JOTI JOURNAL JUNE - 2014

SUBJECT- INDEX

PART-I
(ARTICLES & MISC.)

PART-II
(NOTES ON IMPORTANT JUDGMENTS)

CIVIL PROCEDURE CODE, 1908

Section 10 – Stay of suit – Applicability of section 10 of CPC, test therefor – One of the tests is whether decision of the former suit would operate as ***res judicata*** in the latter suit or not **113 135**

Section 47 – Power of Executing Court – Concession, non-grant of – Law explained – Executing Court has to act within the bounds of the decree and can neither go beyond it nor widen its scope. **114 136**

Section 149 and Order 7 Rule 11(b) & (c) – Discretionary power of court to allow party to make payment of deficient stamp of court fees – The discretion is generally exercised in favour of litigating parties unless there is manifest ground of mala fide. **115 (i) 137**

Order 7 Rule 11 – (i) Dismissal of suit – Pleadings, examination of – Only pleadings in the plaint are required to be examined – Pleadings raised by defendant in the written statement are not required to be looked into while deciding an application under Order 7 Rule 11 CPC.

(ii) Suit for recovery of money, barred by limitation – As section 5 of the Limitation Act is not applicable to suit and period of limitation under Article 20 of the Limitation Act is three years, suit filed after three years from the date of arising of cause of action is liable to be dismissed under Order 7 Rule 11 CPC provided, facts as to suit being barred by limitation emerges from the plaint itself and no evidence is required to be recorded. **116 139**

Order 8 Rule 10, Order 9 Rule 6 and Order 21 Rule 58 – Though defendant has failed to file written statement or remain ***ex parte***, it is the duty of the court to diligently insure that the plaint stands proved and the prayers are worthy of being granted. **117(ii) 141**

Order 17 Rule 1 – Adjournment, grant of – Order 17 of CPC does not forbid grant of adjournment where the circumstances are beyond the control of the party – There is no restriction on the number of adjournments to be granted – It cannot be said that even if the circumstances are beyond the control of the party after having obtained third adjournment, no further adjournments would be granted – It would depend upon the facts and circumstances of each case, on the basis whereof, the court would decide to grant or refuse adjournment. **118* 143**

Order 20 Rule 18 – If once in a joint Hindu family, partition has taken place, it is presumed that there is a complete partition of all the properties – One who alleges otherwise, burden lies upon him to prove his allegations. **119 144**

Order 21 Rule 1(1), (4) & (5) – (i) What is the right mode of appropriation of payment made under a money decree? Unless the decree contains a specific direction, in ordinary course, if money is received without a definite appropriation, it is first applied in payment of interest and when that is satisfied, then in payment of capital.

(ii) Order 21 Rule 1 (4) and (5) CPC is not related to appropriation, except stating when interest ceases to run. **120 145**

Order 21 Rule 12 and Section 115 – Decree for possession in favour of three joint decree holders, execution and satisfaction of – In case of joint decree for possession, unless and until the possession of the entire decretal suit property is given to all the joint decree-holders, it cannot be said that the decree has been satisfied in full the

INDIAN PENAL CODE, 1860

SPECIFIC RELIEF ACT, 1963

Section 16 (c) – Readiness and willingness of plaintiff to perform his part of agreement, when proved? A sale deed and agreement of re-conveyance was executed on the same day – The plaintiff sent a notice to defendant informing that as per the terms of the agreement, he tendered an amount of ` 3,000 and requested them to execute the sale deed – The defendant deferred the date and time on one pretext or another – Plaintiff filed the suit and also deposited the money as per directions of Trial Court – It can be safely inferred that the plaintiff was always ready and willing to perform his part of the agreement – Suit decreed for specific performance.

164 **222**

TRANSFER OF PROPERTY ACT, 1882

Sections 126, 54, 5, 7 and 105 – (i) Transaction between parties having fiduciary relationship without reciprocal consideration – Parameters for examining validity of transaction is different from the one applicable in ordinary transaction for consideration.

(ii) When parties have fiduciary relationship, burden of proving genuineness is on party having dominating position.

(iii) Transfer without consideration on account of close relationship – Love and affection for niece does not necessarily extend to a gesture of transferring immovable property of substantial value without consideration in favour of mother-in-law of niece – On fact, transfer is suspicious and not valid.

(iv) Co-operative society – Co-operative housing society – Transfer of flat – Withdrawal of offer of transfer can be considered by Co-operative society before finality of transfer.

