or socially or culturally or psychologically if they continue as wards of the court until a final order is passed by the foreign court. There is nothing to suggest that the foreign court is either incompetent or incapable of taking a reasonable, just and fair decision in the best interests of the children and entirely for their welfare.

There is no doubt that the foreign court has the most intimate contact with Mayura and her children and also the closest concern with the well being of Mayura, Surya and their children. That being the position even though Mayura did not violate any order of the foreign court when she brought her children to India, her continued refusal to abide by the interim and interlocutory order of the foreign court is not justified and it would be certainly in the best interests and welfare of the children if the foreign court, in view of the above, takes a final decision on the custody of the children at the earliest. The foreign court undoubtedly has the capacity to do so.

We have considered the fact that the children have been in Coimbatore since August 2012 for over two years. The question that arose in our minds was whether the children had adjusted to life in India and had taken root in India and whether, under the circumstances, it would be appropriate to direct their repatriation to the U.K. instead of conducting an elaborate inquiry in India. It is always difficult to say whether any person has taken any root in a country other than that of his or her nationality and in a country other than where he or she was born and brought up. From the material on record, it cannot be said that life has changed so much for the children that it would be better for them to remain in India than to be repatriated to the U.K. The facts in this case do not suggest that because of their stay in India over the last two years the children are not capable of continuing with their life in the U.K. should that become necessary. However, this can more appropriately be decided by the foreign court after taking all factors into consideration.

It must be noted at this stage that efforts were made by this court to have the matter of custody settled in an amicable manner, including through mediation, as recorded in a couple of orders that have been passed by this court. Surya had also agreed to and did temporarily shift his residence to Coimbatore and apparently met the children. However, in spite of all efforts, it was not possible to amicably settle the issue and the mediation centre attached to this court gave a report that mediation between the parties had failed. This left us with no option but to hear the appeal on merits.

Given these facts and the efforts made so far, in our opinion, there is no reason to hold any elaborate inquiry as postulated in ***L. (Minors), In re, (1974) 1AII ER 913 (C.A.*** - this elaborate inquiry is best left to be conducted by the foreign court which has the most intimate contact and the closest concern with

the children. We have also noted that Surya did not waste any time in moving the foreign court for the custody of the children. He moved the foreign court as soon as he became aware (prior to the efforts made by this court) that no amicable solution was possible with regard to the custody of the children.

We are conscious that it will not be financially easy for Mayura to contest the claim of her husband Surya for the custody of the children. Therefore, we are of the opinion that some directions need to be given in favour of Mayura to enable her to present an effective case before the foreign court.

**Accordingly, we direct as follows:-**

1. Since the children Sneha Lakshmi Vadanan and Kamini Lakshmi Vadanan are presently studying in a school in Coimbatore and their summer vacations commence (we are told) in May, 2015 Mayura Vadanan will take the children to the U.K. during the summer vacations of the children and comply with the order dated 29th November, 2012 and participate (if she so wishes) in the proceedings pending in the High Court of Justice. Surya Vadanan will bear the cost of litigation expenses of Mayura Vadanan.
2. Surya Vadanan will pay the air fare or purchase the tickets for the travel of Mayura Vadanan and the children to the U.K. and later, if necessary, for their return to India. He shall also make all arrangements for their comfortable stay in their matrimonial home, subject to further orders of the High Court of Justice.
3. Surya Vadanan will pay maintenance to Mayura Vadanan and the children at a reasonable figure to be decided by the High Court of Justice or any other court having jurisdiction to take a decision in the matter. Until then, and to meet immediate out of pocket expenses, Surya Vadanan will give to Mayura Vadanan prior to her departure from India an amount equivalent to £1000 (Pounds one thousand only).
4. Surya Vadanan shall ensure that all coercive processes that may result in penal consequences against Mayura Vadanan are dropped or are not pursued by him.
5. In the event Mayura Vadanan does not comply with the directions given by us, Surya Vadanan will be entitled to take the children with him to the U.K. for further proceedings in the High Court of Justice. To enable this, Mayura Vadanan will deliver to Surya Vadanan the passports of the children Sneha Lakshmi Vadanan and Kamini Lakshmi Vadanan.

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***36. HINDU SUCCESSION (AMENDMENT) ACT, 2005 – Section 6**

**Whether section 6 of Hindu Succession (Amendment) Act, 2005 will have retrospective effect? Held, No – The rights under the said amendment are applicable to living daughters of living co-parceners as on 9th September, 2005 irrespective of the fact when such daughters were born – Alienation including partitions which may have taken place before 20th December, 2004, as per law applicable prior to the said date, will remain unaffected – Any transaction of partition effected thereafter will be governed by the Explanation.**

हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 – धारा 6

क्या धारा 6 हिन्दू उत्तराधिकार (संशोधन) अधिनियम, 2005 का भूतलक्षी प्रभाव रहेगा?

अभिनिर्धारित किया गया, नहीं। उक्त संशोधन के अधीन अधिकार दिनांक 09.09.2005 को जीवित सहदायिकों की जीवित पुत्रियों को लागू होगा इस बात को ध्यान में दिये बिना कि पुत्रियाँ कब पैदा हुई है – दिनांक 20. 12.2004 के पूर्व तत्समय लागू विधि अनुसार हो चुके अंतरण जिसमें विभाजन भी शामिल है पर (इस संशोधन का) कोई प्रभाव नहीं पड़ेगा – इसके बाद के विभाजन के संव्यवहार स्पष्टीकरण से शासित होंगे।

**Prakash and others. v. Phulavati and others**

**Judgment dated 16.10.2015 passed by the Supreme Court in Civil Appeal No. 7217 of 2013 (Unreported)**

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***37. HINDU SUCCESSION ACT, 1956 – Section 15**
**LAND REVENUE CODE, 1959 (M.P) – Section 110**

**(i) Succession in case of females.**

*Facts of the case:*

**The respondent/plaintiff filed the suit against the appellants/defendants for declaration of title and perpetual injunction stating that the suit property belong to Goramma wife of the first defendant and the mother of the plaintiff and on her death the first defendant had given declaration before the Revenue Authorities to change the *katha* in the name of the plaintiff in respect of the suit property and mutation was effected accordingly. It was also pleaded that the first defendant entered into second marriage with one Jayamma and defendants No. 2 to 5 are their children. Defendants stated in their written statement that the suit property was purchased in the name of Goramma by sale deed dated 14.11.1959 by the first defendant and after her death, he married Jayamma in 1973 and defendants 2 to 5 were born out of the wedlock and the plaintiff as well as the first defendant being the legal heirs of**

**Goramma had succeeded to the suit property. Trial Court dismissed the suit. In appeal, the first Appellate Court held that the plaintiff and the first defendants being Class I heirs of deceased Goramma are entitled to half share each in the suit property. In second appeal, the High Court by setting aside the judgment of the first appellate Court, decreed the suit in full. Held, first defendant did not relinquish or release his right in respect of the half share in the suit property. The assumption on the part of the High Court that as a result of mutation, first defendant divested himself of the title and possession of half share in suit property is wrong as the mutation entries do not convey or extinguish any title.**

**Setting aside the judgment and decree of the High Court, judgment and decree of the first appellate Court restored.**

**(ii) Mutation entry, relevancy of – Mutation entries do not convey or extinguish any title and are relevant only for the purpose of collection of land revenue.**

हिन्दू उत्तराधिकारी अधिनियम, 1956 – धारा 15

भू राजस्व संहिता, 1959 (म.प्र.) – धारा 110

(i) महिलाओं के मामले में उत्तराधिकार।

मामले के तथ्य के क्रम में विधि समझाई गई।

(ii) नामांतरण इंद्राज की सुसंगतता – नामांतरण इंद्राज कोई स्वत्व न तो प्रदान करते है न वापस लेते है और ये भू राजस्व वसूली के उद्देशय से सुसंगत होते है।

**H. Laxmaiah Reddy and others v. L. Venkatesh Reddy**

**Judgment dated 17.04.2015 passed by the Supreme Court in Civil Appeal No. 3725 of 2015, reported in AIR 2015 SC 2499**

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**38. INDIAN PENAL CODE, 1860 – Sections 53 and 306**

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

**Offence of abetment of suicide – Trial Court found the accused persons guilty and by taking a very lenient view, sentenced them with rigorous imprisonment for a period of three years with a fine of Rs. 3,000/- each – In appeal, High Court held that no useful purpose will be served by sending the accused persons back to jail for undergoing remaining sentence of imprisonment and reduced the sentence to the one already undergone by them i.e 4 months and 2 days – Holding the approach of the High Court as casual and fanciful rather than just, Hon'ble the Apex Court restored the sentence passed by the Trial Court – Duty to impose proper sentence reiterated.**

भारतीय दण्ड संहिता, 1860– धाराएं 53 और 306

दण्ड प्रक्रिया संहिता, 1973– धारा 354

आत्म हत्या के लिए दुष्प्रेरण का अपराध– विचारण न्यायालय ने अभियुक्तगण को दोषी पाया और बहुत नर्म रूख लेते हुए उन्हें तीन वर्ष के कठोर कारावास और तीन हजार रूपये अर्थदण्ड से प्रत्येक को दण्डित किया– अपील में उच्च न्यायालय ने अभिनिर्धारित किया कि अभियुक्तगण को अवशेष दण्ड भुगतने के लिए जेल भेजने से कोई उपयोगी उद्देश्य प्राप्त नहीं हो सकेगा और दण्ड को घटाकर अभिरक्षा में बितायी गयी अवधि अर्थात चार माह और दो दिन तक किया– माननीय सर्वोच्च न्यायालय ने अभिनिर्धारित किया कि उच्च न्यायालय का दृष्टिकोण युक्तियुक्त न होकर असावधानीपूर्ण और काल्पनिक है और विचारण न्यायालय द्वारा दिया गया दण्ड पुनः स्थापित किया गया– युक्तियुक्त दण्ड देने के कर्त्तव्य पुनः बतलाये गये।

**Raj Bala v. State of Haryana and others etc. etc.**

**Judgment dated 18.08.2015 passed by the Supreme Court in Criminal Appeal No. 1049 of 2015, reported in AIR 2015 SC 3142**

**Extracts from the Judgment:**

Analysed on the touchstone of the principles stated and reiterated by this Court, as regards the imposition of sentence, it is really unfathomable how the High Court could have observed that no useful purpose would be serve by sending the accused persons to jail for undergoing their remaining sentences of imprisonment, for the High Court itself has recorded that the appellants therein had remained in custody only for a period of four months and twenty days. Section 306 IPC deals with abetment of suicide and further stipulates that whoever abets in the crime would be punished with imprisonment for either description for a term which may extend to ten years and shall also be liable to fine. The two ingredients are essential to prove the offence, that is, the death should be suicidal in nature and there must be abetment thereof. The learned trial Judge has arrived at the conclusion that the respondents had committed the offence under Section 306 IPC. He has applied the test that the accused persons are first offenders and belong to weaker section of the society. Another mitigating fact that has been recorded is that daughter of the accused Satbir Singh was teased. He has also mentioned the nature of the offence and other circumstances of the case. It is also not discernible how the principle of "first offender" would come into play in such a case. Once the offence under Section 306 IPC is proved, there should have been adequate and appropriate punishment. The learned trial Judge has, on the basis of the appreciation of the evidence on record, come to the conclusion that the deceased was assaulted and being apprehensive of further torture, he committed suicide. The mitigating factors which have been highlighted by the learned trial Judge are absolutely non-mitigating factors and, in a way, totally inconsequential for imposing a sentence of three years. The approach of the High Court, as the reasoning would show, reflects more of a

casual and fanciful one rather than just one. A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

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***39. INDIAN PENAL CODE, 1860 – Sections 172 to 174**
**FOREIGN EXCHANGE REGULATION ACT, 1973 – Section 56 r/w/s 40**

**(i) Non-obedience to summons – Non-attendance, consequence of – An accused who willfully evades the process of law, commits an independent offence – Exonerating such an accused on the ground that he is found to be not guilty of the substantive offence, would be destructive of law and order apart from being against public interest.**

**(ii) Whether complaint under section 56 r/w/s 40 of the FERA is maintainable for evading summons even where proceedings as to the substantive offences under FERA were subsequently dropped? Held, Yes.**

**भारतीय दण्ड संहिता, 1860 – धाराएं 172 से 174**
**विदेशी मुद्रा विनिमय अधिनियम, 1973 – धारा 56 सहपठित 40**

(i) समन का अनुपालन न करना – उपस्थित न होने का परिणाम – एक अभियुक्त जो विधि की आदेशिका का जानबूझकर अनदेखा करता है एक स्वतंत्र अपराध कारित करता है – ऐसे अभियुक्त को इस आधार पर निर्मुक्त करना की वह मूल अपराध में दोषी नहीं पाया गया है कानून और व्यवस्था के लिए विध्वंसकारी होगा और लोकनीति के विरूद्ध भी है।

(ii) क्या धारा 56 सहपठित धारा 40 फेरा अधिनियम का परिवाद समन की अनदेखी करने के लिए चलने योग्य है जबकि फेरा के अधीन मूल अपराध की कार्यवाही बाद में ड्राप कर दी गई थी ? अभिनिर्धारित किया गया हाँ।

**Vijay Mallya v. Enforcement Directorate, Ministry of Finance**
**Judgment dated 13.07.2015 passed by the Supreme Court in Criminal Appeal No. 1406 of 2009, reported in (2015) 8 SCC 799**

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**40. INDIAN PENAL CODE, 1860 – Sections 201, 302 and 498-A**
**EVIDENCE ACT, 1872 – Sections 3 and 45**
**Appreciation of evidence – Case based on circumstantial evidence – Death due to murder or suicide – The story of suicide was disbelieved by trial court as well as by the High Court – Affirmed by Hon'ble the Apex Court because:-**

**(i) Death caused due to strangulation/constriction force around the neck leading to asphyxia and shock.**

**(ii) Deceased was not seen by witnesses in a hanging position.**

**(iii) There was no immediate provocation for deceased to take step to commit suicide.**

**(iv) The classic signs of death by hanging as reported in Modi's Medical Jurisprudence and Toxicology were absent in the case at hand as is evident from postmortem report prepared by the doctor.**

भारतीय दण्ड संहिता, 1860 धाराएं 201, 302, 498–ए

साक्ष्य अधिनियम, 1972– धाराएं 3 और 45

साक्ष्य का मूल्यांकन– परिस्थितिजन्य साक्ष्य पर आधारित मामला– मृत्यु का कारण हत्या या आत्महत्या – आत्महत्या की कहानी को विचारण न्यायालय और उच्च न्यायालय द्वारा अविश्वसनीय माना गया – माननीय सर्वोच्च न्यायालय ने इसकी पुष्टि की क्योंकि :–

(i) मृत्यु गला घोंटने/गर्दन के चारों ओर बल जिससे दम घुटना और शाक के कारण हुई है ।

(ii) मृतक को किसी भी साक्षी द्वारा लटकी हुई अवस्था में नहीं देखा गया था।

(iii) मृतक के लिए ऐसा कोई तात्कालिक प्रकोपन नहीं था जिसमें वह आत्महत्या करने का कदम उठाती।

(iv) मोदी के मेडिकल ज्यूरिसप्रूडेंस और टाक्सिकोलॉजी में बतलाये गये आदर्श लक्षण जो हैंगिंग के मामले में होते हैं वे अनुपस्थित थे जैसा कि डाक्टर द्वारा तैयार शव परीक्षण से स्पष्ट होता है।

**Eshwarappa v. State of Karnataka**
**Judgment dated 24.07.2015 passed by the Supreme Court in Criminal Appeal No. 1951 of 2012, reported in AIR 2015 SC 3037**

**Extracts from the Judgment:**

The Trial Court and so also the High Court has rejected the story of suicide by the deceased and in our opinion rightly so, for reasons more than one. Firstly, because the death in the case at hand occurred because of strangulation/constriction force around the neck leading to asphyxia and shock as observed by the doctor which is possible not necessarily by hanging, although the doctor has opined it could be caused probably by hanging also. Secondly, because if death had occurred because of hanging, she would have been discovered by the witnesses in a hanging position, unless of course somebody had upon seeing her hanging, brought her down and placed the body on the ground or the rope by which she hung herself had itself snapped in which event there would have been a rope partly tied to the branch of the tamarind tree and partly around her neck with a noose which the witnesses say was not there. Thirdly, because it is nobody's case that she was carrying a rope with herself when she was seen going towards the field. The presence of the rope and the heap of stones before the branch was obviously a make-believe situation created by the appellant, who was seen by the witness, returning from the field. Fourthly, because there was no immediate provocation for the deceased to take the step to commit suicide. All that she wanted was money from her husband to take her child to the hospital for treatment. Besides, the parents of the deceased were also present in the village around the time the deceased went towards the field which only shows that there was no intense or great provocation that could have led her to commit suicide. Fifthly, because the classic signs of death by hanging as reported in Modi's Medical Jurisprudence and Toxicology (23rd Edition) like face being usually pale; saliva dribbling out of the mouth down on the chin and chest; Neck Stretched and elongated in fresh bodies; Ligature mark being oblique, non-continuous and placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard yellow and parchment like; Abrasions and ecchymoses around the edges of the ligature mark, subcutaneous tissues under the mark being white or glistening; carotid arteries, internal coats being ruptured; fracture or dislocation of the cervical vertebrae were all conspicuously absent in the case at hand as is evident from the post-mortem report prepared by the doctor.

In the totality of the circumstances and having regard to the nature of the evidence which the courts below have found credible on all material aspects of the prosecution case, we do not see any compelling reason to interfere with the view taken by the Trial Court as affirmed by the High Court. The only modification no matter inconsequential in the facts and circumstances of the case that we may make is the setting aside of the conviction of the appellant for the offence punishable under Section 498A Indian Penal Code.

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**41. INDIAN PENAL CODE, 1860 – Sections 294, 323 and 324 r/w/s 34**

**Whether an injury caused by human nail can be said to be caused by an instrument used for stabbing or cutting and making causing of such injury punishable under section 324 IPC? Held, No – It cannot be deemed to be an instrument used for either cutting or stabbing, therefore, the hurt caused by human nail may not qualify as an injury caused by instrument for the purpose of section 324 IPC.**

भारतीय दण्ड संहिता, 1860–धाराएं 294, 323 और 324 सहपठित 34

क्या मानव नाखून द्वारा कारित एक उपहति के लिए यह कहा जा सकता है कि वह वेधन या काटने के किसी उपकरण द्वारा कारित की गयी है और धारा 324 भा.द.स. के तहत दण्डनीय है ? अभिनिर्धारित किया गया, नहीं– यह नहीं माना जा सकता कि यह (मानव नाखून) एक ऐसा उपकरण है जो काटने या वेधने के उपयोग में आता है इस कारण मानव नाखून से कारित उपहति एक ऐसी उपहति नहीं है जो धारा 324 भा.द.स. के उद्देश्य से किसी उपकरण से कारित की गयी है।

**Chhota @ Akash and others v. State of M.P.**

**Order dated 16.10.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 9404 of 2015, reported in 2015 (3) JLJ 392**

**Extracts from the Order:**

It may be noted that there is intrinsic difference between the two sets of appendages of human body namely, the teeth and the nails. Teeth are hard, bony appendages growing out of upper and lower jaw bones and by their very nature much stronger than the nails. Whereas the upper set of teeth is fixed, the lower set, activated by strong jaw muscles, is adapted to move against the upper set facilitating a pincer like grip upon the object being bitten or chewed. As such, teeth are capable of chopping away parts of human body such as tip of nose, earlobes or in extreme cases even distal parts of small fingers. They are; therefore, capable of causing much graver injury to human body than human nails.

The human nail on the other hand is a thin, though hard, layer covering the outer tip of human fingers. It is made up of a translucent protein called keratin. By virtue of its constitution, it is weaker than a tooth. It is also somewhat flexible. Unless they are intentionally used for pinching, nails of fingers are ordinarily not used in coordination with each other. As a result they are not capable of exerting same amount of pressure as teeth. Therefore, in ordinary course they only cause abrasions or scratch marks. In the present case also, only an abrasion over right side of neck was found on the person of the victim.

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**42. INDIAN PENAL CODE, 1860 – Sections 300, 302 and 304 Part II**
**Offence of murder, proof of – 'Murder' and 'culpable homicide', distinction between – Law explained.**
**The deceased and the other family members were wholly unarmed while the accused and his younger brother (co-accused) were in possession of arms – The accused persons caused fatal stab injury on the left side of the chest of the deceased by knife and his younger brother (co-accused) held hands of the deceased and made him lie on the ground – Held, it is the situation where the accused person has taken undue advantage of the situation and it is not a case where he is entitled to alteration of sentence from 302 of IPC to 304 Part II IPC. [*Salim Sahab v. State of M.P., (2007) 1 SCC 699* and *Mohd. Shakil v. State of A.P., (2007) 3 SCC 119* distinguished and *Babulal Bhagwan Khandar and another v. State of Maharashtra, (2005) 10 SCC 404* relied on.]**

**भरतीय दण्ड संहिता, 1860 – धाराएं 300, 302 और 304 भाग II**
**हत्या के अपराध का प्रमाण – हत्या व सदोष मानव वध के मध्य अंतर – विधि समझाई गई।**
**मृतक और उसके परिवार के अन्य सदस्य पूरी तरह निशस्त्र थे जबकि अभियुक्त और उसका छोटा भाई (सह– अभियुक्त) के आधिपत्य में हथियार थे – अभियुक्तगण ने मृतक के सीने के दाहिने तरफ चाकू से घातक घोपी हुई उपहति कारित की और उसका छोटा भाई (सह–अभियुक्त) मृतक के हाथ पकड़े हुए था और उसने मृतक को मैदान पर गिराया था – अभिनिर्धारित किया गया, यह एक ऐसी स्थिति है जहाँ अभियुक्तगण ने स्थिति का असम्यक लाभ लिया है और यह ऐसा मामला नहीं है जहाँ वह दोषसिद्धि को धारा 302 भा.दं.सं. से 304 भाग II भा.दं.सं. में परिवर्तित कराने का हकदार है।** (सलीम साहब विरूद्ध स्टेट ऑफ एम.पी., (2007)1 एससीसी 699 और मोहम्मद शकील विरूद्ध स्टेट ऑफ ए.पी. (2007) 3 एससीसी 119 विभेदित किये गये और बाबू लाल भगवान खण्डार और अन्य विरूद्ध स्टेट ऑफ महारा''ष्ट्र (2005) 10 एससीसी 404 पर विश्वास किया गया।)

**Sunil Khergade v. State of Maharashtra**
**Judgment dated 13.08.2015 passed by the Supreme Court in Criminal Appeal No. 812 of 2008, reported in 2015 CriLJ 4365 (SC)**

**Extracts from the Judgment:**

The trial court, having regard to the evidence of PWs-1, 2 and 7, who were also injured witnesses, and taking note of the nature and manner of the commission of the crime, convicted the appellant and his brother under Section 302 read with Section 34 of IPC. However, on evidence, taking note of the young age of the accused and on reaching the conclusion that it is not a case of rarest of the rare cases, the appellant was sentenced to suffer imprisonment for life. The trial court found that accused no.1-Sanjay (younger brother of the appellant)

had caught hold of the deceased, made him lie on the ground and the appellant brought knife from the house and inflicted a stab injury on the chest of the deceased.

In appeal, having analysed the evidence at length, the High Court was not inclined to take a different view.

Learned Counsel for the appellant mainly stressed for the conviction to be altered to Section 304 Part II of IPC. Even otherwise, private defence under Section 97 of IPC and the benefit under exception to Section 300 of IPC will not go together.

It is submitted that there was only one injury that is mentioned in the First Information Report, and with that, it cannot be held that the appellant committed murder. The First Information Report need not necessarily contain each and every particular injury sustained by the deceased. It needs to contain only some information about the crime and some information about the manner in which the offence has been committed. It is not required to contain the minute details of the whole crime. [See ***Patai alias Krishna Kumar v. State of Uttar Pradesh, AIR 2010 SC 2254***] . In the instant case, the First Information Report was prepared on the basis of the statement given by PW-1-father of the deceased. To him, it is not the number of injuries sustained what mattered but the death resulting from the stab injury. It has also come in evidence that the deceased had been inflicted with three injuries by the appellant and the fatal injury is the one which pierced the heart of the deceased.

Learned Counsel for the appellant, placing reliance on ***Salim Sahab v. State of M.P., (2007) 1 SCC 699*** prayed for alteration of the conviction from Section 302 of IPC to Section 304 Part II of IPC. Reference is also invited to ***Mohd. Ismail alias Haji Abdul Kadar Sheikh v. State of Gujarat, (2007) 3 SCC 118***. ***Salim Sahab*** (supra) is a case where the Court, having discussed the factual scenario, came to the conclusion that

> "... during a quarrel between the deceased and the accused, they were grappling and during that quarrel, the accused attacked the deceased with a pair of scissors. It was not a very big-sized weapon though it was certainly having a sharp-edged point".

In that view of the matter, the conviction was altered to Section 304 Part-II of IPC. ***Mohd. Shakeel v. State of A.P., (2007) 3 SCC 119*** is also one where the conviction is altered from Section 302 of IPC to Section 304 Part II of IPC. It is a case of only one injury and the accused also suffering injury during the scuffle. The situation in the case of the appellant is totally different. It has been established in evidence that the deceased and the other members of the family were wholly unarmed, the deceased had come to his village only in the morning of the fatal day, the appellant and his younger brother, who is the co-accused, both were in possession of arms, the appellant had fetched the knife (Article-15) which had a wooden handle and 17 centimeter long blade portion with which

the fatal injury was caused on the left side of the chest of the deceased. It is a situation where the appellant has taken undue advantage of the situation as held by this Court in ***Babulal Bhagwan Khandare and another v. State of Maharashtra, AIR 2005 SC 1460***. Therefore, it is not a case where the appellant is entitled to alteration of sentence from Section 302 of IPC to Section 304 Part II of IPC.

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**43. INDIAN PENAL CODE, 1860 – Section 302 r/w/s 149**

**Offence of murder by members of unlawful assembly, constitution of – Dying declarations of the deceased recorded by Executive Magistrate clearly named the accused persons and stated the roles played by them – Two of the accused persons set the deceased on fire while the other accused persons who were present on the spot when deceased was being burnt alive, surrounded the deceased to ensure that he could not escape – Held, the intent of entire members of the unlawful assembly was clear – Setting aside the acquittal, accused persons were convicted under section 302/149 IPC.**

भारतीय दण्ड संहिता, 1860 – धारा 302 सहपठित 149

अवैध सभा के सदस्यों द्वारा हत्या के अपराध का गठन – कार्यपालक मजिस्ट्रेट द्वारा अभिलिखित मृतक के मृत्युकालिक कथन में स्पष्ट रूप से अभियुक्तगण के नाम और उनके द्वारा किये गये कृत्य बतलाये गये – दो अभियुक्तगण ने मृतक का जलाया जबकि अन्य अभियुक्तगण जो घटना स्थल पर उपस्थित थे वे यह सुनिश्चित करने के लिए मृतक को घेरे हुए थे कि वह भाग न सके – अभिनिर्धारित किया गया, अवैध सभा के सभी सदस्यों का आशय स्पष्ट था – दोषमुक्ति अपास्त की गई, अभियुगण को धारा 302/149 भा.दं.सं. में दोषसिद्ध किया गया।

**State of Madhya Pradesh v. Ashok & ors etc.**

**Judgment dated 01.07.2015 passed by the Supreme Court in Criminal Appeal No. 2096 of 2009, reported in 2015 CriLJ 3973 (SC)**

**Extracts from the Judgment:**

Statement Ext. P-20 leading to the registration of crime as well as statement Ext. P-17 recorded by the Executive Magistrate are dying declarations by Tikaram. Both these statements are consistent and name the present respondents and state the role played by them in surrounding Tikaram and giving cries that he be beaten and should not be left. In the face of such assertions, it is impossible to accept that these respondents arrived at the scene of occurrence after the crime was completed. Their role is that of participants in the crime who did not allow Tikaram to escape by encircling him. The finding rendered by the High Court is against the record.

Both the statements clearly referred to the presence of PW13. It was PW13 who immediately ran home and intimated the fact that Tikaram was set afire, to

the inmates of the house. Consequently PW4 and PW15 arrived at the scene of occurrence. Tikaram was then removed to the hospital. In his testimony PW13 stated that while Tikaram was burning, respondent Vidhna @ Ram Das threw a burning tyre upon him and original accused Harilal threw a sword at him. The post mortem clearly shows an incised injury in the back suffered by said Tikaram, which completely supports such assertion. Having gone through the record we find the presence of said PW13 completely established and accept him to be eye witness to the occurrence. It is relevant to note that the High Court has also not disbelieved the testimony of PW13.

In the light of the eye witness account and the post mortem report it is quite clear that the respondents were present when Tikaram was burning alive. The sequence of narration certainly shows that they were waiting in ambush. It may be that only two of them set Tikaram afire but the others definitely ensured by surrounding Tikaram that he would not be allowed to escape. Further, throwing of burning tyre and the sword would also indicate the active role played by them. Even if one of them was ready with a sword, that is clearly indicative of the level of preparedness on their part and we see no reason how they could not be said to be members of unlawful assembly. It was a crime which was committed by all of them guided by same purpose, acting in concert achieving the result that was desired. The intent of the entire assembly was clear, eloquently established by their presence, preparedness and participation. Though we are conscious that while considering an appeal against acquittal we should be extremely slow in interfering, in our considered view the assessment made by the High Court in the present case is completely unsustainable and against the record.

We therefore allow these appeals, set-aside the judgment and order of acquittal rendered by the High Court and restore the judgment of conviction and sentence as recorded by the trial Court against the respondents. The respondents shall be taken in custody forthwith to serve the sentence awarded to them.

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***44. INDIAN PENAL CODE, 1860 – Sections 307 and 325**

**Offence when falls under section 325 and not under section 307 IPC? Injured fire station officer came to the fire station for surprise check and recorded the absence of the accused in the general diary and returned home – After few minutes, the accused persons armed with lathis went to his house and beat him – Though the injuries caused were 18 in number, they were not on the vital parts of the body – Accused had acted in a state of fury but it cannot be said that they caused such injuries with intention to cause death – Offence falls under section 325 of IPC and not under section 307 IPC.**

भारतीय दण्ड संहिता 1860– धाराएं 307 और 325

अपराध कब धारा 325 भा.दं.सं में आता है और धारा 307 भा.दं.सं. में नहीं आता है ? आहत अग्नि केन्द्र अधिकारी, अग्नि केन्द्र पर अकस्मात निरीक्षण पर आया और उसने सामान्य दैनंदिनी में अभियुक्त की अनुपस्थिति अभिलिखित की और घर लौटा – कुछ मिनट बाद अभियुक्तगण लाठियाँ लेकर उसके घर गये और उसे पीटा – यद्यपि उपहतियाँ जो कारित की गई उनकी संख्या 18 थी लेकिन वे शरीर के मर्म भागों पर नहीं थी – अभियुक्त ने क्रोध की अवस्था में कृत्य किया किन्तु यह नहीं कहा जा सकता की ऐसी उपहति मृत्यु कारित करने के आशय से कारित की गई – अपराध धारा 325 भा.दं.सं. में आयेगा न की धारा 307 भा.दं.सं. में।

**Fireman Ghulam Mustafa v. State of Uttaranchal (now Uttarakhand)**
**Judgment dated 25.08.2015 passed by the Supreme Court in Criminal Appeal No. 1105 of 2015, reported in AIR 2015 SC 3101**

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**45. INDIAN PENAL CODE, 1860 – Sections 320 and 325**

**(i) Offence of voluntarily causing grievous hurt by hard and blunt object, constitution of and grievous hurt, connotation of – The fracture or dislocation of bone is considered grievous hurt because it causes great pain and suffering to the injured persons and it is defined in section 320 IPC – To make out the offence of voluntary causing grievous hurt, there must be a specific hurt voluntarily inflicted and coming within the eight kinds of hurt enumerated in section 320 IPC.**

**(ii) Sentencing – Is always a matter of discretion by the Court – In imposing the sentence, Judge must consider the nature of the offence, the conduct of the accused, unprotected state of victim, variety of factors, circumstances and overall view of the situation.**

**(iii) Imposition of sentence, interference by appellate Court – No interference is warranted unless discretion in inflicting sentence has been exercised arbitrarily or capriciously or on unsound principles.**

भारतीय दण्ड संहिता, 1860 – धाराएं 320 और 325

(i) शख्त और बोथरे हथियार से स्वेच्छया घोर उपहति कारित करने के अपराध का गठन और स्वेच्छया घोर उपहित का अर्थ– अस्थिभंग या हड्डी का विस्थापन घोर उपहित है क्योंकि यह आहत गण को गंभीर दर्द और पीड़ा कारित करता है और यह धारा 320 भां.दं.सं में परिभाषित है – स्वेच्छया घोर उपहित कारित करने के अपराध के लिए एक विशिष्ट उपहित स्वेच्छया पहुंचाना जो धारा 320 भा.दं.सं में उल्लेखित आठ प्रकार की उपहित में से कोई एक अवश्य होना चाहिए।

(ii) दण्डाज्ञा – यह सदैव न्यायालय के विवेकाधिकार का विषय होता है – दण्ड अधिरोपित करने के लिए न्यायाधीश को अपराध की प्रकृति, अभियुक्तगण का आचरण, आहत की असुरक्षित दशा और विभिन्न कारक, परिस्थितियाँ तथा स्थिति का पूर्ण परिदृश्य विचार में लेना चाहिए।

(iii) दण्ड अधिरोपित करना, अपील न्यायालय द्वारा हस्तक्षेप – किसी हस्तक्षेप की आवश्यकता नहीं है जब तक कि दण्ड अधिरोपित करने में विवेकाधिकार का प्रयोग मनमाना या स्वेच्छाचारी या अयुक्तियुक्त सिद्धांतों के आधार पर न किया गया हो।

**Sakharam v. State of Madhya Pradesh and another**

**Judgment dated 19.08.2015 passed by the Supreme Court in Criminal Appeal No. 1079 of 2015, reported in 2015 CriLJ 4369 (SC) (Three Judge Bench)**

**Extracts from the Judgment:**

'Grievous hurt' is defined in Section 320 IPC. To make out the offence of voluntarily causing grievous hurt, there must be a specific hurt voluntarily inflicted and coming within the eight kinds of hurt enumerated in Section 320 IPC. By perusal of X-ray report (Ex. P-23), it is evident that PW 2 sustained fracture or dislocation of the bone which clearly falls in the category of grievous hurt as expressly mentioned in clause (7) of Section 320 IPC. The fracture or dislocation of bone is considered grievous hurt because it causes great pain and suffering to the injured person. Even though Dr. Moitra PW-15 was not questioned about the nature of the injuries, fracture of the frontal bone would bring the offence within the definition of 'grievous hurt'. Having regard to the nature of injuries and the X-ray reort, in our view, the High Court rightly convicted the appellant under Section 325 IPC and the same cannot be modified.

For conviction under Section 325 IPC, the High Court imposed seven years rigorous imprisonment. The imposition of sentence is always a matter of discretion of the Court. In imposing the sentence, Judge must consider variety of factors and circumstances and overall view of the situation and impose appropriate sentence. The measure of punishment in a given case must depend upon nature of the offence, the conduct of the accused and unprotected state of victim. The Supreme Court will not interfere with the sentence unless this Court finds that discretion has been exercised arbitrarily or capriciously or on unsound principles or that the lower court or the High Court has not taken into account any relevant factor in imposing the sentence. In the present case, when the complainant was returning from the flour mill, Raju restrained him and there was a wordy altercation. On hearing the hues and cries, both complainant party and accused party gathered and there was fight and in which the appellant inflicted two lathi blows on Santu PW-2. As the occurrence was a sudden fight and in a fit of passion the appellant inflicted injuries on Santu PW-2. In our view, the sentence of imprisonment of seven years imposed on the appellant is excessive and the same is to be reduced.