165 (i) to (iv) **222**

PART-III
(CIRCULARS/NOTIFICATIONS)

PART-IV
(IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS)

सम्पादकीय

प्रदीप कुमार व्यास,
अतिरिक्त संचालक

सम्मानीय पाठक गण,

इस अंक में माननीय सर्वोच्च न्यायालय द्वारा दो मामलों में दिये गये निदेश (Directions) शामिल किए गये हैं। पहले निदेश न्यायदृष्टांत स्टेट ऑफ कर्नाटका विरूद्ध शिवन्ना उर्फ टी. शिवन्ना के है जिसमें माननीय सर्वोच्च न्यायालय ने 5 निदेश दिये हैं जिनके अनुसार जैसे ही अनुसंधान अधिकारी को बलात्कार का अपराध करने की सूचना मिलती है वह अभियोक्त्रि को किसी न्यायिक मजिस्ट्रेट के समक्ष उसके 164 दण्ड प्रक्रिया संहिता के कथन लेखबद्ध करवाने के उद्देश्य से ले जायेगा।

न्यायिक मजिस्ट्रेट के लिए ध्यान रखने योग्य निदेश यह है कि यदि अभियोक्त्रि को उनके सामने लाने में 24 घंटे से अधिक का विलंब होता है तो अन्वेषण अधिकारी को इसके कारण केस डायरी में लिखना होते हैं उनकी एक प्रति मजिस्ट्रेट को देना होती है मजिस्ट्रेट को अभियोक्त्रि का कथन लेखबद्ध करने के बाद तत्काल उसकी प्रति अन्वेषण अधिकारी को देना होगी जिसमें यह विनिर्दिष्ट निदेश भी देना होंगे कि कथन के तथ्य अभियोग पत्र प्रस्तुत होने तक किसी को नहीं बतलाया जाये।

अतः प्रदेश के समस्त न्यायिक मजिस्ट्रेट से आग्रह है कि वे अभियोक्त्रि को उनके समक्ष 164 दण्ड प्रक्रिया संहिता के कथन लेखबद्ध करवाने के लिये जब भी लाया जाये तो यह देखें कि प्रथम सूचना प्रतिवेदन के दर्ज होने के बाद 24 घंटे से अधिक का विलंब अभियोक्त्रि को लाने में नहीं हो और यदि ऐसा विलंब पाया जाये तो उस पर भी विचार करें और अभियोक्त्रि का कथन तत्काल लेखबद्ध करे उसकी प्रति उक्त निदेश के साथ अन्वेषण अधिकारी को सौंपे।

प्रदेश के मुख्य न्यायिक मजिस्ट्रेट कार्य विभाजन पत्रक में ऐसी व्यवस्था कर सकते हैं जिससे धारा 164 दण्ड प्रक्रिया संहिता के कथन लेखबद्ध करने का कार्य जिले के न्यायिक मजिस्ट्रेट के बीच इस प्रकार बांटा जाये कि अभियोक्त्रि के कथन बिना किसी विलंब के लेखबद्ध हो जाये।

सत्र न्यायाधीश महोदय इसका पर्यवेक्षण कर सकते हैं अन्य दशा में किसी एक मजिस्ट्रेट के पास कथन लेखबद्ध करने का कार्य रखने से माननीय सर्वोच्च न्यायालय के उक्त निर्देशों का उनके सही भावनाओं में अनुपालन नहीं हो सकेगा।

दूसरे निदेश न्यायदृष्टांत ***इंडियन बैंक एसोसिएशन विरूद्ध यूनियन ऑफ इंडिया (2014) 5 एस.सी.सी. 590*** में दिये गये हैं जिनके अनुसार एन.आई.एक्ट के मामलों में धारा 138 एन.आई. एक्ट का परिवाद जिस दिन प्रस्तुत होता है उसी दिन संबंधित मजिस्ट्रेट को परिवाद की छानबीन करके प्रसंज्ञान लेकर समन्स जारी करने के निर्देश देना चाहिए और उसकी तामील के बारे में भी उचित कदम उठाने के निदेश दिये गये हैं साथ ही अपराध विवरण की कार्यवाही धारा 251 दण्ड प्रक्रिया संहिता पूर्ण होने के बाद अब यह अभियुक्त पर है कि वह परिवादी और उसके साक्षियों से प्रतिपरीक्षण करना चाहता है तो धारा 145 (2) एन.आई. एक्ट के तहत आवेदन देवें और उनका आवेदन स्वीकार करते समय मजिस्ट्रेट अपनी ओर से उचित शर्तें भी लगा सकते हैं जैसे प्रतिपरीक्षण कितने अवसरों में पूर्ण कर लिया जाना है क्योंकि इस मामले में एक निदेश यह भी दिया गया है कि 3 माह में मुख्य परीक्षण, प्रतिपरीक्षण और पुनः परीक्षण पूर्ण किया जाना चाहिये।

मुझे आशा ही नहीं अपितु पूर्ण विश्वास है कि माननीय सर्वोच्च न्यायालय के उक्त दोनों मामलों में दिये गये निर्देश का उनकी सही भावनाओं में प्रदेश के न्यायाधीश गण अनुपालन करेंगे।

जून माह में एक क्षेत्रीय कार्यशाला 21 एवं 22 जून 2014 को उज्जैन मे और दूसरी 28 एवं 29 जून 2014 को जबलपुर में मोटर दुर्घटना दावा प्रकरण तथा अपील और रिवीजन पर सम्पन्न हुई साथ ही 30 जून को Acadmic year भी सम्पन्न हो चुका है।