While confirming the conviction under Section 325 IPC, the sentence of imprisonment of seven years imposed on him is reduced to three years and this appeal is partly allowed.

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***46. INDIAN PENAL CODE, 1860 – Section 326-A**
**CRIMINAL PROCEDURE CODE, 1973 – Section 357-A**
**Compensation for acid attack victim:**

**(i) There should be a minimum compensation of Rs. 3 lakh for acid attack victims.**

**(ii) Direction issued by Hon'ble the Apex Court for acid attack case:**

**(a) State Governments/Union Territories should seriously discuss and take up the matter with all the private hospitals in their respective State/Union Territory to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and re-constructive surgeries.**

**(b) The hospitals where the victim of an acid attack is first treated, should give a certificate that the individual is a victim of an acid attack. This certificate may be utilized by the victim for treatment and re constructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.**

**(c) In the event of any specific complaint against any private hospital or Government hospital, the acid attack victim will, of course, be at liberty to take further action.**

**(d) With regard to the banning of sale of acid across the counter, the Secretary in the Ministry of Home Affairs and Secretary in the Ministry of Health & Family Welfare to take up the matter with the State Governments, Union Territories to ensure that an appropriate notification to this effect is issued within a period of three months from the date of passing of this judgment. It appears that some States/Union Territories have already issued such a notification, but, in our opinion all States and Union Territories must issue such a notification at the earliest.**

**(e) In case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of the District or their**

**nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.**

भारतीय दण्ड संहिता, 1860– धारा 326–ए

दण्ड प्रक्रिया संहिता, 1973 धारा–357–ए

अम्ल द्वारा हमले के मामले में पीड़ित को प्रतिकर

(i) अम्ल द्वारा हमले के पीड़ित को न्यूनतम तीन लाख प्रतिकर दिया जाना चाहिए।

(ii) माननीय सर्वोच्च न्यायालय द्वारा अम्ल द्वारा हमले के प्रकरण के बारे में निर्देश जारी किये गये।

**Laxmi v. Union of India and others**

**Judgment dated 10.04.2015 passed by the Supreme Court in Writ Petition (C) No. 129 of 2006, reported in AIR 2015 SC 3662**

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***47. JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2000 – Section 12**

**If the release of juvenile in conflict with law defeats the ends of justice, his bail application cannot be allowed – In this case the juvenile in conflict with law committed murder in public place in broad day light by causing 24 injuries to the deceased – It must have put terror in the hearts of the witnesses and it would be natural for them not to come forward for giving evidence if the applicant is at large – Order of the trial court rejecting bail maintained by Hon'ble the High Court.**

किशोर न्याय (बालकों की देख रेख और संरक्षण) अधिनियम, 2000 – धारा 12

यदि विधि संबंधि विरोध में किशोर को रिहा किया जाना न्याय के उद्देश्यों को पराजित करता हो तो उसका जमानत आवेदन स्वीकार नहीं किया जा सकता – इस मामले में विधि संबंधित विरोध में किशोर ने लोक स्थान पर दिनदहाड़े हत्या कारित की और मृतक को 24 उपहतियाँ कारित की – यह गवाहों के मन में भय उत्पन्न करता है और यह स्वाभाविक होगा कि वे यदि किशोर जमानत पर स्वतंत्र हो तो गवाह देने के लिए आगे नहीं आयेंगे – विचारण न्यायालय का जमानत निरस्त करने का आदेश माननीय उच्च न्यायालय द्वारा कायम रखा गया।

**Mintu @ Siryaaz Khan v. State of M.P.**

**Order dated 01.12.2014 passed by the High Court of M.P. in Criminal Revision No. 1703 of 2014, reported in ILR (2015) MP 505**

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***48. LAND ACQUISITION ACT, 1894 – Section 31**
**COURT FEES ACT, 1870 – Section 7 (i)**

**Ad valorem Court Fees, payment of – Purchaser of land under acquisition filed a suit to the effect that amount of compensation which was fixed by an award be paid to him because he had purchased the land – Trial Court ordered the plaintiff to pay ad valorem Court Fees on the amount of compensation – Plaintiff thereafter, filed an application seeking amendment in relief clause that he be declared owner of the land – Held, substantive relief sought by the plaintiff is in regard to compensation because at present stage, simple declaration is of no effect – Therefore, the plaintiff is required to pay ad valorem Court Fees.**

भूमि अधिग्रहण अधिनियम, 1894 — धारा 31
न्यायालय शुल्क अधिनियम, 1870 — धारा 7 (i)

मूल्य अनुसार न्यायालय शुल्क का भुगतान — अधिग्रहण की भूमि के क्रेता ने एक वाद पेश किया कि अवार्ड द्वारा नियत प्रतिकर की राशि का भुगतान उसे किया जाये क्योंकि उसने भूमि क्रय कर ली है — विचारण न्यायालय ने वादी को प्रतिकर राशि पर मूल्य अनुसार न्यायालय शुल्क भुगतान करने का आदेश किया — उसके बाद वादी ने अनुतोष के खण्ड में संशोधन चाहने का एक आवेदन पेश किया कि उसे भूमि का स्वामी घोषित किया जाये अभिनिर्धारित किया गया, वादी ने जो तात्विक अनुतोष चाहा है वह प्रतिकर के संबंध में है क्योंकि इस प्रक्रम पर एक साधारण घोषणा का कोई प्रभाव नहीं है — अतः वादी को मूल्य अनुसार न्यायालय शुल्क देना आवश्यक है।

**Shuchita v. Sub-Divisional Officer, Betul (M.P.) and others**
**Order dated 25.08.2015 passed by the High Court of M.P. in Writ Petition No. 8774 of 2015, reported in 2015 (4) MPLJ 174**

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***49. MOTOR VEHICLES ACT, 1988 – Section 163-A and Schedule II**

**Benefit of structured formula provided in Schedule II, entitlement of – Such benefit can be availed by those claimants only whose annual income is up to Rs. 40,000/- – Further the held, rejection of claim made on the basis of structured formula on the ground that deceased was earning Rs. 500/- per day i.e. Rs. 15,000/- per month which comes to Rs. 1,80,000/- per year is proper.** ***Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., (2004) 5 SCC 385,*** **relied on.**

मोटर यान अधिनियम, 1988 — धारा 163 —ए और अनुसूची II

द्वितीय अनुसूची में उपलब्ध संरचनात्मक सूत्र के लाभ का हकदार होना — ऐसा लाभ उन्हीं दावेदारों द्वारा लिया जा सकता है जिनकी वार्षिक आय 40 हजार रूपये तक है— यह भी अभिनिर्धारित किया गया कि मृतक 500 रूपये प्रति दिन अर्थात 15,0000/— प्रतिमाह जो 1,80,000/— रूपये होती है कमाता था, इस आधार पर दावा खारिज

करना उचित है– *दीपल गीरिश भाई सोनी और अन्य विरूद्ध यूनाईटेट इंडिया इन्श्योरेन्स कंपनी लि. (2004) 5 एससीसी 385* पर विश्वास किया गया।

**Ramkali Bai and others v. Sudhir Yadav and another**
**Order dated 07.10.2014 passed by the High Court of M.P. in Misc. Appeal No. 972 of 2014, reported in 2015 (4) MPLJ 178**

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

**(i) Death claim – Self-employed person aged 45 years – Compensation, determination of – Law stated.**

**(ii) Age, determination of – Deceased had completed 45 years 5 months and 28 days of age – Held, since he had completed only 45 years, age to be taken is 45 years.**

**(iii) Death claim – Self-employed persons vis-à-vis persons on fixed wages – Future prospects, determination of – Law explained.**

**(iv) Divergent views between two previous three Judge Bench decisions – Rule of judicial discipline and propriety – Proper course to be followed by two Judge Bench – Law stated.**

मोटर यान अधिनियम, 1988 – धारा 166

(i) मृत्यु प्रकरण – 45 वर्षीय स्व–नियोजित व्यक्ति – प्रतिकर का निर्धारण – विधि समझाई गई।

(ii) उम्र का निर्धारण – मृतक ने 45 वर्ष 5 माह व 28 दिन की उम्र पूर्ण की थी – अभिनिर्धारित किया गया उसने 45 वर्ष की उम्र पूर्ण की थी अतः उसकी उम्र 45 वर्ष विचार ली जायेगी।

(iii) मृत्यु प्रक्रण – स्व–नियोजित व्यक्ति विरूद्ध नियत मजदूरी पर व्यक्ति – भविष्य की संभावनाओं का निर्धारण – विधि समझाई गई।

(iv) पूर्व के दो, तीन न्यायमूर्तिगण की पीठ के परस्पर विरोधी मत – न्यायिक अनुशासन का नियम और औचित्य – दो न्यायमूर्तिगण की पीठ द्वारा अनुसरित किये जाने वाला उचित मार्ग – विधि समझाई गई।

**Shashikala and others v. Gangalakshmamma and another**
**Judgment dated 13.03.2015 passed by the Supreme Court in Civil Appeal No. 2836 of 2015, reported in (2015) 9 SCC 150**

**Extracts from the Judgment:**

Without adverting to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business he was doing, in my view, the income of the deceased as stated in the income tax return for the year 2006-07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e. Rs.20,290/- is to be deducted towards income tax and the remaining comes to Rs.1,82,620/-. The

amount to be deducted for professional tax is Rs.2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs.20,000/- and after deducting the same, the net amount comes to Rs.1,60,220/-. Deducting 1/4th (one/fourth) towards personal expenses which comes out to Rs.40,055/-, the loss of dependency/loss of contribution is arrived at Rs.1,20,165/- per annum.

Insofar as appropriate multiplier, the date of birth of the deceased as per driving licence was 16.6.1961. On the date of accident i.e. 14.12.2006, the deceased was aged 45 years, 5 months and 28 days and the tribunal has taken the age as 46 years. Since the deceased has completed only 45 years, the High Court has rightly taken the age of the deceased as 45 years and adopted multiplier 14 which is the appropriate multiplier and the same is maintained. Total loss of dependency is calculated at Rs.16,82,310/- (Rs.1,20,165/- x 14).

With respect to the award of compensation towards conventional heads, the tribunal has awarded only Rs.10,000/- towards loss of consortium and Rs.10,000/- towards love and affection, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral charges. The High Court totally awarded Rs.45,000/- towards conventional heads such as loss of estate, loss of love and affection, loss of consortium, transportation of dead body and funeral expenses. In various decisions, this Court has held that substantial compensation is to be awarded towards conventional damages like loss of consortium, loss of love and affection and funeral expenses. In ***Rajesh v. Rajbir Singh , (2013) 9 SCC 54 and Jiju Kuruvila v. Kunjujamma Mohan, (2013) 9 SCC 166,*** this Court has awarded substantial amount of Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Following the same, Rs.1,00,000/- is awarded towards loss of consortium and Rs.1,00,000/- towards loss of love and affection to the minor children and Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of estate totalling to Rs.2,50,000/-. Thus, the compensation awarded to the claimants is enhanced to Rs.19,32,310/-.

In the result, the compensation awarded to the claimants is enhanced and the compensation is awarded at Rs.19,32,310/-. The enhanced compensation of Rs.4,62,938/- is payable with interest at the rate of 9% per annum from the date of the claim petition till the date of realisation. Out of enhanced compensation of Rs.4,62,938/-, Rs.3,12,938/- alongwith accrued interest shall be paid to the first appellant-wife of the deceased, balance Rs.1,50,000/- alongwith accrued interest shall be apportioned amongst the claimants 2 to 4. If the appellants 2 to 4 are still minors claimants, their share of the enhanced compensation shall be invested in a nationalized bank on the same terms as directed by the High Court. In case, the appellants No. 2 to 4 have already attained majority, they are permitted to withdraw their entire share of apportioned compensation.

It is worth mentioning that the reference even in the case of a perceived conflict or disagreement with the views of a two judge (or even a three judge) Bench does not permit a lower Bench formation to refer the matter straightway to a five Judge Bench. This principle was stated in ***Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangha, (2001) 4 SCC 448***. In that judgment, the Constitution Bench held that a decision of a Constitution Bench binds Benches of two and three learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they can direct that the matter to be heard by a Bench of three learned Judges. In ***Pradip Chandra Parija v. Pramod Chandra Patnaik*** a Bench of two learned judges expressed reservations with the judgment of a three judge Bench and directed the matter to be placed before a larger Bench of five judges. The Constitution Bench held that the rule of 'judicial discipline and propriety' as well as the theory of precedents permitted only a Bench of the same quorum to question the correctness of the decision by another Bench of co-ordinate strength upon which the matter can be placed for consideration by a Bench of larger quorum. A Bench of lesser quorum cannot thus, express disagreement with, or question the correctness of, the view of a Bench of a larger quorum.

***Central Board of Dawoodi Bohra Community v. State of Maharashtra, (2005) 2 SCC 673*** summarized, for future guidance, the correct approach in such matters. The relevant para of the said case is extracted hereunder:-

> "12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:
>
> > (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.
> >
> > (2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

> (3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in ***Union of India v. Raghubir Singh, (1989) 2 SCC 754*** and ***Union of India v. Hansoli Devi, (2002) 7 SCC 273.***"

Hence, I am of the opinion that ***Rajesh*** (sura) itself applied the ***Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421,*** even while clarifying that for self employed individuals, age is also a determining factor, as is seen in the observation in the case of ***Rajesh*** (supra) that in the case of self- employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects.

In fact, this gives shape to the view that future prospects are to be taken into account even in case of self employment and also that there cannot be a set formula for determining such compensation. The best application of this view may be seen in ***Sanjay Verma v. Haryana Roadways, (2014) 3 SCC 210*** where the facts were noticed as follows :

> "The appellant was a self-employed person. Though he had claimed a monthly income of Rs.5000/-, the income tax returns filed by him demonstrate that he had paid income tax on an annual income of Rs.41,300/-. No fault, therefore, can be found in the order of the High Court which proceeds on the basis that the annual income of the claimant at the time of the accident was Rs 41,300/-."

Then, this Court after noticing the decisions of this Court in the cases of ***Sarla Verma v. DTC, (2009) 6 SCC 121, Santosh Devi (supra)*** and the three Judge Bench of this Court in ***Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65*** and ***Rajesh*** (supra) applied the law in the following manner in **Sanjay Verma's case** (supra):-

"Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.

Insofar as the multiplier is concerned, as held in ***Sarla Verma*** (supra) or as prescribed under the Second Schedule to the Act, the correct multiplier in the present case cannot be 15 as held by the High Court. We are of the view that the adoption of the multiplier of 17 would be appropriate. Accordingly, taking into account the addition to the income and the higher multiplier the total amount of compensation payable to the claimant under the head "loss of income" is Rs.10,53,150/- (Rs.41,300/- + Rs.20,650/- = Rs.61,950/- x 17)."

The clarification of the position, by a three judge Bench, in ***Rajesh*** (supra), ipso facto could not have led to the conclusion that there was a conflict between the views of various Benches, since ***Santosh Devi*** (supra) itself had noticed ***Sarla Verma*** (supra), the logic of which in respect of limiting compensation for non-permanent employment was clarified.

The above facts recount the position as emerging from a combined reading of various orders and judgments. What is clear is that a two judge Bench as was the formation in the case of ***National Insurance Company Ltd. v. Pushpa, (2015) 9 SCC 166*** could not, having regard to the settled legal principle outlined in the decision of this Court in Central Board of ***Dawoodi Bohar Community v. State of Maharashtra, (2005) 2 SCC 673*** have referred the matter to a larger Bench. The correct view would have been to place the matter before a Bench of co-ordinate strength which decided ***Reshma Kumari*** (supra) and ***Rajesh*** (supra), i.e. three judges.

However, I agree that the matter in relation to future prospects to be added to the annual income to determine the compensation towards loss of dependency cannot be finally decided by us and has to be ultimately referred to a larger Bench because I was a party to the reference in ***National Insurance Co. Ltd. v. Pushpa*** (supra) and more importantly, cannot in propriety recall that reference while I am part of another Bench presently. In view of the observations, the matter has to be placed before the Hon'ble Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench in accordance with law.

Since we have disagreed only insofar as the addition towards the future prospects in case of self-employed or fixed wages to be added to the compensation towards the dependency, the matter may be placed before the

Hon'ble the Chief Justice of India for appropriate orders towards the constitution of a suitable larger Bench to decide the said issue.

Pendente lite the said issue, the enhanced compensation of Rs. 4,62,938/- along with interest at the rate of 9% p.a. from the date of the claim petition till the date of realisation shall be paid within four weeks from today by way of a demand draft or be deposited before the Motor Accident Claims Tribunal, Bangalore, to enable the appellants herein to withdraw the same.