इस अंक में एक लेख समय प्रबन्धन, तनाव प्रबन्धन और स्व प्रबन्धन पर भी दिया गया है उसमें जो सूत्र बतलाये गये हैं वे जीवन के सामान्य सूत्र हैं । तनाव वर्तमान जीवन शैली का एक अनिवार्य अंग बन चुका है उसे खत्म तो नहीं किया जा सकता लेकिन कम तो अवश्य किया जा सकता है वर्तमान में न्यायाधीशगण पर बढ़ते तनाव को देखते हुए यह लेख शामिल किया गया है।

एक लेख भूमि अधिग्रहण अधिनियम के बारे में भी शामिल किया गया है क्योंकि प्रदेश में इस मामलों में प्रतिकर निर्धारण के प्रकरण काफी संख्या में लंबित है।

यह द्विमासिक पत्रिका आपके पास समय पर पहुंचे इसके लिए संस्थान लगातार प्रयासरत है और शीघ्र ही इसमें हम सफल होंगे।

शुभकामनाओं सहित।

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APPOINTMENT OF ADDITIONAL JUDGE IN HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Sushil Kumar Palo has been administered oath of office by Hon'ble the Chief Justice Shri A.M. Khanwilkar, High Court of Madhya Pradesh on 15th April, 2014 as Additional Judge of High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court at Jabalpur.

Hon'ble Shri Justice Sushil Kumar Palo was appointed as Additional Judge of the High Court of Madhya Pradesh. Was born on 2nd November, 1956 at Nabarangpur, Odisha. Obtained degree of B.Sc. (Botony) Hons. from Vikram Dev College, Jeypore, Berhampur University, Odisha in the year 1977. Obtained Post Graduate Degree in M.A. (Sociology) (Gold Medalist) in the year 1979 and LL.B. degree in 1980 from Rani Durgawati Vishwavidhyalaya, Jabalpur.

Was awarded prizes for Best Shooter and Best Cadet in Junior Division NCC during school days. Is a keen sportsman and has represented his College and University in Cricket in various tournaments. Also excels in Table Tennis, Badminton, Lawn Tennis and Billiards. Has contributed articles to various legal Journals and attended many Conferences, Workshops, Seminars and Training Programmes. Is a good speaker and has delivered lectures on varied subjects in law in various Institutions and Colleges.

Joined M.P. Judicial Services as Civil Judge Class II on 17.12.1981. Was promoted to the post of Additional District & Sessions Judge in September, 1994.

Worked as Registrar, M.P. State Consumer Disputes Redressal Commission, Bhopal and also Member Secretary of the Madhya Pradesh State Legal Services Authority. Worked in different capacities at Balaghat, Jagdalpur (Bastar), Durg, Satna, Chhatarpur, Badwani, Chhindwara. Promoted as District & Sessions Judge in the year 2006 and was served as District & Sessions Judge, Guna. Was District & Sessions Judge, Rewa prior to elevation.

Took oath as Additional Judge, High Court of Madhya Pradesh on 15.04.2014.

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

Courtesy: The Madhya Pradesh Law Journal

HON'BLE SMT. JUSTICE VIMLA JAIN DEMITS OFFICE

Hon'ble Smt. Justice Vimla Jain demitted office on 16.05.2014 on Her Lordship's attaining superannuation. Born on 11.06.1952 in village Vidwas (Surkhi) Distt. Sagar, Madhya Pradesh. Obtained degrees of M.A, LL.B and B.Ed. from Vikram University, Ujjain. Joined Judicial Services as Civil Judge Class II at Indore on 12.08.1978. Was promoted as Additional District Judge in the year 1991. Was granted Selection Grade on 17.11.1997 and Super Time Scale on 23.02.2005.

Worked in different capacities as Additional District & Sessions Judge at Bhopal, Dewas and Shivpuri, Special Judge, Raisen, Additional Commissioner, Gas Relief, Bhopal, District & Sessions Judge Datia, Sehore and Tikamgarh. Also worked as Principal Judge, Family Court, Gwalior. Was District & Sessions Judge, Rajgarh prior to elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 13.09.2010 and as Permanent Judge on 11.09.2012

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

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समय प्रबंधन, तनाव प्रबंधन, स्व प्रबंधन

प्रदीप कुमार व्यास,
अतिरिक्त संचालक

समय प्रबंधन, तनाव प्रबंधन और स्व प्रबंधन इनकी जितनी आवश्यकता वर्तमान समय में महसूस की जा रही है उतनी आज से 20 से 25 वर्ष पहले नहीं थी जैसे–जैसे विकास हुआ है वैसे–वैसे इन तीनों क्षेत्रों में प्रबंधन की आवश्यकता तेजी से महसूस की जा रही है आइये इस पर विचार करते हैं। ये तीनों ही विषय एक दूसरे से जुड़े हुए हैं किसी एक को साधने से या प्रबंधित करने से दूसरे पर भी अनुकूल प्रभाव पड़ता है अतः नीचे जो सूत्र दिये जा रहे हैं वे वास्तव में तीनों ही प्रबंधन से संबंधित कहें जा सकते हैं।