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

**Divergent views of Benches of equal strength – Authoritative pronouncement, need therefor.**

**Claim – Compensation – Future prospects vis-à-vis persons who are self-employed or on fixed wages, determination of – Law explained – Divergent views in *Rajesh v. Rajbir Singh, (2013) 9 SCC 54 and Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65* with regard to addition of income for future prospects vis-à-vis persons who are self-employed or on fixed wages – Views taken in *Reshma Kumari case* (supra) not taken note of in later case of *Rajesh case* (supra) – Matter referred to larger Bench.**

मोटर यान अधिनियम, 1988 – धारा 166

समान संख्या की पीठ द्वारा विरोधी मत – अधिमान्य निर्णय की आवश्यकता।

दावा – प्रतिकर – व्यक्ति जो स्व–नियोजित है या नियत मजदूरी पर है उनके भविष्य की संभावनाओं का निर्धारण – विधि समझाई गई – *राजेश विरूद्ध राजबीर सिंह, (2013) 9 एससीसी 54 और रेशमा कुमारी विरूद्ध मदन मोहन, (2013) 9 एससीसी 65* में स्व–नियोजित व्यक्ति या नियत मजदूरी के व्यक्ति के भविष्य की संभावनाओं के लिए अतिरिक्त आमदनी जोड़ने के बारे में दो परस्पर विरोधी अभिमत – *रेशमा कुमारी* के प्रकरण में लिया गया अभिमत बाद के प्रकरण राजेश के उक्त मामले में में विचार में नहीं लिया गया – मामला बड़ी पीठ का निर्देशित किया गया।

**National Insurance Company Limited v. Pushpa and others**

**Order dated 25.08.2015 passed by the Supreme Court in SLP (C) No......... (CC No. 8058 of 2014), reported in (2015) 9 SCC 166**

**Extracts from the Order:**

We think it appropriate to refer to the decisions in chronology and what has been laid down therein. In ***Sarla Verma v. DTC, (2009) 6 SCC 121,*** this Court, while dealing with the issue of addition of income for future prospects, took note of the decisions in ***Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176, Sarla Dixit v. Balwant Yadav, (1996) 3 SCC 179*** and ***Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148*** and in para 24 opined thus [***Sarla Verma case*** (supra)]:

> "24. In ***Susamma Thomas*** (supra), this Court increased the income by nearly 100%, in ***Sarla Dixit*** (supra) the income was increased by 50% and in ***Abati Bezbaruah*** (supra) the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words 'actual salary' should be read as 'actual salary less tax'.) The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardize the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made in rare and exceptional cases involving special circumstances."

In ***Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421,*** the Court while dealing with the contention of addition of income for the future prospects to a case where the deceased was neither a government servant nor was a permanent employee of a corporation or a company which may have ensured increase in his income from time to time, referred to para 24 of the judgment in ***Sarla Verma*** (supra) and stated thus:

> "We find it extremely difficult to fathom any rationale for the observation made in para 24 of the judgment in ***Sarla Verma*** (supra) that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc. would remain the same throughout his life.
>
> The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and

maximum on those who are self employed or get fixed income/emoluments. They are the worst affected people. Therefore, they put in extra efforts to generate additional income necessary for sustaining their families.

The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in echelons of service will cross the figure of Rs. 1 lakh.

Although the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors, but it cannot be denied that there has been incremental enhancement in the income of those who are self employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching clothes. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason, etc.

Therefore, we do not think that while making the observations in the last three lines of para 24 of ***Sarla Verma*** (supra) judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes the victim of an accident then the same formula deserves to be applied for calculating the amount of compensation."

In ***Rajesh v. Rajbir Singh, (2013) 9 SCC 54***, a three Judge Bench, delivered the judgment on 12.04.2013, opining thus:

> "Since, the Court in ***Santosh Devi case*** (supra) actually intended to follow the principle in the case of salaried persons as laid down in ***Sarla Verma case*** (supra) and to make it applicable also to the self employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the age. In other words, in the case of self employed or persons with fixed wages, in case, the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 30-40 years.
>
> In ***Sarla Verma case*** (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50-60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter."

In ***Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65*** which was decided on 02.04.2013, the three Judge Bench was dealing with the reference made by the two Judge Bench [***Reshma Kumar v. Madan Mohan, (2009) 13 SCC 422***] and one of the questions that was referred to it reads as follows:

> "Whether for determination of the multiplicand, the 1988 Act provides for any criterion, particularly as regards determination of future prospects?"

While answering the same, the Court referred to para 24 of ***Sarla Verma case*** (supra) and held thus:

> "The standardization of addition to income for future prospects shall help in achieving certainty in arriving at appropriate compensation. We approve the method that an addition of 50% of actual salary be made to the actual salary income of the deceased towards future prospects where the deceased had a permanent job and was below 40 years and the addition should be only 30% if the age of deceased was 40-50 years and no addition should be made where age of deceased is more that 50 years. Where the annual

income is in taxable range, the actual salary shall mean actual salary less tax. In the cases where the deceased was self employed or was on a fixed salary without provision for annual increments, the actual income at the time of death without any addition to income for future prospects will be appropriate. A departure from the above principle can only be justified in extraordinary circumstances and very exceptional cases.

□ □ □

While making addition to income for future prospects, the Tribunals shall follow para 24 of the judgment in ***Sarla Verma case*** (supra)"

Be it noted, though the decision in ***Reshma*** (supra) was rendered at earlier point of time, as is clear, the same has not been noticed in ***Rajesh*** (supra) and that is why divergent opinions have been expressed.

We are of the considered opinion that as regards the manner of addition of income for future prospects there should be an authoritative pronouncements. Therefore, we think it appropriate to refer the matter to a larger Bench. Let the papers be placed before Hon'ble the Chief Justice of India for constitution of appropriate larger Bench.

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**52. MOTOR VEHICLES ACT, 1988 – Section 166 (2)**

**Territorial jurisdiction of Claims Tribunal – Claimant, owner and driver of vehicle are residents and carry on their business in District Umariya – Vehicle was insured by a branch office of insurance company at Shahdol – Accident took place in Umariya District – Claim application was filed before Claims Tribunal at Katni – Whether Claims Tribunal at Katni has territorial jurisdiction to entertain the claim application because the branch office of Insurance Company is situated at Katni and it carries on its business from that office? Held, No. [*Sonic Surgical v. National Insurance Co. Ltd., (2010) 1 SCC 135* relied on].**

मोटर यान अधिनियम, 1988 – धारा 166 (2)

दावा अधिकरण का प्रादेशिक क्षेत्राधिकार – दावेदार, वाहन का मालिक और चालक जिला उमरिया के निवासी और वहीं व्यवसाय कर रहें है – वाहन बीमा कंपनी की शहडोल शाखा में बीमित था – दुर्घटना जिला उमरिया में हुई – दावा अधिकरण कटनी के समक्ष दावा आवेदन प्रस्तुत किया गया – क्या कटनी स्थित दावा अधिकरण को क्लेम आवेदन ग्रहण करने का प्रादेशिक अधिकार है क्योंकि बीमा कंपनी की एक शाखा कटनी में स्थित है और वहाँ उसका व्यापार चला रही है ? अभिनिर्धारित किया गया, नहीं। *''सोनी सर्जिकल विरूद्ध नेशनल इन्शोरेन्स कंपनी लि., 2010 (1) एससीसी 135* पर विश्वास किया गया।

**Ravendra Singh v. Sonu Rajak and others**

**Judgment dated 08.01.2014 passed by the High Court of M.P. in W.P. No. 1383 of 2013, reported in 2015 ACJ 2512**

**Extracts from the Judgment:**

I am of the considered view that the court below has committed grave error. Merely because the insurance company has branch office in Katni that would not amount that any court where a branch office of Insurance company is situated would have jurisdiction to deal with the matter. Under Section 166 (2) of the Motor Vehicles Act, 1988 the jurisdiction is conferred based on option of the claimant subject to condition that claimant should be either residing within the jurisdiction of claims tribunal where proceedings are initiated or the defendant should be residing or carries on business. Merely because United India Insurance Company Ltd. has its branch office at Katni also it cannot provide jurisdiction under provision of Section 166 (2) of the Motor Vehicles Act.

Similar question was considered by the Supreme Court in the case of ***Sonic Surgical v. National Insurance Company, (2010) 1 SCC 135*** and after taking note of the question of jurisdiction for complaint to be filed under the Consumer Protection Act in a place where branch office of insurance company is situated, the learned Supreme Court held that merely because branch office of the Insurance Company is situated in various places all over the country, the cause of action would not arise in every place where the branch office of insurance company is situated. It has been indicated that for finding out cause of action in the matter and question with regard to availability of jurisdiction territorial in nature an ancillary question with regard to the place of business of the insurance company and the condition for insuring the vehicle is liable to be considered. Merely because branch office is situated at a place, the cause of action would not arise.

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

**(i) Whether compounding fee as applicable in Negotiable Instruments cases pursuant to the judgment of *Damodar S. Prabhu v. Sayyad Baba Lal H., (2010) 5 SCC 663* is applicable to cases which are compounded after 03.05.2010 retrospectively irrespective of the date on which the cheque is executed?**

**(ii) Whether compounding of cases under Negotiable Instruments Act if the cheque dated is prior to pronouncement of judgment in *Damodar S. Prabhu's case* (supra) i.e. 03.05.2010, the compounding fee is not levyable?**

**Held, even if the date of cheque is prior to the pronouncement of the judgment in Damodar S. Prabhu's case (supra), that will make no difference – The relevant fact (or relevant date) to be kept in mind is: when the compounding application is made and is being considered – Not the date on which the cheque is issued.**

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

**(i)** **क्या परक्राम्य लिखत के मामलों में लागू शमन शुल्क जो कि** दामोदर एस. प्रभु विरूद्ध सैयद बाबा लाल एच. (2010) 5 एस.सी.सी. 663 **के निर्णय के संदर्भ में उन मामलों में भी लागू होती है जिनमें 3 मई 2010 के बाद शमन होता है चाहे चैक की तारीख जो भी हो ?**

**(ii)** क्या परक्राम्य लिखत अधिनियम के मामलों में समझौता, यदि चैक दामोदर एस. प्रभु के प्रकरण के निर्णय दिनांक 03–05–2010 की घोषणा के पूर्व की हो तो समझौता शुल्क अधिरोपित नहीं किया जाता है ?

अभिनिर्धारित किया गया चाहे चैक की तारीख दामोदर एस.प्रभु के प्रकरण के निर्णय के घोषित होने के पूर्व की हो, इससे कोई अंतर नहीं आता है– सुसंगत तथ्य (या सुसंगत तारीख) जो मस्तिष्क में रखना है वह जब शमन के लिए आवेदन दिया जाता है और विचार में लिया जाता है– न कि चैक जारी करने की तारीख।

**Verendra v. Shri Ram Transport Finance Co. Ltd.**

**Order dated 17.11.2015 passed by the High Court of M.P. in Criminal Revision No. 2404 of 2015, reported in 2015 (3) JLJ 444 (DB)**

**Extracts from the Order:**

As regards the first question, the same is answered in paragraph 16 of the decision of the Supreme Court in the case of ***Damodar S.Prabhu v. Sayed Babalal H., (2010) 5 SCC 663***. From the last sentence of paragraph 16, it is amply clear that the directions given by the Supreme Court (as noted in paragraph 15), should be given effect prospectively.

As per the guidelines formulated by the Supreme Court, compounding of such cases can be allowed at different stages of the proceedings pending before the Trial Court or Appellate Court or for that matter Revisional Court, as the case may be. Depending on the stage during which the compounding application is made, the amount towards compounding cost has been specified. That, however, can be and ought to be levied on case to case basis. Thus, the fact that the cheque is issued prior to 3rd May, 2010, on which date the Supreme Court formulated the guidelines, will make no difference. Accordingly, the first question formulated by the learned Single Judge does not require any further elaboration and is answered accordingly.

Reverting to the second question, the same is another shade of the first question. As aforesaid, even if the date of cheque is prior to pronouncement of the judgment in **Damodar S. Prabhu's case** (supra), that will make no difference. The relevant fact to be kept in mind is: when the compounding application is made and is being considered. Not the date on which cheque is issued.

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

**(i) Whether action can be taken against a guarantor u/s 138 of N.I. Act? Held, Yes.**

**(ii) Effect of non-filing of list of witnesses along with complaint – The party complaining against such non-compliance must establish prejudice.**

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

(i) क्या एक जमानतदार के विरूद्ध धारा 138 एन.आई. एक्ट के अधीन कार्यवाही की जा सकती है ? अभिनिर्धारित किया गया, हाँ।

(ii) परिवाद के साथ गवाहों की सूची प्रस्तुत न करने का प्रभाव – पक्षकार जो ऐसे अननुपालन की शिकायत करता है उसे उसके हितों पर प्रतिकूल असर गिरना स्थापित करना चाहिए।

**Rakesh Kumar Sharma v. Satpuda Narmada Kshetriya Gramin Bank**
**Order dated 24.08.2015 passed by the High Court of M.P. in Misc. Criminal Case No. 11351 of 2014, reported in 2015 (III) MPWN 54**

**Extracts from the Order:**

The respondent, in rebuttal to the contention of the petitioner that no list of witnesses was filed, has filed the said list along with IA No.1467/2015. There is no reply to the said IA by the petitioner. However, it is seen that parties have taken a diametrically opposite stand on the factum of filing of said list before the court below. Therefore, this matter may be examined from another angle. Kerala High Court dealt with this aspect in ***Madhavan Nambiar and others v. Govindan and another, 1982 Cri.L.J. 683. Para 7*** of the judgment reads as under:

> "The purpose of S.204 (2) is to convince the court that there are proper materials to support the case and to enable the accused to know in advance what are the materials that the complainant is likely to produce against him. If this purpose is served otherwise, the omission to file a list of witnesses will not vitiate the proceedings. At the most what can be stated is that the court may insist on a list of witnesses being filed and refuse to issue process before such a list is made available. Reference may be made to the decision of the Supreme Court in ***Mowu v. Supdt. Special Jail, Nowgong, 1972 SCC (Cri.) 184,*** a case which arose under S. 204 (1-A) of the Code of 1898. A similar contention was raised in that case regarding the non-production of the list of witnesses. The Supreme Court overruled the objections and observed:

> It is true that Section 204 (1-A) requires that a Magistrate shall not issue a process until a list of the prosecution witnesses has been filed before1 him. This provision is intended to be a safeguard for an accused person so that he knows beforehand what evidence is likely to be produced against him. Before the Magistrate issued the warrant he had both the complaint and the first information report before him which presumably contained particulars of the various offences charged against the petitioner, and in this particular case, the manner and the circumstances in which he was arrested as also the persons who apprehended him, the materials, that is to say, the arms and ammunition, and various documents seized from him at the time of his arrest. The complaint and the first information report, therefore, would disclose the evidence which would be relied upon by the prosecution although a list of witnesses might not have been filed before the Magistrate. Section 204 has also been the subject matter of interpretation by this Court in ***Maniyani v. State of Kerala, 1979 Ker LT 183***. It was held that mention in the complaint itself of the names of witnesses would be sufficient compliance of Section 204 (2) of the Code and that noncompliance of the provision does not automatically result in invalidating consequences or vitiate the entire trial, unless it has resulted in preiudice to the accused. In the light of the above decisions the contention that the complaint should not have been acted upon in view of the noncompliance of Section 204 (2) of the Code has no force."

In ***F.A. Poncha v. M. Meherjee, 1995 Cr.L.J.352,*** the Madras High Court opined as under:

> "Observations of T. U. Mehta, C.J. of Himachal Pradesh High Court, in ***Kanhu Ram v. Durga Ram, 1980 Cri LJ 518,*** appear to be relevant in this context. Learned Judge stated, that even if filing of a list contemplated by sub-section (2) of Section 204 Cr.P.C. was considered to be mandatory, the provisions contained in Section 465 the Code may have to be taken into consideration, before declaring the issue of process as illegal. Therefore, order issuing process cannot be set aside, unless the Court found, that it had resulted in failure of justice. It was further held, that the order had not resulted in failure of justice, since the matter had not yet proceeded further and the complainant could be asked to furnish a list of witnesses, before evidence was recorded in the case, so that the accused, for whose protection, sub-section (2) of Section 204 enacted, could

know the nature of evidence, which the complainant was likely to produce."

In ***Pramila Mahesh Shah v. Employees State Insurance Corporation and another, (2002) 2 Maharashtra Law Journal 100,*** the Nagpur Bench opined as under:

> "Coming to section 204 (2) of Criminal Procedure Code, I must say that the non-compliance of this provision does not affect the jurisdiction of the Magistrate either to issue process or to try the case. This view has been taken by the Apex Court in ***Noorkhan v. State of Rajasthan, Madhaorao Pandurang v. Yeshwant, 1969 Mh.LJ., 21; Abdullah Bhat v. Ghulam Mohd. Wani, 1972 Cri.LJ., 277 and Shashindir v. R.C.Mehta 1982 (1) BomCR 358***. The procedural laws are hand maid of justice and the question of prejudice is of paramount consideration in respect of breach of procedural provisions. Therefore, even if it was to be held that the provisions of section 204 (2) are mandatory, that, by itself, would not vitiate the issue of process or the jurisdiction of the Court and where the matter is at the initial stage, directions can be given to furnish the copy of list of witnesses, if any, before the proceedings actually commenced. The stage of the proceedings is relevant to determine the prejudice, if any, caused to the accused. In the case under consideration, the substantive proceedings had not yet started. Therefore, in the circumstances, directions to the complainant to supply copy of witnesses, if any, within a period of four weeks from the receipt of the copy of the order by the trial Court would be considered as sufficient compliance of section 204 (2) of Criminal Procedure Code, 1973."

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**55. PREVENTION OF CORRUPTION ACT, 1988 – Section 17**

**Investigation by an unauthorized officer – Whether the order passed by the Magistrate allowing the sub-inspector CBI to investigate the matter, can be sustained in law? Held, Yes, because no case of prejudice or miscarriage of justice by such investigation is made out.**

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 17

अप्राधिकृत अधिकारी द्वारा अनुसंधान– क्या मजिस्ट्रेट द्वारा पारित आदेश जिसके द्वारा सी.बी.आई. के उप–निरीक्षक को मामले में अनुसंधान की अनुमति दी गयी हो उसे विधि में स्थिर रखा जा सकता है ? अभिनिर्धारित किया गया, हाँ क्योंकि ऐसे अनुसंधान से हितों पर प्रतिकूल असर गिरना या न्याय की हानि होने का कोई मामला नहीं बनता है।

## Union of India and others v. T. Nathamuni

**Judgment dated 01.12.2014 passed by the Supreme Court in Criminal Appeal No. 2512 of 2014, reported in (2015) 3 SCC (Cri) 411 = (2014) 16 SCC 285**

**Extracts from the Judgment:**

In ***M.C. Sulkunte v. State of Mysore, (1970) 3 SCC 513***, the main question raised by the appellant in an appeal against the order of conviction was that the sanction to investigate the offence given by the Magistrate was not proper in as much as he had not recorded any reason as to why he had given permission to the Inspector of Police to investigate the offence of criminal misconduct of obtaining illegal gratification. Considering Section 5-A of the Act, Their Lordships observed:

> "Although laying the trap was part of the investigation and it had been done by a Police Officer below the rank of a Deputy Superintendent of Police, cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observations in ***State of M.P. v. Mubarak Ali, AIR 1959 SC 707,*** to the effect that when the Magistrate without applying his mind only mechanically issues the order giving permission the investigation is tainted cannot help the appellant before us."

In ***Muni Lal v. Delhi Administration, AIR 1971 SC 1525,*** this Court was considering the question with regard to the irregularity in investigation for the offence under the Prevention of Corruption Act. Following earlier decisions, this Court held:

> "From the above proposition it follows that where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that Section 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned counsel for the appellant has been unable to show us how there has been any miscarriage of justice in this case and how the accused has been prejudiced by any irregular investigation."

In the case of State of ***Haryana v. Bhajan Lal, AIR 1992 SC 604,*** this Court while considering Section 5A of the Act, held as under:

> "It has been ruled by this Court in several decisions that Section 5-A of the Act is mandatory and not directory and the investigation conducted in violation thereof bears the stamp of illegality but that illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the court for trial and where the cognizance of the case has in fact been taken and the case is proceeded to termination, the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. See ***(1) H.N. Rishbud v. State of Delhi, AIR 1955 SC 196; (2) Major E.G. Barsay v. State of Bombay, (1962) 2 SCR 195; (3) Munna Lal v. State of Uttar Pradesh, (1964) 3 SCR 88; (4) S.N. Bose v. State of Bihar, (1968) 3 SCR 563; (5) Muni Lal v. Delhi Administration, 1971 (2) SCC 48, and (6) Khandu Sonu Dhobi v. State of Maharashtra, (1972) 3 SCC 786.*** However, in ***Rishbud case*** (supra) and ***Muni Lal*** case (supra), it has been ruled that if any breach of the said mandatory proviso relating to investigation is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders as may be called for to rectify the illegality and cure the defects in the investigation."

In the case of ***A.C. Sharma v. Delhi Admn., (1973) 1 SCC 726,*** provisions of Section 5-A were again considered by this Court and held as under:

> "As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In ***H.N. Rishabud and Inder Singh v. State of Delhi*** (supra) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination of the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused

thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act, 1947. This decision was followed in ***Munna Lal v. State of U.P*** (supra) where the decision in ***State of Madhya Pradesh v. Mubarak Ali, AIR 1959 SC 707*** was distinguished. The same view was taken in the ***State of Andhra Pradesh v. M. Venugopal, (1964) 3 SCR 742*** and more recently in ***Khandu Sonu Dhobi v. State of Maharashtra*** (supra). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr Anthony deal with different points: in any event to the extent they contain any observations against the view expressed by this Court in the decisions just cited those observations cannot be considered good law."

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**56. PREVENTION OF CORRUPTION ACT, 1988 – Section 19**

**Grant of sanction for prosecution by Department of Law and Justice, validity of – Law explained.**

**Power to grant sanction for prosecution already existed with the Department of Law and Legislative Affairs since 03.02.1988 and the circular letter dated 28.02.1998 does not confer any new power and it only clarifies that the Department is a competent authority not only in respect of investigations made by Lokayukt organization but also by the State Economic Offences Investigation Wing – Further held, since power to grant sanction was delegated to the Department of Law and Justice, it cannot be said that Administrative Department had the power to decline sanctions.**

भ्रष्टाचार निवारण अधिनियम, 1988 – धारा 19

विधि और न्याय विभाग द्वारा अभियोजन चलाने की अनुमति देने की वैधानिकता – विधि समझाई गई।

अभियोजन चलाने की अनुमति देने की शक्ति दिनांक 03.02.1998 से विधि और विधायी कार्य विभाग को होना अस्तित्व में था और दिनांक 28 फरवरी, 1998 का परिपत्र कोई नई शक्ति नहीं देता है और यह केवल यह स्पष्ट करता है कि (विधि) विभाग न केवल लोकायुक्त संगठन द्वारा अनुसंधान किया गया हो तब बल्कि राज्य आर्थिक अपराध अनुसंधान विंग द्वारा अनुसंधान में भी सक्षम प्राधिकारी (अभियोजन चलाने की अनुमति देने के लिए) होता है – यह भी अभिनिर्धारित किया गया कि अभियोजन चलाने की

अनुमति देने का अधिकार विधि और न्याय विभाग को प्रत्यायोजित किया गया है अतः यह नहीं कहा जा सकता कि प्रशासनिक विभाग अनुमति से इंकार की शक्ति रखता है।

## State of Madhya Pradesh & ors. v. Anand Mohan & anr.

**Judgment dated 09.07.2015 passed by the Supreme Court in Civil Appeal No. 1971 of 2015, reported in 2015 CriLJ 3968 (SC)**

**Extracts from the Judgment:**

We are unable to accept the view taken by the High Court for the reason that from annexure P-1 and annexure P-2, it is evident that the power to grant the sanction for prosecution, already existed with the Department of Law and Legislative Affairs, since February, 1988. The circular letter dated 28.02.1998 (Annexure P-5) does not confer any new power and it only clarifies that Department of Law and Justice is a competent authority not only in respect of investigations made by Lokayukta Organization, but also the State Economic Offences Investigation Wing. The power with the appellant No.2 to grant the sanction is, in fact, conferred by the rule as amended vide notification dated 03.02.1988 published in the Official Gazette. After such amendment in the rule whereby power to grant sanction was delegated to Department of Law and Justice, it cannot said that Administrative Department had power to decline sanction as it has done vide its order dated 10.07.1997.

In ***DDA and others v. Joginder S. Monga and others, AIR 2004 SC 3291*** discussing the situation of conflict between statutory rule and executive instruction, this Court has clarified as under:

> "It is not a case where a conflict has arisen between a statute or a statutory rule on the one hand and an executive instruction, on the other. Only in a case where a conflict arises between a statute and an executive instruction, indisputably, the former will prevail over the latter. The lessor under the deed of lease is to fix the market value. It could do it areawise or plotwise. Once it does it areawise which being final and binding, it cannot resile therefrom at a later stage and take a stand that in a particular case it will fix the market value on the basis of the price disclosed in the agreement of sale."

On behalf of the respondents, reliance is placed in the case of ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, 2015 AIR SCW 784,*** but on going through said case law we find that in said case investigation agency itself filed closure report as against the appellant Sanjaysinh Ramrao Chavan, and the same was accepted by the Magistrate, as such there was no question of sanction to be obtained from the Department concerned. In the circumstances, we find that the case of ***Sanjaysinh Ramrao Chavan*** (supra,) is of little help to the present respondents.

Recently in ***State of Bihar and others v. Rajmangal Ram, AIR 2014 SC 1674*** this Court has held as under: -

> "In the instant cases the High Court had interdicted the criminal proceedings on the ground that the Law Department was not the competent authority to accord sanction for the prosecution of the respondents. Even assuming that the Law Department was not competent, it was still necessary for the High Court to reach the conclusion that a failure of justice has been occasioned. ………….."

From the sanction granted by the Law Department, copy of which is annexed as Annexure P-8, it is evident that the authority has examined the material on record before granting the sanction.

Therefore, we are of the view that the High Court has erred in law in allowing the Writ Petition filed by the respondents seeking quashing of sanction dated 20.11.2012 granted by appellant No.2, Secretary, Department of Law and Legislative Affairs, Government of Madhya Pradesh. We do not find any infirmity as to the competence of appellant No.2 to grant the sanction in the matter for the reasons discussed above. Accordingly, the appeal is allowed. The impugned order dated 03.09.2013, passed by the High Court, is set aside.

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**57. PROTECTION OF HUMAN RIGHTS ACT, 1993 – Sections 21(1), (5) & (6), 3 (1), 9 to 11, 13 to 18 and 12 (a) to (d)**

**(i) State Human Rights Commission, constitution of – Is mandatory and does not depend upon discretion of concerning State Government.**

**(ii) Vacancies of Chairpersons and Members of the Commission, filling up of – Is mandatory and is not a power simplicitor but a duty coupled with power.**

**(iii) Setting up/specifying the Human Rights Courts – The State Government directed to take appropriate steps for setting up/specifying the Human Rights Courts in every district**

**(iii) Distinction between power simplicitor and duty coupled with power, explained.**

**(iv) CCTV cameras in police stations and prisons, installation of – Directions issued to State Governments.**

**(v) Custodial violence and police torture – Cases of death and injury – Direction issued to State Governments to initiate appropriate proceedings so that custodial torture and violence in police stations and prisons is effectively prevented and dealt with.**

**(vi) Word, 'may' and 'shall', interpretation of – Whether a provision is directory or mandatory cannot be decided by the use of words 'what', 'may' and 'shall' – It depends upon object and**

**purpose of the enactment and the context in which the expression is used.**

मानव अधिकार संरक्षण अधिनियम, 1993 – धाराएं 21(1),(5) और (6), 3 (1), 9 से 11, 13 से 18 और 12 (ए) से (डी)

(i) राज्य मानव अधिकार आयोग का गठन – आज्ञापक है और संबंधित राज्य सरकार के विवेक पर निर्भर नहीं होता है।

(ii) आयोग के अध्यक्ष और सदस्यों की रिक्तियाँ भरी जाना – आज्ञापक है और यह शक्ति नहीं बल्कि कर्तव्य है जो शक्ति के साथ जुड़ा होता है।

(iii) मानव अधिकार न्यायालयों का स्थापित/ विनिर्दिष्ट करना – राज्य सरकार को प्रत्येक जिले में मानव अधिकार न्यायालय स्थापित/ विनिर्दिष्ट करने के लिए निर्देश दिये गये।

(iv) केवल शक्तियों और कर्तव्य के साथ जुड़ी शक्तियों को स्पष्ट किया गया।

(v) पुलिस थानों और जेलों में सीसीटीवी कैमरे लगाये जाना – राज्य सरकारों को निर्देश जारी किये गये।

(vi) अभिरक्षा में हिंसा और पुलिस प्रताड़ना – मृत्यु और उपहित के मामले –राज्य सरकारों को इस बारे में निर्देश जारी किये गये कि समुचित कार्यवाही प्रारंभ करे ताकि अभिरक्षा में प्रताड़ना और हिंसा जो कि पुलिस थानों और जेलों में होती है उसे प्रभावकारी तरीके से रोका जाये और लिया जाये।

(vii) शब्द **"may"** और **"shall"** का अर्थान्वयन – कोई प्रावधान निर्देशात्मक है या आज्ञापक है यह इन उपयोग किये गये शब्दों द्वारा निर्धारित नहीं होता – यह कानून के बनाने के उद्देश्य पर निर्भर करता है और यह शब्द किस संदर्भ में उपयोग किये गये है इस पर निर्भर करता है।

## D.K. Basu v. State of West Bengal and others

**Judgment dated 24.07.2015 passed by the Supreme Court in Criminal Miscellaneous Petition No. 16086 of 1997, reported in (2015) 8 SCC 744**

**Extracts from the Judgment:**

In ***D.K. Basu etc. v. State of West Bengal, (1997) 1 SCC 416 [D.K. Basu (1)]*** this Court lamented the growing incidence of torture and deaths in police custody. This Court noted that although violation of one or the other of the human rights has been the subject matter of several Conventions and Declarations and although commitments have been made to eliminate the scourge of custodial torture yet gruesome incidents of such torture continue unabated. The court described 'custodial torture' as a naked violation of human dignity and degradation that destroys self esteem of the victim and does not even spare his personality. Custodial torture observed the Court is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. The Court relied upon the Report of the Royal Commission on Criminal Procedure and the Third Report of the National Police Commission in India to hold that despite recommendations for

banishing torture from investigative system, growing incidence of torture and deaths in police custody come back to haunt.

Relying upon the decisions of this Court in ***Joginder Kumar v. State of U.P., (1994) 4 SCC 260; Smt. Nilabati Behera v. State of Orissa, (1993) 2 SCC 746; State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262 ;*** and the 113th report of the Law Commission of India recommending insertion of Section 114-B in the Indian Evidence Act, this Court held that while the freedom of an individual must yield to the security of the State, the right to interrogate the detenus, culprits or arrestees in the interest of the nation must take precedence over an individual's right to personal liberty. Having said that the action of the State, observed this Court, must be just and fair. Using any form of torture for extracting any kind of information would neither be right nor just or fair, hence, impermissible, and offensive to Article 21 of the Constitution. A crime suspect, declared the court, may be interrogated and subjected to sustained and scientific interrogation in the manner determined by the provisions of law, but, no such suspect can be tortured or subjected to third degree methods or eliminated with a view to eliciting information, extracting a confession or deriving knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be a qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal. State terrorism declared this Court is no answer to combat terrorism. It may only provide legitimacy to terrorism, which is bad for the State and the community and above all for the rule of law.

Having said that, the Court issued the following directions and guidelines in all cases of arrest and/or detention:

> "35. We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:
>
> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name togs with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
>
> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of he next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned Stare or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

This Court also examined whether compensation could be awarded and declared that pecuniary compensation was permissible in appropriate cases by way of redressal upon proof of infringement of fundamental rights of a citizen by the public servants and that the State was vicariously liable for their acts. The Court further held that compensation was payable on the principle of strict liability to which the defence of sovereign immunity was not available and that the citizen must receive compensation from the State as he/she has a right to be indemnified by the Government.

***D.K. Basu (1)*** was followed by seven subsequent orders reported in ***Dilip K. Basu v. State of W.B., (1997) 6 SCC 642; Dilip K. Basu v. State of W.B., (1998) 9 SCC 437; Dilip Kumar Basu v. State of W.B., (1998) 6 SCC 380; Dilip K. Basu v. State of W.B., (2002) 10 SCC 741; Dilip K. Basu v. State of W.B., (2003) 11 SCC 723; Dilip K. Basu v. State of W.B., (2003) 11 SCC 725; and Dilip K. Basu v. State of W.B., (2003) 12 SCC 174***. All these orders were aimed at enforcing the implementation of the directions issued in ***D.K. Basu (1)***. It is not, in our view, necessary to refer to each one of the said orders for observations made therein and directions issued by this Court simply show that this Court has pursued the matter touching enforcement of the directions with considerable perseverance.

There is, in our opinion, no merit in the contention urged on behalf of the defaulting States. We say so for reasons more than one, but, before we advert to the same we wish to point out that Protection of Human Rights Act, 1993 symbolises the culmination of a long drawn struggle and crusade for protection of human rights in this country as much as elsewhere is the world. The United Nations (UN) General Assembly in December, 1948 adopted the Universal Declaration of Human Rights which was a significant step towards formulating and recognizing such rights. It was, then, followed by an International Bill of Rights which was binding on the covenanting parties. Since the Universal Declaration of Human Rights was not legally binding and since United Nations had no machinery for its enforcement, the deficiency was removed by the UN General Assembly by adopting in December, 1965 two covenants for the observance of human rights viz. (i) the Covenant on Civil and Political Rights; and (ii) the Covenant on Economic, Social and Cultural Rights. The first covenant formulated legally enforceable rights of the individual while second required the

States to implement them by legislation. These covenants came into force in December, 1976 after the requisite number of member States ratified them. Many of the States ratified the Covenants subsequently at the end of 1981. These Covenants thus become legally binding on the ratifying States and since India is a party to the said Covenants, the President of India promulgated the Protection of Human Rights Ordinance, 1993 on 28th September, 1993 to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in the States and Human Rights Courts for better protection of human rights and for matters connected therewith. The ordinance was shortly thereafter replaced by the Protection of Human Rights Act, 1993.

In the Statement of Objects and Reasons of the Protection of Human Rights Act, 1993 it, is inter alia, mentioned that India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th December, 1966. It is further stated that the human rights embodied in the said Covenants are substantially protected by the Constitution and that there is a growing concern about the changing social realities and the emerging trends in the nature of crime and violence. The Statement of Objects and Reasons also refers to the wide ranging discussions that were held at various fora such as the Chief Ministers' Conference on Human Rights, seminars organized in various parts of the country and the meetings with leaders of various political parties, which culminated in the presentation of Protection of Human Rights Bill, 1993 that came to be passed by both the Houses of Parliament and received the assent of the President on 8th January, 1994 taking retrospective effect from 28th September, 1993. The significance of the human rights and the need for their protection and enforcement is thus beyond the pale of any debate. The movement for the protection of such rights is not confined only to India alone. It is a global phenomenon. It is, in this backdrop that the provisions of Section 21 of the Act need to be examined. It is true that a plain reading of the provisions may give the impression that the setting-up of a State Human Rights Commission rests in the discretion of the State Government. But a closer and more careful analysis of the provisions contained in the Act dispel that impression.

Section 21 of the Act, which deals with the setting-up of State Human Rights Commission, is in the following terms:

> "***21. Constitution of State Human Rights Commission.***— (1) A State Government may constitute a body to be known as the ……………………… (Name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to a State Commission under this Chapter.
>
> (2) The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—

(a) a Chairperson who has been a Chief Justice of a High Court;

(b) one Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge;

(c) one Member to be appointed from among persons having knowledge of or practical experience in matters relating to human rights.

(3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.

(4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

(5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution: Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures "List II and List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that State has power to make laws" had been substituted.

(6) Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made offer obtaining the recommendations of the committee referred to in sub-section (1) of section 22 in respect of the state for which a common chairman or member, or both, the case may be, is to be appointed."