समय प्रबंधन

यह प्रकृति का गजब का समभाव है कि उसने प्रत्येक व्यक्ति को चाहे वह अमीर हो या गरीब, छोटा हो या बड़ा एक समान 24 घंटे दिये है किसी के साथ भी प्रकृति ने भेदभाव नहीं किया है।

समय एक बार खर्च हो जाने के बाद दोबारा उत्पन्न नहीं किया जा सकता इस दृष्टि से देखें तो समय धन से भी ज्यादा मूल्यवान है क्योंकि धन को तो खर्च करके पुनः कमाया जा सकता है।

वास्तव में कोई भी व्यक्ति समय का प्रबंधन नहीं कर सकता है उसे समय के अनुसार स्वयं का प्रबंधन करना होता है और कुछ सिद्धांतों पर यदि लगातार चला जायें तो समय धीरे–धीरे स्वतः ही प्रबंधित हो जाता है कुछ महत्वपूर्ण सिद्धांत इस प्रकार है :–

1. समय से जागे, समय पर सोयें

वर्तमान समय में अधिकतम व्यक्तियों का न तो रात्रि में सोने का समय निश्चित है और न ही सुबह उठने का समय निश्चित है जब नींद आयी तब सो गये जब नींद खुली तब उठ गये इस तरह सुबह उठते ही चूंकि उठने का समय ही निश्चित नहीं है अतः भागमभाग शुरू हो जाती है।

मेरा प्रत्येक न्यायाधीश गण से निवेदन है कि वे प्रातः उठने का और रात में सोने का एक समय निश्चित करें और बहुत अच्छा होगा यदि वे प्रातः 5 से 6 बजे के बीच उठने का कोई समय नियत करें एवं रात्रि 10 से 11 के बीच कोई समय सोने के लिए नियत करें। ऐसा करने से प्रातः उठते ही दिनचर्या आपके नियंत्रण में रहेगी।

आपात काल के बाद हुये चुनाव में स्व. मोरारजी देसाई चुनाव जीत गये थे पार्टी के कार्यकर्ता रात 9:30 बजे उनके घर यह समाचार देने गये तब उनके पी.ए. ने बतलाया की अब श्री मोरारजी देसाई प्रातः 4 बजे उठेंगे तभी उन्हें यह समाचार दिया जा सकेगा पी.ए. के अनुसार श्री देसाई के ऐसे निर्देश है एक बार वे सोने के लिए चले जाये उसके बाद में सुबह 4 बजे तक डिस्टर्ब नहीं किया जायें।

आपात काल के बाद हुये चुनाव में भारी मत से विजयी होना एक बहुत बड़ा समाचार था उसके बाद भी अपनी दिनचर्या के पक्के श्री मोरारजी देसाई के उक्त उदाहरण से यह समझा जा सकता है हमें किस प्रकार हमारे सोने और जागने का समय निश्चित रखना चाहिए।

2. उठते ही एक घंटा शरीर के लिए देवें

प्रातः जागने के बाद दैनिक क्रियाकलाप से निवृत होकर रोजाना एक घंटा शारीरिक व्यायाम जैसे प्राणायाम, योगासन, तेज गति से पैदल घूमना, शरीर पर तेल मालिश आदि क्रियाओं में देना चाहिए प्रत्येक व्यक्ति का शरीर उसके लिए ईश्वर द्वारा दिया हुआ एक मंदिर होता है प्रत्येक व्यक्ति का यह कर्तव्य है कि इस मंदिर को स्वच्छ और स्वस्थ रखें। शरीर को स्वस्थ रखने का एक तरीका नियमित प्राणायाम और योगासन हो सकता है क्योंकि इन क्रियाओं से शरीर में ऑक्सीजन की मात्रा अधिकतम हो जाती है और कार्बन–डाइ–ऑक्साइड और अन्य विषैले पदार्थ बाहर हो जाते हैं इस तरह रोजाना शरीर की सफाई होती रहती है।

वर्तमान में अधिकतर न्यायाधीश किसी न किसी बीमारी से कम उम्र में ही ग्रसित हो जाते हैं और फिर उनका बहुत सारा समय एक डॉक्टर से दूसरे डॉक्टर के पास जाने–आने, विभिन्न प्रकार के टेस्ट करवाने, विभिन्न प्रकार की चिकित्सा प्रणाली अपनाने में नष्ट होता रहता है और इस तरह समय भी नष्ट होता है और तनाव भी बढ़ता है लेकिन यदि व्यक्ति इसी समय से यह प्रण कर ले की उठते ही एक घंटा शरीर को देगें तो निश्चित रूप से उनका अमूल्य समय बचेगा और स्वस्थ रहने के कारण उनकी कार्यक्षमता बढ़ेगी और वे कार्य और लगन और उत्साह से भी कर पायेगें।