A plain reading of the above would show that the Parliament has used the word 'may' in sub-Section (1) while providing for the setting-up of a State Human

Rights Commission. In contrast the Parliament has used the word 'shall' in sub-Section (3) while providing for constitution of a National Commission. The argument on behalf of the defaulting States, therefore, was that the use of two different expressions which dealing with the subject of analogous nature is a clear indication that while a National Human Rights Commission is mandatory a State Commission is not. That argument is no doubt attractive, but does not stand close scrutiny. The use of word 'may' is not by itself determinative of the true nature of the power or the obligation conferred or created under a provision. The legal position on the subject is fairly well settled by a long line of decisions of this Court. The stated position is that the use of word 'may' does not always mean that the authority upon which the power is vested may or may not exercise that power. Whether or not the word 'may' should be construed as mandatory and equivalent to the word 'shall' would depend upon the object and the purpose of the enactment under which the said power is conferred as also related provisions made in the enactment. The word 'may' has been often read as 'shall' or 'must' when there is something in the nature of the thing to be done which must compel such a reading. In other words, the conferment of the power upon the authority may having regard to the context in which such power has been conferred and the purpose of its conferment as also the circumstances in which it is meant to be exercised carry with such power an obligation which compels its exercise.

The ***locus classicus*** on the subject is found in ***Julius v. Bishop of Oxford, (1880) LR 5 AC 214 (HL)*** where Justice Cairns, L.C. observed:

> "…The words 'it shall be lawful' are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. ..."

Lord Blackburn in the same case observed:

> "I do not think the words "it shall be lawful" are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may

> be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf….”

A long line of decisions of this Court starting with ***Sardar Govind Rao v. State of Madhya Pradesh, AIR 1965 SC 1222*** have followed the above line of reasoning and authoritatively held that the use of the word ‘may’ or ‘shall’ by themselves do not necessarily suggest that one is directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same.

It is unnecessary to refer to all those decisions for we remain content with reference to the decision of this Court in ***Bachahan Devi v. Nagar Nigam, Gorakhpur, (2008) 12 SCC 372*** in which the position was succinctly summarized as under:

> “It is well settled that the use of word ‘may’ in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word ‘may’ as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word ‘may’, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word ‘may’ involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word ‘may’ should be interpreted to convey a mandatory force. As a general rule, the word ‘may’ is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word ‘shall’, which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words ‘may’ ‘shall’, and ‘must’ are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.
>
> The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and

> effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.
>
> If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretional and 'shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.
>
> The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determinating effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."

The above decision also dispels the impression that if the Parliament has used the words "may" and "shall" at the places in the same provision, it means that the intention was to make a distinction in as much as one was intended to be discretionary while the other mandatory. This is obvious from the following passage where this Court declared that even when the two words are used in the same provision the Court's power to discover the true intention of the legislature remains unaffected:

> “Obviously where the legislature uses two words may and shall in two different parts of the same provision prima facie it would appear that the legislature manifested its intent on to make one part directory and another mandatory. But that by itself is not decisive. The power of court to find out whether the provision is directory or mandatory remains unimpaired.”

The upshot of the above discussion that the power of the State Governments under Section 21 to set-up State Human Rights Commission in their respective areas/territories is not a power simpliciter but a power coupled with the duty to exercise such power especially when it is not the case of anyone of the defaulting States that there is no violation of human rights in their territorial limits. The fact that Delhi has itself reported the second largest number of cases involving human rights cases would belie any such claim even if it were made. So also, it is not the case of the North-Eastern States where such Commissions have not been set-up that there are no violations of Human Rights in those States. The fact that most if not all the States are affected by ethnic and other violence and extremist activities calling for curbs affecting the people living in those areas resulting, at times, in the violation of their rights cannot be disputed. Such occurrence of violence and the state of affairs prevailing in most of the States cannot support the contention that no such commissions are required in those States as there are no human rights violations of any kind whatsoever.

There is another angle from which the matter may be viewed. It touches the right of the affected citizens to “access justice” and the denial of such access by reason of non-setting up of the Commissions. In ***Imtiyaz Ahmad v. State of U.P., (2012) 2 SCC 688*** this Court has declared that access to justice is a fundamental right guaranteed under Article 21 of the Constitution. This Court observed:

> “….A person’s access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of this right undermines public confidence in the justice delivery system and incentivises people to look for short-cuts and other fora where they feel that justice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to Rule of Law.
>
> It may not be out of place to highlight that access to justice must not be understood in a purely quantitative dimension. Access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual’s access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable (See United Nations Development Programme, Access to Justice - Practice Note (2004)].”

Human rights violations in the States that are far removed from the NHRC headquarters in Delhi itself makes access to justice for victims from those states an illusion. While theoretically it is possible that those affected by violation of human rights can approach the NHRC by addressing a complaint to the NHRC for redressal, it does not necessarily mean that such access to justice for redressal of human rights violation is convenient for the victims from the states unless the States have set-up their own Commissions that would look into such complaints and grant relief. We need to remember that access to justice so much depends upon the ability of the victim to pursue his or her grievance before the forum competent to grant relief. North-Eastern parts of the country are mostly inhabited by the tribals. Such regions cannot be deprived of the beneficial provisions of the Act simply because the States are small and the setting-up of commissions in those states would mean financial burden for the exchequer. Even otherwise there is no real basis for the contention that financial constrains prevent these States from setting-up their own Commissions. At any rate, the provisions of Section 21(6) clearly provide for two or more State Governments setting–up Commissions with a common Chairperson or Member. Such appointments may be possible with the consent of Chairperson or Member concerned but it is nobody's case that any attempt had in that direction been made but the same had failed on account of the persons concerned not agreeing to take up the responsibility vis-a-vis the other State. Even the NHRC had in its Annual Report (1996-1997) suggested that if financial constraint was really one of the reasons for not setting-up of Commission in the North-Eastern Regions, the State Governments could consider setting-up such commissions by resorting to Section 21(6), which permits two States having the same Chairperson or Members thereby considerably reducing the expenses on the establishment of such Commissions.

It is a matter of regret that despite the National Human Rights Commission itself strongly and repeatedly recommending setting-up of State Commission in the States the same have not been set-up. Keeping in view the totality of the circumstances, therefore, we see no reason why the recommendation made by the Amicus for a direction to the States of Delhi, Arunachal Pradesh, Mizoram, Meghalaya, Tripura and Nagaland should not be issued to set-up State Human Rights Commission in their respective territories.

The other recommendation which the Amicus has noted for issue of suitable directions relates to the filling-up of vacancy of Chairperson and Members in several State Human Rights Commissions. The Amicus points out that in the States of Manipur and Himachal Pradesh SHRC is not functional since post of Chairperson and several Members remains unfilled. In the State of Jammu and Kashmir, the post of Chairperson and one Member is vacant. In the State of Jharkhand, the Chairperson is in position but the post of sole Member is vacant. So also, in the State of Karnataka two Members in the Commission are working while the post of Chairperson and one member remains vacant. Even in the

State of Tamil Nadu the post of Chairperson remains vacant. The Amicus states that similar is the position in several other States also which means that although States have set up SHRC, the same are dysfunctional on account of non filling-up of the vacancies on account of administrative apathy and lethargy. It was argued by the Amicus that dysfunctional SHRCs are as good as there being no such Commissions at all thereby defeating the very purpose underlying the Act and calling for a direction from this Court to the States concerned to fill up the existing vacancies immediately and also to ensure that no vacancy in the SHRC whether against the post of Chairperson or Members remains unfilled for more than three months.

There is, in our opinion, considerable merit in the submission made by the Amicus that the very purpose of setting up of the State Human Rights Commission gets defeated if vacancies that occur from time to time are not promptly filled up and the Commission kept functional at all times. There is hardly any explanation much less a cogent one for the failure of the State to take immediate steps for filling-up of the vacancies wherever they have occurred. The inaction or bureaucratic indifference or even the lack of political will cannot frustrate the laudable object underlying the Parliamentary legislation. With the number of complaints regarding breach of human rights increasing everyday even in cities like Delhi which is the power centre and throbbing capital of the county, there is no question of statutory Commissions being made irrelevant or dysfunctional for any reason whatsoever. The power available to the Government to fill up the vacancies wherever they exist is, as noticed earlier, coupled with the duty to fill up such vacancies. The States ought to realise that the Human Rights Commission set up by them are not some kind of idle formality or dispensable ritual. The Commissions are meant to be watch dogs for the protection of the human rights of the citizens and effective instruments for redressal of grievances and grant of relief wherever necessary. Denial of access to the mechanism conceptualised under the Act by reason of non filling up of the vacancies directly affects the rights of the citizens and becomes non functional. It is in that spirit that we deem it fit and proper to direct that all vacancies against the post of Chairperson and Members of the State Human Rights Commission shall be filled up by the concerned State Governments as expeditiously as possible but, in any case, within a period of three months from the date of this order. We only hope and trust that we shall be spared the unpleasant task of initiating action against the defaulting State in case the needful is not done within the time allotted. We also recommend to the State Governments that since the dates on which vacancies are scheduled to occur are known well in advance, (save and except where an incumbent dies in office) the process for appointment of the incumbents against such vacancies should be initiated well in time in future so that no post remains vacant in any State Human Rights Commission for a period or unfilled for any period for more than three months from the date the vacancy arises.

That brings us to the third recommendation that Amicus has formulated concerning the constitution of Human Rights Court in different districts in terms

of Section 30 of The Protection of Human Rights Act, 1993. Section 30 of the Act provides that the State Government shall specify with the concurrence of the Chief Justice of the High Court, for each district a Court of Session to be a Human Rights Court so that the offences arising out of violation of human rights are tried and disposed of speedily. It was submitted that while the State of Sikkim has complied with the said provision, other States are silent in that regard. It was urged that if a small State like Sikkim could comply with the requirement of specifying Sessions Courts to be Human Rights Court, there was no reason why other States cannot follow suit. There is considerable merit in that submission. Section 30 of the Act stipulates that for providing speedy trial of offences arising out of violation of human rights, the State Government, may with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court provided that if a Court of Session is already specified as a special Court or a special Court is already constituted for such offences under any other law for the time being in force, no such specification of a Court would be necessary.

There is, in our opinion, no reason why the State Governments should not seriously consider the question of specifying human rights Court to try offences arising out of violation of human rights. There is nothing on record to suggest that the Governments have at all made any attempt in this direction or taken steps to consult the Chief Justices of the respective High Courts. The least which the State Governments can and ought to do is to take up the matter with the Chief Justices of High Courts of their respective States and examine the feasibility of specifying Human Rights Court in each district within the contemplation of Section 30 of the Act. Beyond that we do not propose to say anything at this stage.

There are, apart from the above, few other recommendations made by the Amicus like installation of CCTV Cameras in all Police Stations and prisons in a phased manner, and appointment of non-official visitors to prisons and police stations for making random and surprise inspections. Initiation of human proceedings Under Section 302/304 IPC in each case where the enquiry establishes culpability in custodial death and framing of uniform definition of custodial death and mandatory deployment of atleast two women constables in each district are also recommended by the Amicus.

As regards installation of CCTV cameras in police stations and prisons, with a view to checking human rights abuse, it is heartening to note that all the States have in their affidavits supported the recommendation for installation of CCTV cameras in Police Stations and prisons. In some of the States, steps appear to have already been initiated in that direction. In the State of Bihar, CCTV cameras in all prisons and in 44 police stations in the State have already been installed. So also the State of Tamil Nadu plans to equip all police stations with CCTV cameras. State of Haryana has stated that CCTV cameras should be installed in all police stations, especially, at the entrance and in the lockups.

Union Territories of Andaman & Nicobar and Puducherry has also installed CCTV cameras in most of the police stations. Some other States also appear to be taking steps to do so. Some of the States have, however, remained silent and non-committal on the issue.

We do not for the present consider it necessary to issue a direction for installation of CCTV cameras in all police stations. We are of the opinion that the matter cannot be left to be considered by the State Governments concerned, having regard to the fact that several other State Governments have already taken action in that direction which we consider is commendable. All that we need say is that the State Governments may consider taking an appropriate decision in this regard, and appropriate action wherever it is considered feasible to install CCTV cameras in police stations. Some of these police stations may be located in sensitive areas prone to human rights violation. The States would, therefore, do well in identifying such police stations in the first instance and providing the necessary safeguard against such violation by installing CCTV camera in the same. The process can be completed in a phased manner depending upon the nature and the extent of violation and the experience of the past.

In regard to CCTV cameras in prison, we see no reason why all the States should not do so. CCTV cameras will help go a long way in preventing violation of human rights of those incarcerating in jails. It will also help the authorities in maintaining proper discipline among the inmates and taking corrective measures wherever abuses are noticed. This can be done in our opinion expeditiously and as far as possible within a period of one year from the date of this order.

**TO SUM UP:**

1. The States of Delhi, Himachal Pradesh, Mizoram, Arunachal Pradesh, Meghalaya, Tripura and Nagaland shall within a period of six months from today set up State Human Rights Commissions for their respective territories with or without resort to provisions of Section 21(6) of the Protection of Human Rights Act, 1993.
2. All vacancies, for the post of Chairperson or the Member of SHRC wherever they exist at present shall be filled up by the State Governments concerned within a period of three months from today.
3. Vacancies occurring against the post of Chairperson or the Members of the SHRC in future shall be filled up as expeditiously as possible but not later than three months from the date such vacancy occurs.
4. The State Governments shall take appropriate action in terms of Section 30 of the Protection of Human Rights Act, 1993, in regard to setting up/specifying Human Rights Courts.
5. The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years.

6. The State Governments shall also consider installation of CCTV cameras in police stations in a phased manner depending upon the incidents of human rights violation reported in such stations.
7. The State Governments shall consider appointment of non-official visitors to prisons and police stations in terms of the relevant provisions of the Act wherever they exist in the Jail Manuals or the relevant Rules and Regulations.
8. The State Governments shall launch in all cases where an enquiry establishes culpability of the persons in whose custody the victim has suffered death or injury, an appropriate prosecution for the commission of offences disclosed by such enquiry report and/or investigation in accordance with law.
9. The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years.

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**58. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Section 12**

**Whether calling for and consideration of the domestic incident report, if not available at the time of issuance of notice on an application under section 12 of the Act, is mandatory? Held, No – If it is available, the Magistrate shall take into consideration before issuing the notice on that application –** ***Shri Ram Singh v. Smt. Maya Singh and others, 2012 (4) MPHT 169*** **explained –** ***Ajay Kant Sharma and others v. Smt. Alka Sharma, 2008 CriLJ 264*** **held to be per incurium in light of judgment of the Apex Court in the case of** ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, AIR 2010 SC 2239*****.**

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धारा 12

**क्या धारा 12 अधिनियम के एक आवेदन पर सूचना पत्र जारी करते समय यदि घरेलू घटना की सूचना उपलब्ध न हो तो उसे बुलाना और विचार में लेना आज्ञापक है ? अभिनिर्धारित किया गया, नहीं– यदि उपलब्ध हो तब मजिस्ट्रेट ऐसे आवेदन पर सूचना पत्र जारी करने के पूर्व उसे विचार में लेगा–** श्री रामसिंह विरूद्ध श्रीमती मायासिंह, 2012 (4) एम.पी.एच.टी. 169 को स्प''ष्ट किया गया– अजयकांत 'शर्मा और अन्य विरूद्ध श्रीमती अल्का 'शर्मा – 2008 सी.आर.एल.जे. 264 **सर्वोच्च न्यायालय के निर्णय** राजकुमार शिवहरे विरूद्ध असिस्टेण्ट डायरेक्टर, डायरेक्टरेट आफ इन्फोर्समेण्ट और एक अन्य, ए.आई.आर. 2010 एस.सी.2239 **के प्रकाश में पर इन्क्युरियम है।**

**Ravi Kumar Bajpai and another v. Smt. Renu Awasthy Bajpai**
**Order dated 16.09.2015 passed by the High Court M.P. in Misc. Criminal Case No. 14047 of 2013 (Unreported case)**

**Extracts from the Order:**

In view of the foregoing, the precise questions in the case called upon to answer is to whether the report of the Protection Officer or the Service Provider, if not available is obligatory to call at the time of issuance of notice on the application under Section 12 of the Domestic Violence Act, or its consideration is mandatory on availability of such report?

In view of the foregoing discussion and the ambiguity arose by the judgment of ***Ajay Kant Sharma and others v. Smt. Alka Sharma, 2008 CriLJ 264, Tehmina Qureshi v. Shazia Qureshi, 2010 (1) MPHT 133*** and ***Shri Ram Singh v. Smt. Maya Singh, 2012 (4) MPHT 169*** is hereby explained that the judgment of ***Ajay Kant Sharma*** (supra) incorporating the meaning of “any order”which means final order is held to be ***per incuriam*** in the light of the judgment of Apex Court in the case of ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, AIR 2010 SC 2239*** and to such extent the judgment of ***Shri Ram Singh*** (supra) is held to be good. Simultaneously the finding recorded that it is not necessary to the Magistrate to consider the report of the Protection Officer or Service Provider before issuance of the notice is also not held to be good. But the findings in the said case holding that it is not obligatory for a Magistrate to call for the report at the stage of taking cognizance may be held to be good and in consonance to the spirit of the Act. In fact, if the report of the Protection Officer or Service Provider is available then its consideration is obligatory even at the stage of issuance of notice or at the time of passing final order as the case may be, affording opportunity to other side. It may be explained by example that under Section 12 on behalf of the aggrieved person if any application is filed by the Protection Officer or Service Provider attaching a report then it is obligatory on the Magistrate to consider the same at the time of issuance of summons but in case the complaint is filed by the complainant without having report then Magistrate is not bound to call for or await the report of the Protection Officer, and defer the proceeding awaiting the report before passing an order taking cognizance. Simultaneously, it is to be further held that in ***Tehmina Qureshi*** (supra) relying upon the judgment of ***Ajay Kant Sharma*** (supra) the interpretation of Section 2(q) made by this Court is against the judgment of Hon’ble Apex Court in the case of ***Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade and others, 2011 Cri.L.J. 1687.*** In view of the discussion made hereinabove the judgment of ***Ajay Kant Sharma*** (supra) is held to be ***per incuriam***, except on the point that calling of the report from the Protection Officer at the stage of taking cognizance is not obligatory.