यदि यह एक घंटा प्रातः 5 से 6 बजे के बीच का हो तो वह दुगना लाभ देगा क्योंकि सुबह का वातावरण स्वच्छ रहता है और वातावरण में ऑक्सीजन अधिक रहती है।

अनुलोम विलोम एक ऐसा प्राणायाम है जिससे लगभग 25 प्रतिशत ऑक्सीजन एक अनुमान के अनुसार मस्तिष्क को भी पहुंचती है। अतः प्रतिदिन कम से कम 10 मिनिट अनुलोम विलोम प्राणायाम करना चाहिए।

कपाल भाति एक ऐसा प्राणायाम है जिससे छोटी आंत, बड़ी आंत, लीवर, किडनी, पेनक्रियाज, हृदय आदि में जमा ब्लॉकेज प्राकृतिक रूप से हट जाते हैं अतः कम से कम 10 मिनिट कपाल भाति प्राणायाम भी करना चाहिए।

3. अपनी सोच पर नजर रखें व भटकाव को नियंत्रित करें

प्रत्येक व्यक्ति को अपने चिन्तन या सोचने की प्रक्रिया पर सदैव नजर रखना चाहिए कि वह किस दिशा में सोच रहा है, क्यों सोच रहा है, क्या वह सोच लाभप्रद है। होता यह है कि एक न्यायाधीश किसी पत्रावली का अध्ययन करते हुए किसी बिन्दु विशेष पर सोचते समय अचानक वहॉ से भटककर कुछ और सोचने लग जाते हैं और उनका काफी समय नष्ट हो जाता है अतः पत्रावली के अध्ययन के समय अपने सामने एक कागज और कलम अवश्य रखें और एक–एक बिन्दु संक्षिप्त में

लिखते जाये या उस प्रकरण विशेष में किन–किन बिन्दुओं पर विचार करना है पहले लिख लें फिर उन पर अध्ययन चालू करें जहाँ कहीं भटकाव आवें वहाँ तत्काल अपने मस्तिष्क को नियंत्रित करें सही दिशा में लावें।

ऐसा नियंत्रण प्रत्येक कार्य करते समय करें ताकि आप जो भी काम कर रहे हैं आपका ध्यान उसी पर रहे और मस्तिष्क या सोच अनावश्यक न भटके ऐसा करके भी आप बहुत सा अमूल्य समय बचा सकते हैं।

4. चिन्ता का समय नियत करें

वर्तमान में प्रत्येक व्यक्ति को किसी न किसी विषय को लेकर चिन्ता रहती है जैसे स्वयं का विवाह, बच्चों की पढ़ाई, बच्चों को व्यवस्थित करना, बच्चों का विवाह, कर्ज, मकान बनाना, कोई बीमारी वगैरह प्रायः यह देखा जाता है कि व्यक्ति उस चिन्ता के बिन्दु को लेकर दिन भर या पूरे दिन में किसी भी समय चिन्ता शुरू कर देता है और इससे जो काम वह कर रहे हैं वह भी ठीक से नहीं हो पाता।

यदि कोई कठिनाई है तो चिन्ता स्वाभाविक है यदि आपको कोई भी चिन्ता है तो उस चिन्ता के लिए एक समय नियत कर दें जैसे शाम 7 से 8 या 8 से 9 आदि और फिर उस समय में उसी विषय पर चिन्ता करें और एक कागज और कलम लेकर लिखें की आपकी चिन्ता क्या है और उस चिन्ता के क्या–क्या संभावित हल हो सकते हैं और फिर उन पर काम करना शुरू कर दें ताकि किसी हल पर पहुंचा जा सकें।

यदि चिन्ता ऐसी है जिसका हल आपको नहीं सूझ रहा है तो किसी योग्य व्यक्ति से मार्गदर्शन लेवें।

यदि आप इस निष्कर्ष पर पहुंचते हैं कि चिन्ता ऐसी है जिसका कोई संभावित हल नहीं है तब उस बिन्दु पर चिन्ता करना छोड़ दें और किसी अन्य बिन्दु पर कार्य करना प्रारम्भ कर दें यह विधि अपनाने से आप यह देखेंगे की आपकी कई चिन्ताएं ऐसी है जिनके संभावित हल आपके ही आसपास है और वे आपको मिल जायेंगे कई चिन्ताएं ऐसी हैं जिन पर चिन्ता करने से कोई लाभ नहीं है। कई चिन्ताएं तो निर्मूल निकलेगी इस तरह पूरे दिन में बहुत सा अमूल्य समय आप बचा लेगें।

5. काम को प्राथमिकता को क्रम से करें

प्रत्येक व्यक्ति के पास बहुत से काम रहते हैं होता यह है कि वह महत्वहीन या अल्प महत्व के काम तो कर लेते हैं लेकिन महत्वपूर्ण काम को अक्सर वे टालते रहते हैं जबकि होना इसके विपरीत चाहिए सर्वप्रथम सबसे महत्वपूर्ण काम करना चाहिए। उसके बाद उससे कम महत्व का काम करना चाहिए।