In consequence to the above discussion and on plain reading of Section 12 of the Domestic Violence Act, as a whole the complaint can be presented by an aggrieved person, Protection Officer or Service Provider before the Magistrate seeking one or more reliefs as specified under Sections 18, 19, 20, 21, 22, 23 and 31. Upon filing of such an application, the procedure enumerated in Code of Criminal Procedure, 1973 be followed and the Court is not prevented

from laying down its own procedure for disposal of an application under Section 12 or sub-section (2) of Section 23. On plain reading of proviso attached to Section 12(1), it is clear that before passing any order on such application under sub-section (1) of Section 12, if the report of Protection Officer is available, the Magistrate shall take into consideration. Thus, word used "the Magistrate shall take into consideration" is only with respect to a report if it is available and not to call for it at the time of taking cognizance. However, the obligation of a Magistrate is only to the extent to consider the report if available with a view to affording an opportunity to other side.

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***59. SENTENCING:**

**Sentencing – Appropriate sentence, imposition of – Appropriate sentence is to be awarded keeping in view the gravity and nature of an offence, the manner of commission of a crime, the age of the accused person and other mitigating and aggravating circumstances.**

दण्डाज्ञा :

दण्डाज्ञा – युक्तियुक्त दण्ड अधिरोपित करना – युक्तियुक्त दण्ड अपराध की गंभीरता और प्रकृति, अपराध करने के तरीके, अभियुक्तगण की उम्र और अन्य शमनकारी और वृद्धिकारक परिस्थितियों के क्रम में अधिरोपित किया ही जाना चाहिए।

**Sushil Ansal and others v. State through CBI**

**Judgment dated 22.09.2015 passed by the Supreme Court in Criminal Appeal No. 597 of 2010, reported in 2015 CrLR (SC) 1062 (Three Judge Bench)**

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**60. SPECIFIC RELEIF ACT, 1963 – Section 16 (c)**

**Relief of specific performance of contract of sale, entitlement of – Plaintiff did not make payment according to contract and also did not respond to defendant's reply to notice to the effect that defendant is ready and willing to execute the sale deed as per terms and conditions of the agreement – Plaintiff had not come to Court with clean hands as he tried to support his case on the basis of fabricated document – Held, plaintiff is not entitled to relief of specific performance of contract – Suit rightly rejected by the trial Court.**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16 (सी)

संविदा के विनिर्दिष्ट पालन के अनुतोष का हकदार होना – वादी ने संविदा के अनुसार भुगतान नहीं किया साथ ही प्रतिवादी के सूचना पत्र के जबाब का कि प्रतिवादी अनुबंध की शर्तों और दशाओं के अनुसार विक्रय पत्र निष्पादित करने के लिए तत्पर और इच्छुक है (इस पर) कोई ध्यान नहीं दिया – वादी स्वच्छ हाथों से न्यायालय में नहीं आया था और उसने उसके मामले का समर्थन कूट रचित दस्तावेजों के आधार पर किया – अधिनिर्धारित किया गया कि वादी संविदा के विनिर्दिष्ट पालन का अनुतोष पाने का हकदार नहीं है – वाद विचारण न्यायालय द्वारा सही खारिज किया गया।

## Ashok Kumar Barman v. Kanti Gupta

**Order dated 09.12.2014 passed by the High Court of M.P. First Appeal No. 267 of 2009, reported in 2015 (4) MPLJ 188**

**Extracts from the Order:**

For seeking relief of specific performance of the contract it is mandatory for a plaintiff to plead and prove compliance of Sec. 16 (1)(c) of the Specific Relief Act otherwise the decree in order to specific performance cannot be granted to a plaintiff.

The provision of Section 16 (c) of the Specific Relief Act, 1963 (in short "the Act" ) are as follows:

> "*16. Personal bars to relief* – Specific performance of a contract cannot be enforced in favour of a person –
>
> (a)¬(b) xxx
>
> (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant"

The basic principle behind Section 16 (c) read with Explanation (ii) is that any person seeking benefit of the specific performance of contract must manifest that his conduct has been blemishless throughout entitling him to the specific relief. The provision imposes a personal bar. The Court is to grant relief on the basis of the conduct of the person seeking relief. If the pleadings manifest that the conduct of the plaintiff entitles him to get the relief on perusal of the plaint he should not be denied the relief.

Section 16 (c) of the Act mandates the plaintiff to aver in the plaint and establish as the fact by evidence aliunde that he has always been ready and willing to perform his part of the contract. These aspect were highlighted in ***Sugani v. Rameshwar Das (2), (2006)11 SCC 587***.

See also on this point ***Kamrun Nisha v. Pramod Kumar, ILR 1996 MP 393***.

In the instant case the terms and conditions of the contract which were to be performed by the parties have been mentioned in Para¬4 of Ex.P¬1 which reads as follows:

यह कि भूखण्ड की राशि में क्रेता घरेलू परिस्थिति में देने में असमर्थ हूँ। अतः उक्त राशि रू. 77,500/– अंकन सतत्तर हजार पांच सौ रूपया एक वर्ष के अन्दर चुकता कर दूंगा। तथा यह राशि आप क्रेता से प्राप्त करके आपके नाम पर विक्रय पत्र का निष्पादन कर कब्जा दखल मालिकाना अधिकार सौंप देगा। मैं क्रेता प्रतिमाह कम से कम रू0 1,000/– अंकन एक हजार रूपया मात्र देता जाउंगा। शेष राशि एक वर्ष की अवधि पूर्ण होने के पूर्व चुकता कर देंगे। यह कि रजिस्ट्री का जो भी खर्चा है वह क्रेता पक्षकार को वहन करना होगा। साथ ही आप क्रेता को समचय के अन्दर रजिस्ट्री कराना अनिवार्य होगा।

As discussed earlier it has already concluded that the plaintiff has not made any payment according to Para4 of the contract quoted above. Apart from this, the plaintiff does not have clean hands because he has sought the support of his fabricated document Ex.P2 to prove his case. Moreover, when the notice (Ex.P3) got issued by the plaintiff it was replied by the defendant vide Ex.P6 stating that he was ready and willing to execute the sale deed as per terms and conditions of Ex.P1, if the plaintiff was ready to pay the entire amount of consideration. The plaintiff did not reply of Ex.P6 to show his willingness for getting sale deed executed after paying the consideration. The said circumstances also leads to the conclusion that the plaintiff himself was not willing to perform the contract as possibly he had no money for the same.

In view of the above circumstances, as per Sec. 16 of the Specific Relief Act, the plaintiff is not entitled to get the relief sought in the plaint. Therefore, the learned trial Court has not committed any error in dismissing the suit. Having taken into account the recorded evidence, this Court comes to the conclusion that findings given by the learned trial Court for rejection of the suit for relief of specific performance of the contract being just and proper are hereby affirmed and no interference is required in them as a result the appeal is hereby dismissed.

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**61. SPECIFIC RELEIF ACT, 1963 – Section 20**

**(i) Finding recorded by criminal court, whether conclusive proof? Held, it cannot be the conclusive proof of existence of any fact particularly, the existence of agreement to grant decree for specific performance without independent finding by civil court.**

**(ii) Alleged agreement was executed on a quarter sheet of paper and not on a proper stamp and written in small letters – No opinion of handwriting expert about execution of documents sought for – Held, not a fit case where the discretionary relief for specific performance to be granted in favour of the plaintiff.**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) क्या दण्ड न्यायालय द्वारा अभिलिखित निष्कर्ष निश्चायक सबूत होते हैं ? अभिनिर्धारित किया गया, ये (दण्ड न्यायालय के निष्कर्ष) सिविल न्यायालय के स्वतंत्र निष्कर्ष के अभाव में, किसी भी तथ्य के अस्तित्व के बारे में निश्चायक सबूत नहीं माने जा सकते विशेषकर विनिर्दिष्ट अनुतोष की आज्ञप्ति देने के लिए अनुबंध का अस्तित्व।

(ii) अभिकथित अनुबंध एक कागज के एक चौथाई हिस्से पर निष्पादित था और उचित स्टाम्प पर नहीं था – छोटे अक्षरों में भी लिखा था – दस्तावेज के निष्पादन के बारे में हस्तलेख विशेषज्ञ की राय भी नहीं मांगी गयी थी – अभिनिर्धारित किया गया, यह वादी के पक्ष में विनिर्दिष्ट अनुतोष का विवेकीय अनुतोष देने का उचित मामला नहीं है।

**K. Nanjappa (dead) by LRs. v. R.A. Hameed alias Ameersab (dead) by LRs. and another**
**Judgment dated 02.09.2015 passed by the Supreme Court in Civil Appeal No. 8224 of 2003, reported in AIR 2015 SC 3389**

**Extracts from the Judgment:**

In the instant case while deciding the issue as to whether the agreement of 1967, allegedly executed by the defendants, can be enforced, the Court had to consider various discrepancies and series of legal proceedings before the agreement alleged to have been executed. In the agreement dated 2.9.1967, there is reference of earlier agreement dated 29.11.1965 where under Rs. 18,000/- was paid to the defendant-appellant which was denied and disputed. Curiously enough that agreement dated 29.11.1965 was neither filed nor exhibited to substantiate the case of the plaintiff. The High Court put reliance on the agreement dated 2.9.1967 written in a quarter sheet of paper merely because of the fact that said quarter sheet of paper was produced before the Magistrate in a criminal proceeding. In our view, the High Court is not correct in holding that there is no reason to disbelieve the execution of the document although it was executed on a quarter sheet of paper and not on a proper stamp and also written in a small letter. The High Court also misdirected itself in law in holding that there was no need of the plaintiff to have sought for the opinion of an expert regarding the execution of the document.

Indisputably, various documents including order-sheets in the earlier proceedings including execution case were filed to nullify the claim of the plaintiff regarding possession of the suit property but these documents have not been considered by the High Court. In our considered opinion the evidence and the finding recorded by the criminal courts in a criminal proceeding cannot be the conclusive proof of existence of any fact, particularly, the existence of agreement to grant a decree for specific performance without independent finding recorded by the Civil Court.

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**62. SPECIFIC RELIEF ACT, 1963 – Sections 20 and 28 (1)**
**CIVIL PROCEDURE CODE, 1908 – Sections 33, 148 and 151**

**(i) Extension of time – Discretionary power of the Court, exercise of – The Court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period – Extension of time can be granted even after the expiry of the period originally fixed.**

**(ii) Conditional self-operative decree, effect of non-compliance of terms and conditions – Non-compliance of conditions of decree lead to automatic dismissal of the suit.**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 20 और 28 (1)
सिविल प्रक्रिया संहिता, 1908 – धाराएं 33, 148 और 151

(i) समय बढ़ाना – न्यायालय की विवेकीय शक्ति का प्रयोग किया जाना– न्यायालय को ऐसा विवेकाधिकार होता है कि किसी पक्षकार द्वारा एक नियत अवधि में कार्य करने के बारे में समय आवेदन करने पर बढ़ा सकती है – मूल रूप से नियत समय सीमा समाप्त होने के बाद भी समय बढ़ाया जा सकता है।

(ii) सशर्त स्वप्रभावी डिक्री की शर्तों और दशाओं का अनुपालन न करने का प्रभाव – डिक्री की शर्तों का पालन न करने से वाद स्वतः ही निरस्त हो जाता है।

## P.R. Yelumalai v. N.M. Ravi

**Judgment dated 27.03.2015 passed by the Supreme Court in Civil Appeal No. 3213 of 2015, reported in (2015) 9 SCC 52**

**Extracts from the Judgment:**

Arguments were also made by the learned counsel on both sides as to which Court had the power to grant extension of time and several authorities were cited on this point. However, we find that after the execution Court had dismissed the execution proceeding on the ground of delay in depositing the amount, the same question was dealt with by the original side of the Trial Court as well in the application for extension of time. Since both the Courts have given concurrent findings that the case for extension of time was not made out, we are of the opinion that dealing with the question as to which Court had the jurisdiction to decide this point, will be an exercise in futility. It would suffice to say that the Court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed. In ***Johri Singh v. Sukh Pal Singh, (1989) 4 SCC 403,*** this Court observed:

> "This Section empowers the Court to extend the time fixed by it even after the expiry of the period originally fixed. It by implication allows the Court to enlarge the time before the time originally fixed. The use of 'may' shows that the power is discretionary, and the Court is, therefore, entitled to take into account the conduct of the party praying for such extension."

From a perusal of the judgment and decree dated 15.02.2007 passed by the Trial Court, it is clear that the period of one month granted for depositing the balance consideration started from the date of decree. From the records it appears that the decree was signed on 27.02.2007. Therefore, the period of one month started from 27.02.2007 and ended on 26.03.2007. After extension of two months was granted, the last date for depositing the amount of balance consideration fell on 26.05.2007. As the Civil Court was not working on 26.05.2007 and next date i.e., 27.05.2007 was Sunday, the Plaintiff-Buyer was to deposit the amount on 28.05.2007, which was the re-opening day. However, there is no evidence on record to show that he made efforts to deposit the balance consideration on 28.05.2007 or made an application on 28.05.2007. The R.O. is dated 29.05.2007 and deposit was made on 29.05.2007. Thus, the Plaintiff-Buyer failed to comply with the decree and the suit stood dismissed automatically.

The Trial Court rightly held that the decree-holder did not make the deposit within the time stipulated by the Court nor the deposit of the balance consideration was made through the mode as stipulated by the Court, and that being the case, the suit will have to be deemed as dismissed. The Trial Court further held that the decree-holder is not entitled to seek execution of decree, which does not exist in the eye of law and consequently the Trial Court dismissed the execution petition. Further, we have already discussed the order of the Trial Court in the application for extension of time and we do not take the contention of the Plaintiff-Buyer that the application was dismissed solely on the technical ground and that the application was filed after a delay of 3 weeks. The Trial Court has discussed full merits of the application and given a finding that there is no evidence to show that the plaintiff had made any effort to deposit the amount on the 28.05.2007. The application was dismissed on its merits and not merely on the technical grounds. Further, we accept the submission of the learned counsel for the Defendant-Seller that the Plaintiff-Buyer had even failed to make the deposit through the mode of payment as required by the decree.

Having given above findings, the obvious corollary is that since the Plaintiff-Buyer failed to comply with the terms of the decree, the suit stood dismissed as the order passing the decree was a peremptory order. In light of this, we do not find it necessary to address the arguments made by the counsel on the point of bona fide purchaser. Further, the contention that the acceptance of deposit made by the Plaintiff-Buyer on 29.05.2007 is an implied grant of extension of time is a misplaced one. Reliance cannot be placed on ***Md. Alimuddin v. Waizuddin and Anr., (1998) 9 SCC 108,*** as in that case there was an application for extension of time which was granted, though at the risk of the depositor, along with the deposit of amount. This Court in the said case held that when the Court had allowed the application for extension of time in its wisdom, there was no reason to disturb it later. In the present case, there is rather a reverse situation wherein the Trial Court has dismissed the application for extension of time giving due reasons. In view of above findings, the question as to whether the Plaintiff-Buyer was required to give notice of the amount deposited also need not be answered, although we believe that had the Plaintiff-Buyer, irrespective of any obligation under law, given notice of the deposit made to the Defendant-Seller it would have helped the case of the Plaintiff-buyer.

Thus, in the present case, the Plaintiff-Buyer has clearly defaulted on time of depositing as well as the mode of payment. The decree was self-operative and the suit stood dismissed for non-compliance of the decree. Further, the Plaintiff-Buyer also failed to make out a case for condonation of delay. In view of these findings, we are of the opinion that the questions formulated by the High Court in the order of remand are not required to be answered by the Trial Court. Consequently, the appeal filed by the Plaintiff-Buyer is dismissed and the appeal filed by the Defendant-Seller is allowed.

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***63. SPECIFIC RELIEF ACT, 1963 – Section 22**
**CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17 Proviso**
**Section 22 of the Act of 1963 vis-à-vis proviso to Order 6 Rule 17 of the Code – Section 22 of the Act will have overriding effect.**
**Code of Civil Procedure is a general enactment whereas Specific Relief Act, 1963 is special one – Section 22 of the Act begins with a non obstante clause and has been given overriding effect on any provision of CPC – Although proviso to Order 6 Rule 17 of the Code was inserted in 2002, yet there exist a special provision under section 22 of the Act to allow amendment at any stage – Having an overriding effect, proviso to Order 6 Rule 17 of the Code cannot be an impediment in seeking amendment with regard to refund of money paid by plaintiff even after commencement of trial – In such cases, proviso of Order 6 Rule 17 must give way to the amendment sought in proceedings under section 22 of the Specific Relief Act.**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 22
सिविल प्रक्रिया संहिता, 1908 – आदेश 6 नियम 17 का परंतुक

धारा 22 अधिनियम, 1963 विरूद्ध आदेश 6 नियम 17 संहिता का परंतुक – धारा 22 अधिनियम का अभिभावी प्रभाव रहेगा।

सिविल प्रक्रिया संहिता एक सामान्य कानून है जबकि विनिर्दिष्ट अनुतोष अधिनियम, 1963 एक विशेष कानून (अधिनियम) है – धारा 22 अधिनियम एक नॉन ऑफस्टेंट क्लोज से प्रारंभ होता है और उसको सिविल प्रक्रिया संहिता के किसी भी प्रावधान पर अभिभावी प्रभाव दिया गया है – यद्यपि आदेश 6 नियम 17 संहिता का परंतुक वर्ष 2002 में समाविष्ट किया गया था किन्तु धारा 22 अधिनियम, 1963 में किसी भी प्रक्रम पर संशोधन की अनुमति का प्रावधान अस्तित्व में है – विचारण प्रारंभ होने के बाद वादी द्वारा भुगतान की गई राशि लौटाने के बारे में संशोधन चाहने के मार्ग में आदेश 6 नियम 17 का परंतुक नहीं आयेगा क्योंकि इस बारे में (धारा 22 का) अभिभावी प्रभाव है – ऐसे मामले में धारा 22 विनिर्दिष्ट अनुतोष अधिनियम, 1963 की कार्यवाही में आदेश 6 नियम 17 के परंतुक को छोड़ देना चाहिए।

**Deewan Singh and another v. Ramniwas and others**
**Order dated 23.06.2015 passed by the High Court of M.P. in W.P. No. 7793 of 2013, reported in 2015 (4) MPLJ 172**

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***64. SUCCESSION ACT, 1925 – Section 295**
**Probate proceedings – Jurisdiction of Probate Court, limitation thereon – The Probate Court has limited jurisdiction and the question whether a particular bequest is good or bad is beyond the purview of the Probate Court – Further held, the Probate Court is also not concerned with the question of title.**

उत्तराधिकारी अधिनियम, 1925 – धारा 295

प्रोबेट कार्यवाहियाँ – प्रोबेट न्यायालय के क्षेत्राधिकार की परिसीमा – प्रोबेट न्यायालय का क्षेत्राधिकार सीमित होता है (यह) प्रश्न की क्या एक विशेष वसीयत अच्छी या खराब है प्रोबेट न्यायालय के क्षेत्र के बाहर है – यह भी अभिनिर्धारित किया गया कि प्रोबेट न्यायालय का स्वत्व के प्रश्न से कोई संबंध नहीं होता है।

**Pratibha Mohta v. Sanjay Baori and others**
**Order dated 29.06.2015 passed by the High Court of M.P. in W.P. No. 5763 of 2009, reported in 2015 (4) MPLJ 141**

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**65. TRANSFER OF PROPERTY ACT, 1882 – Sections 52 and 122**
**CIVIL PROCEDURE CODE, 1908 – Order 20 Rules 10, 12 and 18**

**(i) Joint family property, proof of – Keeping in view the admission made by defendant that he received some amount from deceased husband of plaintiff (who was his brother) for construction of suit property and further admission by him that income from ancestral agricultural property was also utilized for construction of suit property, the concurrent findings by trial Court and first appellate Court that suit property was self-acquired property, held to be erroneous.**

**(ii) Doctrine of lis pendens, applicability of – After passing of judgment by first appellate Court in a suit for partition and before filing of SLP, gift deed executed by defendant in favour of co-defendant, who was his brother, held, execution of gift deed is hit by section 52 of the Transfer of Property Act.**

**(iii) Gift deed, validity of – Gift deed of the suit property executed by deceased defendant in favour of the co-defendant during the pendency of the proceedings – Gift deed could not have been acted upon by the defendants as the plaintiff has been in possession of some portion of the said property in her husband's independent right – Gift deed, held to be invalid.**

**(iv) Devolution of property – Section 8 of the Hindu Succession Act, applicability of – Suit property being joint family property and not self-acquired property of the defendant and also the gift deed being invalid, it was held that section 8 of the Hindu Succession Act would come into play – Property will devolve on plaintiff and other brothers and children of defendant, being his Class I heirs.**

**(v) Effect of failure to seek leave or bring on record the person upon whom the interest has devolved during the pendency of the suit – Law stated.**

**If a suit is pending when the transfer in favour of a party was made that would not affect the result when no application had**

**been made to be brought on record in the original court during the pendency of the suit.**

संपत्ति अंतरण अधिनियम, 1882 – धाराएं 52 और 122

सिविल प्रक्रिया संहिता, 1908 – आदेश 20 नियम 10, 12 और 18

(i) संयुक्त परिवार की संपत्ति का प्रमाण – मामले के क्रम में समझाया गया।

(ii) वाद लंबन के सिद्धांत का लागू होना – स्पष्ट किया गया।

(iii) दान पत्र की वैधता – मामले के तथ्यों के क्रम में बतलाई गई।

(iv) संपत्ति का न्यागमन – धारा 8 हिन्दू उत्तराधिकार का लागू होना – वाद संपत्ति संयुक्त परिवार की संपत्ति है न की प्रतिवादी की स्वअर्जित संपत्ति है साथ ही दान पत्र अवैध पाया गया, यह अभिनिर्धारित किया गया कि धारा 8 हिन्दू उत्तराधिकारी अधिनियम लागू होगी – संपत्ति वादी एवं उसके अन्य भाईयों और प्रतिवादी के बच्चों में जो कि श्रेणी I के उत्तराधिकारियों में न्यागमित होगी।

(v) वादी लंबन के दौरान उस व्यक्ति को जिसे संपत्ति में हित मिले है, अभिलेख पर लाने की अनुमति मांगने में असफल रहने का प्रभाव – विधि बतलाई गई।

## Kirpal Kaur v. Jitender Pal Singh and others

**Judgment dated 14.07.2015 passed by the Supreme Court in Civil Appeal No. 2820 of 2015, reported in AIR 2015 SC 2967**

**Extracts from the Judgment:**

In the light of the admissions made by the deceased-first defendant in his statement of evidence deposed before the trial court, the most important fact that has come to light in his admission is that he had received money from the plaintiff's husband while he was in Kuwait. He has also admitted that the plaintiff's husband had a share in the ancestral property that consists of 8 kanals and 18 marlas. Further, the deceased-first defendant has admitted in his statement of evidence before the Additional District Judge on 11.12.2003 in another proceeding between the parties that he had received an amount of Rs.1 lakh by way of bank draft and cash from the deceased husband of the plaintiff, while he was working in Kuwait which amount was utilised by the deceased-first defendant for the reconstruction of the building in the 'B' suit schedule property. In view of the above evidence elicited from the deceased-first defendant, the First Appellate Court was not right in making an observation in the impugned judgment that the plaintiff is only entitled for the refund of the said amount from the deceased first defendant even though there is substantive and positive evidence on record to the effect that the amount sent by the deceased husband of the plaintiff was utilised by the deceased first defendant for the purpose of construction of the building upon the suit schedule 'B' property.

Both the trial court as well as the First Appellate Court have misread and misdirected themselves with regard to the positive and substantive evidence placed on record in justification of the claim of the plaintiff and they have not appreciated and re-appreciated the same in favour of the plaintiff in the proper

perspective to record the finding of fact on her claim for the division of the share in her favour in respect of the schedule 'B' property. Therefore, the concurrent finding of fact recorded by both the trial court as well as the First Appellate Court on the contentious issue No.4 are not only erroneous in law but also suffer from error in law for the reason that there is a positive and substantive evidence elicited by the deceased-first defendant during the course of his cross examination before the trial court, the relevant portion of which is extracted above, wherein he had in unequivocal terms admitted in his evidence that he, his sons and daughters have an ancestral property in his village and the same has not been divided between them and that he used to get the income from the said agricultural land and the same was utilized by him for the construction of the building at Sant Nagar, i.e. schedule 'B' property. Therefore, it amounts to putting the said property in the hotchpot of joint family property. The non-consideration of the above positive and substantive evidence by the trial court as well as the First Appellate Court in justification of the claim of the plaintiff in respect of the schedule 'B' property has rendered the concurrent finding recorded by it as erroneous in law and therefore, the same are liable to be set aside.

The factum of the said alleged gift deed was not made known to this Court by the second defendant who is the beneficiary of the said gift deed till the last stage of conclusion of submission by the learned counsel. Reliance has been placed upon the decision of this Court in the case of ***Dhurandhar Prasad Singh v. Jai Prakash University & ors., AIR 2001 SC 2552*** at paras 6, 7 and 8 with regard to the above said proposition of law, the relevant paras from the above judgment are extracted hereunder:

> "6. In order to appreciate the points involved, it would be necessary to refer to the provisions of Order 22 of the Code, Rules 3 and 4 whereof prescribe procedure in case of devolution of interest on the death of a party to a suit. Under these Rules, if a party dies and right to sue survives, the court on an application made in that behalf is required to substitute legal representatives of the deceased party for proceeding with a suit but if such an application is not filed within the time prescribed by law, the suit shall abate so far as the deceased party is concerned. Rule 7 deals with the case of creation of an interest in a husband on marriage and Rule 8 deals with the case of assignment on the insolvency of a plaintiff. Rule 10 provides for cases of assignment, creation and devolution of interest during the pendency of a suit other than those referred to in the foregoing Rules and is based on the principle that the trial of a suit cannot be brought to an end merely because the interest of a party in the subject-matter of the suit has devolved upon another during its pendency but such a suit may be continued with the leave of the court by or against

the person upon whom such interest has devolved. But, if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree……..

7. Under Rule 10 Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against persons upon whom such interest has devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, and yet, as pointed out by Their Lordships of the Judicial Committee in ***Moti Lal v. Karrabuldin, (1898) 25 Cal. 179*** he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for, as Lord Kingsdown of the Judicial Committee said in ***Prannath Roy Chowdry v. Rookea Begum, (1851-59) 7 M.I.A. 323*** a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings.

8. The effect of failure to seek leave or bring on record the person upon whom the interest has devolved during the pendency of the suit was the subject-matter of consideration before this Court in various decisions. In the case of ***Saila Bala Dassi v. Nirmala Sundari Dassi, AIR 1958 SC 394,*** T.L. Venkatarama Aiyar, J., speaking for himself and on behalf of S.R. Das, C.J. and A.K. Sarkar and Vivian Bose, JJ. laid down the law that if a suit is pending when the transfer in favour of a party was made, that would not affect the result when no application had been made to be brought on the record in the original court during the pendency of the suit."

The legal principles laid down in the aforesaid paragraphs from the judgment referred to supra would clearly go to show that this Court has laid down the legal principle to the effect that the absence of any leave sought by the second defendant

on the ground that his interest has devolved upon the schedule 'B' property of the deceased-first defendant, would not affect the relief sought by the plaintiff during the pendency of the proceedings before this Court when no application has been submitted either by the plaintiff or by the second defendant in this regard.

The legality of the alleged gift deed executed in favour of the second defendant by the deceased-first defendant in respect of the schedule 'B' property has been further examined by us and the same is hit by Section 52 of the of the Transfer of Property Act, 1882, in the light of the decision of this Court in the case of ***Jagan Singh v. Dhanwanti, (2012) 2 SCC 628*** wherein this Court has laid down the legal principle that under Section 52 of the Transfer of Property Act, 1882, the 'lis' continues so long as a final decree or order has not been obtained from the Court and a complete satisfaction thereof has not been rendered to the aggrieved party contesting the civil suit. It has been further held by this Court that it would be plainly impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The relevant paras of the aforesaid decision read thus:

> "The broad principle underlying Section 52 of the TP Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to lis pendens, if an appeal is afterwards filed, as held in ***Krishanaji Pandharinath v. Anusayabai, AIR 1959 Bom 475*** In that matter the respondent (original plaintiff) had filed a suit for maintenance against her husband and claimed a charge on his house. The suit was dismissed on 15-7-1952 under Order 9 Rule 2, of the Code of Civil Procedure, 1908 for non-payment of process fee. The husband sold the house immediately on 17-7-1952. The respondent applied for restoration on 29-7-1952, and the suit was restored leading to a decree for maintenance and a charge was declared on the house. The plaintiff impleaded the appellant to the darkhast as purchaser. The appellant resisted the same by contending that the sale was affected when the suit was dismissed. Rejecting the contention the High Court held in para 4 as follows:
>
>> "... In Section 52 of the Transfer of Property Act, as it stood before it was amended by Act 20 of 1929, the expression 'active prosecution of any suit or proceeding' was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the 'lis' continues so long as a final decree or order has not been obtained and complete satisfaction thereof has not been rendered. At p. 228 in Sir Dinshah

Mulla's 'Transfer of Property Act', 4th Edn., after referring to several authorities, the law is stated thus:

'Even after the dismissal of a suit a purchaser is subject to "lis pendens", if an appeal is afterwards filed.'If after the dismissal of a suit and before an appeal is presented, the 'lis' continues so as to prevent the defendant from transferring the property to the prejudice of the plaintiff, I fail to see any reason for holding that between the date of dismissal of the suit under Order 9 Rule 2 of the Civil Procedure Code and the date of its restoration, the 'lis' does not continue.'

33. It is relevant to note that even when Section 52 of the TP Act was not so amended, a Division Bench of the Allahabad High Court had following to say in ***Moti Chand v. British India Corpn. Ltd., AIR 1932 All 210:***

"... The provision of law which has been relied upon by the appellants is contained in Section 52, TP Act. The active prosecution in this section must be deemed to continue so long as the suit is pending in appeal, since the proceedings in the appellate court are merely continuation of those in the suit."

If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The Explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

In the present case, it would be canvassed on behalf of the respondent and the applicant that the sale has taken place in favour of the applicant at a time when there was no stay operating against such sale, and in fact when the second appeal had not been filed. We would however, prefer to follow the dicta in Krishanaji Pandharinath (supra) to cover the present situation under the principle of lis pendens since the sale was executed at a time when the second appeal had not been filed but which came to be filed afterwards within the period of limitation. The doctrine of lis pendens is founded in public policy and equity, and if it has to be read meaningfully

> such a sale as in the present case until the period of limitation for second appeal is over will have to be held as covered under Section 52 of the TP Act."

Notwithstanding the above legal principle, we have examined the legality and validity of the alleged gift deed. The recital of the gift deed, particularly, the recital clause 2 is extracted hereunder:

> "2. That since the physical possession of the said property is already with the Donee hence the proprietary possession of the same is being handed over by the Donor unto the Donee who shall enjoy the same peacefully without any interference or disturbance of the Owner/Donor or anybody claiming through him. On this the Donee shall become the absolute Owner of the said Property and shall be at liberty to deal with same in the manner he likes."

A careful reading of the above recital would clearly go to show that the physical possession of the entire suit schedule 'B' property could not have been given to the second defendant in the light of the undisputed fact that the physical possession of the second floor of the schedule 'B' property is with the plaintiff. Further, the plaintiff is in the possession of the second floor in her independent right of her husband's share after they separated from the family. Therefore, the alleged gift deed executed by the deceased-first defendant in favour of the second defendant during the pendency of the proceedings with respect to the suit schedule 'B' property is not legally correct as it is the joint family property and even otherwise the same cannot be acted upon by the parties.

Therefore, we have to record the finding of fact with respect to the gift deed and hold that the same is invalid as it is evident from the factual and legal aspect of the case that the gift deed of the schedule 'B' property was executed by the deceased first defendant in favour of the second defendant during the pendency of the proceedings and the same could not have been acted upon by the defendants as the plaintiff has been in possession of the second floor of the said property in her husband's independent right. The same is also not acted upon by the parties for the reason that the plaintiff has been in physical possession of the second floor of the 'B' suit schedule property and therefore, in fact, she could not have delivered the possession to the second defendant and acted upon the same, hence, Section 8 of the Hindu Succession Act, 1956, would come into operation in respect of the above said property. The said property of the deceased-first defendant would devolve upon the deceased husband of the plaintiff along with the second defendant and the other daughters of the deceased-first defendant as they are the joint owners of the said property by virtue of being Class I legal heirs of the deceased-first defendant as per the schedule to the Hindu Succession Act, 1956, upon the death of the first defendant. For this reason also, the plaintiff is entitled for 1/4th share in the suit schedule "B" property.

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# PART - IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

### THE NEGOTIABLE INSTRUMENTS (AMENDMENT) SECOND ORDINANCE, 2015

**(No. 7 of 2015)**

**New Delhi, the 22nd September, 2015**

Promulgated by the President in the Sixty-sixth Year of the Republic of India.

An Ordinance further to amend the Negotiable Instruments Act, 1881.

WHEREAS the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated by the President on 15th day of June, 2015:

AND WHEREAS, the Negotiable Instruments (Amendment) Bill, 2015 to replace the Negotiable Instrument (Amendment) Ordinance, 2015 has been passed by the House of the People and is pending in the Council of States;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now THEREFORE, in exercise of the powers conferred by clause (1) of Article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :–

**1. Short title and commencement.**

(1) This Ordinance may be called the **Negotiable Instruments (Amendment) Second Ordinance, 2015**.

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

**2. Amendment of section 6.**

In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), in section 6,-

(i) in *Explanation I*, for clause (a), the following clause shall be substituted, namely:-

‘(a) “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;’;

(ii) after *Explanation* II, the following *Explanation* shall be inserted, namely:–

‘**Explanation III** – For the purposes of this section, the expressions “asymmetric crypto system”, “computer resource”, “digital signature”, “electronic form” and “electronic signature” shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.’.

**3. Amendment of section 142.**

In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:–

"(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,–

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

***Explanation.***– For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

**Insertion of New Section**

**4. Validation for transfer of pending cases.**

In the principal Act, after section 142, the following section shall be inserted, namely:–

"142A. Validation for transfer of pending cases. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases transferred to the court having jurisdiction under sub-section (2) of Section 142 as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Ordinance, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Ordinance, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments

(Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

**PRANAB MUKHERJEE**
**President**

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# THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2015
**(NO. 26 OF 2015)**

**[26th December, 2015]**

(Published in the Gazette of India Extra-ordinary, dated 29th December, 2015)

An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

**1. Short title and commencement.**

(1) This Act may be called the Negotiable Instruments (Amendment) Act, 2015.

(2) It shall be deemed to have come into force on the 15th day of June, 2015.

**2. Amendment of section 6.**

In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), in section 6,—

(i) in ***Explanation*** I, for clause (a), the following clause shall be substituted, namely:—

'(a) "a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;';

(ii) after ***Explanation*** II, the following ***Explanation*** shall be inserted, namely: —

**'Explanation III.—** For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.'.

**3. Amendment of section 142.**

In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

*Explanation.*— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.".

**Insertion of new section 142A.**

**4. Validation for transfer of pending cases.**

In the principal Act, after section 142, the following section shall be inserted, namely:–

"142A. Validation for transfer of pending cases. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

**5. Repeal and savings.**

(1) The Negotiable Instruments (Amendment) Second Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

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