अतः प्रत्येक न्यायाधीश को अपने पास लम्बित कामों को प्राथमिकता के क्रम में लिख लेना चाहिए उस अनुसार सबसे महत्वपूर्ण काम पहले क्रम में करना चाहिए ऐसा करने से भी आप महत्वहीन और अल्प महत्व के कामों में समय नष्ट करने से बच जाएंगे और तनाव से भी बचेंगे।

6. काम की गति शुद्धता के साथ बढ़ायें

प्रत्येक न्यायाधीश को प्रत्येक काम में प्रतिदिन अपनी गति शुद्धता के साथ और तनाव रहित होकर बढ़ाने का प्रयास करना चाहिए ऐसा करके भी अमूल्य समय को बचाया जा सकता है लेकिन यहाँ यह स्थिति भी ध्यान रखना चाहिए कि तेज चलो लेकिन यह भी ध्यान रखें की घुटने न टूटने पायें कहने का तात्पर्य यह है कि हमें सावधानीपूर्वक शुद्धता के साथ काम की गति बढ़ाते रहना चाहिए ऐसा करके भी हम बहुमूल्य समय बचा सकते हैं।

7. लक्ष्य निर्धारित करना और उन पर लगातार बढ़ना

प्रत्येक न्यायाधीश को अपने जीवन के विभिन्न क्षेत्रों के लक्ष्य लिखित में निर्धारित करना चाहिए और उन पर लगातार पूरी लगन और उत्साह से तब तक काम करते रहना चाहिए जब तक की लक्ष्य प्राप्त न हो जायें ऐसा करने से आपको अपने जीवन का उद्देश्य निर्धारित करने और उसे पाने में मदद मिलेंगी।

किसी विद्वान ने कहा है कि **यदि आपको यह नहीं पता है कि आप कहाँ जा रहे हैं और क्यों जा रहे हैं और लगातार चलते रहते हैं आप जहाँ भी पहुंचेगे वहाँ पहुंचकर अपने आप को असंतुष्ट ही पायेंगे**। अतः अपने लिखित लक्ष्य निर्धारित करिये और उन पर बढ़ते रहिये।

8. कौन सा काम स्वयं करना है और कौन सा करवाना है?

हर व्यक्ति के लिए संभव नहीं है कि वह सारे काम स्वयं ही कर लें अतः यह तय करना चाहिए कि कौन से काम स्वयं करना है और कौन से काम करवाना है तथा यह भी तय करें कि किस व्यक्ति से करवाना है और ऐसा करके आप अमूल्य समय बचा पायेंगे और कार्य का उचित विभाजन भी कर पायेंगे यहाँ यह ध्यान रखना आवश्यक है कि काम किसे सौंपना है यह गंभीरता से सोचकर निर्धारित करना चाहिए।

9. परनिंदा, गपशप से बचें

प्रायः बहुत से व्यक्तियों का अमूल्य समय परनिंदा और अनावश्यक गपबाजी में नष्ट होते देखा जा सकता है अतः प्रत्येक व्यक्ति को परनिंदा और अनावश्यक गपशप से बचना चाहिए इसके विपरीत अपनी बात सारगर्भित शब्दों में करने की आदत विकसित करना चाहिए और कोई भी चर्चा शुरू करने से पहले अनावश्यक फुटेज नहीं लेना चाहिए। कई न्यायाधीशों की आदत एक ही किस्से को बार–बार सुनाने की होती है या यह बताने की होती है कि जब वे किसी स्टेशन पर पदस्थ थे तो उन्होंने स्टाफ को कैसे सुधार दिया, बार को कैसे सुधार दिया वगैरह ऐसी बातें करने की आदत से बचें और संभव हो तो सुनने में भी अरूचि दर्शायें। ऐसा करके भी आप अपने अमूल्य समय को बचा सकते हैं।

10. शरीर की जीवविज्ञान घड़ी को पहचाने?

प्रत्येक व्यक्ति के शरीर में एक बायोलोजिकल क्लाक होती है जिसमें उस व्यक्ति का प्राइम टाइम निर्धारित रहता है हर व्यक्ति को यह चाहिए कि वह इस बायोलोजिकल क्लाक को पहचाने और

वह प्राइम टाइम कौन सा है यह भी पहचाने क्योंकि उस समय व्यक्ति कार्य करने की सर्वोत्तम दशा में होता है और वह जो भी काम उस समय में करता है वह न केवल कम समय में होता है बल्कि बहुत अच्छा भी होता है जैसे कुछ व्यक्ति सुबह के समय किसी भी बिन्दु पर सोचकर बहुत जल्दी निष्कर्ष निकाल लेते हैं कुछ व्यक्तियों के लिए यह समय शाम का होता है। अतः इस समय को भी पहचाने और ऐसी क्लाक विकसित करने का प्रयास भी करें।

11. अपने मूढ़ की सलाह पर न चलें

कई व्यक्ति यह कहते सुने जाते हैं कि आज उनका काम करने का मूढ़ नहीं है कभी भी अपने मूढ़ की सलाह न लें बल्कि निर्धारित समय पर प्राथमिकता वाला काम शुरू कर दें धीरे–धीरे आपका मूढ़ स्वतः ही बनता चला जाऐगा अतः अपने मूढ़ के नाम पर अमूल्य समय नष्ट नहीं होने दें।

12. टेलीफोन, मोबाइल पर बातचीत

वर्तमान समय में अधिकतर व्यक्तियों का समय टेलीफोन और मोबाइल पर व्यय होता है किसी भी व्यक्ति से क्या बात करना है वह काम की बाद पहले करें कई बार जिस बात के लिए फोन लगाया जाता है वह रह जाती है बाकि कई बातें हो जाती हैं अतः इन यंत्रों पर केवल काम की बातचीत करें।

यदि आप जहाँ रह रहे हैं वहाँ पानी गिर रहा है या ज्यादा ठण्ड पड़ रही है और ऐसा ही जिस व्यक्ति को फोन लगाया वहाँ भी हो रहा है तो इसमें न तो आप कुछ कर सकते हैं न ही वह व्यक्ति कुछ कर सकता है। अतः ऐसी अनावश्यक बातचीत से बचें।

13. यात्रा के समय का उपयोग करना सीखें

प्रायः ट्रेन लेट हो जाने, बस रास्ते में खराब हो जाने, कार का टायर पंचर हो जाने आदि के समय हम अनावश्यक तनावग्रस्त हो जाते हैं जबकि इस पर हमारा कोई नियंत्रण नहीं है अतः यात्रा पर चलते समय अपने साथ कोई साहित्य या कुछ न कुछ काम अवश्य रखें ताकि यात्रा के समय का अधिकतम उपयोग किया जा सके।

14. दूरदर्शन, समाचार पत्र नेट के बारे में

समाचार पत्र में हेडलाइन पढ़े और आपसे संबंधित समाचार को ही पूरा पढ़े इसी तरह दूरदर्शन पर भी कौन से कार्यक्रम देखना है और कितनी देर देखना है यह तय रखें नेट पर आप क्यों गये है और क्या देखकर आपको नेट बंद कर देना है वह भी तय रखें।

अक्सर कई लोगों का समय टेलीविजन के सामने रिमोट का बटन दबाने में व्यतीत होता रहता है और कोई भी कार्यक्रम उन्हें अच्छा नहीं लगता है इसी तरह वह नेट पर क्या जानकारी ढूढ़ने गये थे वह रह जाती है और अनावश्यक नेट देखते रहते हैं इससे बचें।

15. व्यवस्थित रहें

प्रायः अव्यवस्था से बहुत सा समय नष्ट जाता है अतः प्रत्येक चीज रखने का स्थान नियत करें और वह चीज उसी स्थान पर रखें अपने आयकर, चालन अनुज्ञप्ति, वाहन रजिस्ट्रेशन, अचल सम्पत्ति

के दस्तावेज आदि व्यवस्थित फाइलें बनाकर रखें ताकि चीजों को ढूढ़ने में अनावश्यक समय नष्ट नहीं होगा।

एक अनुमान के अनुसार एक आम आदमी का पूरे जीवन का 25 प्रतिशत समय चीजों को और प्रपत्रों को ढूढ़ने में नष्ट होता है इससे बचें और स्वयं को व्यवस्थित रखें।

16. डेडलाइन तय करें

जो भी कार्य हाथ में लें वह कब तक करना है ऐसी एक डेड लाइन तय करें ऐसा करने से आपको यह पता रहेगा कोई कार्य कब तक पूर्ण हो जाना है और ऐसा हर महत्वपूर्ण कार्य के लिए करें।

2. तनाव प्रबंधन

वर्तमान समय में तनाव प्रत्येक व्यक्ति के जीवन का एक आवश्यक अंग हो चुका है प्रतियोगिता बढ़ी है इसलिए तनाव भी बढ़ा है तनाव तो रहेगा लेकिन हम इसको किस तरह प्रबंधित करें यही मुख्य प्रश्न है।

1. ऊपर मैनें समय प्रबंधन के लिए जो उपाय बताये यदि हम उन पर चलते हैं तो हमारे कई विशेष महत्वपूर्ण कार्य समय पर हो जायेंगे और काम समय पर हो जाने से बहुत हद तक तनाव नियंत्रित हो जायेगा।

2. तनाव के कारणों को भी एक कागज और कलम लेकर लिखते चले जायें और उसका संभावितः हल भी लिखते जायें जैसा कि उपर चिन्ता के कारण के बारे में बतलाया है वैसे ही उपाय तनाव के लिए भी करने होगें।

   Solve the problem or leave the problem but do not live with the problem.

   इस तरह यदि कोई तनाव या समस्या है तो उसके संभावित हल के बारे में विचार करना चाहिए और उस अनुसार उस तनाव को हल कर लेना चाहिए और यदि कोई संभावित हल ही न हो तो अनावश्यक तनाव नहीं करना चाहिए।

   इसके अतिरिक्त हमें हमारी समस्या सही संदर्भ में क्या है यह भी पहचानना चाहिए और उसी अनुसार हल भी करना चाहिए कहीं ऐसा न हो :–

   उम्र भर गालिब यही भूल करते रहे,

   धूल चेहरे पर थी और आइना साफ करते रहें।

3. तनाव नियंत्रण का एक और महत्वपूर्ण तरीका है ईश्वर में पूर्ण आस्था रखना। आप अपने कोई भी एक इष्टदेव बनायें और उनको नियमित जितना भी समय दे सकें उतने समय आराधना करें।

   न्यायाधीश का कार्य एक इस प्रकार का कार्य है जो देवीय कार्य भी कहा गया है और ऐसा कार्य करने के लिए परम पिता परमेश्वर का आर्शीवाद और आवश्यक हो जाता है हमें प्रतिदिन सैंकड़ो हस्ताक्षर करना पड़ते हैं यह संभव नहीं है कि हम हर प्रपत्र को पूरा पढ़कर फिर उस

पर हस्ताक्षर करें कई हस्ताक्षर हम विश्वास में करते हैं आपने देखा होगा कई बार हस्ताक्षर करते–करते आपके हाथ अचानक रूक जाते हैं और वह ऐसा कागज होता है आपको जिस पर हस्ताक्षर नहीं करना होते हैं। आपने कभी सोचा है वह कौन सी शक्ति है जो आपको उस गलत कागज पर हस्ताक्षर करने से रोकती है यह वही दैवीय शक्ति है अतः प्रभु की आराधना करें और उन पर पूर्ण विश्वास रखें ।

एक अन्धा व्यक्ति रोज मंदिर जाता था उससे एक अन्य व्यक्ति ने पूछा कि आप भगवान को देख नहीं सकते फिर क्यों रोज मंदिर में आते हो?

अन्धे व्यक्ति ने उत्तर दिया कि मैं तो भगवान को नहीं देख सकता हूँ किन्तु भगवान तो मुझे देख सकते हैं बस इसी विश्वास के कारण मैं रोज मंदिर आता हूँ।

4. तनाव नियंत्रण के लिए हर व्यक्ति को अपनी परिस्थितियों के अनुसार कारण खोजना चाहिए कुछ कारण सबके लिए सामान्य हैं जैसे सदैव प्रसन्नचित्त रहें। हम यदि प्रसन्नचित्त रहते हैं तो आधा तनाव वैसे ही कम हो जाता है अतः बोर्ड पर बैठते समय, साथी न्यायाधीश से मिलते समय एक हल्की मुस्कुराहट के साथ मिलिये और स्वयं प्रसन्नचित्त रहने का प्रयास कीजिए।

5. किसी भी व्यक्ति से कोई अपेक्षा मत रखियें और उससे अपनी तुलना मत कीजिए क्योंकि दो व्यक्ति कभी भी बिल्कुल समान नहीं हो सकते हैं हर एक की अपनी विशेषताएं होती हैं।

   एक विद्वान ने कहा है कामयाब इंसान खुश रहे या न रहें लेकिन खुश इंसान एक दिन कामयाब जरूर होता है।

6. यदि गलती हो जायें तो तत्काल माफी मांग लें और कोई माफी मांग रहा हो तो उसे भी माफ करने में विलंब न करें अैर ऐसे समय में एक शेर याद रखें :–

   कुछ इस तरह से मैनें अपनी जिन्दगी आसॉ कर ली,

   किसी से माफी मांग ली तो किसी को माफ कर दिया।

   एक विद्वान ने यह भी कहा है कि आदमी अपनी गलतियों का सबसे बड़ा वकील होता है और दूसरो की गलतियों का सबसे बड़ा न्यायाधीश होता है जबकि होना इसके विपरीत चाहिए।

7. यदि आपके बॉस द्वारा आपको ज्यादा काम दिया जा रहा है तो इसे लेकर शिकायत करने की बजाय यह सोचें की हम जितना ज्यादा काम करते हैं हमारे काम करने की शक्ति उतनी ही ज्यादा बढ़ती है। साथ ही आपको अधिक काम सौंपना आपकी योग्यता भी दर्शाता है अतः यह सोचें की आपके बॉस ने आप पर विश्वास दिखाया है।

8. तनाव कम करने का एक तरीका विनम्रता भी है सदैव विनम्र रहिये विनम्रता कमजोरी नहीं है बल्कि बहुत बड़ी ताकत है।

एक विद्वान ने कहा है :– किसी व्यक्ति के नर्म स्वभाव होने का अर्थ उसकी कमजोरी नहीं है क्योंकि पानी से नर्म कुछ नहीं होता है लेकिन उसका बल या फोर्स पत्थर की शक्ति को भी तोड़ देता है अतः विनम्र रहें।

9. गुस्से से बचे गुस्सा भी तनाव का बहुत बड़ा कारण है किसी ने एक संत से पूंछा की गुस्सा क्या होता है संत ने उत्तर दिया किसी की गलती की सजा खुद को देना अतः दूसरों की गलती की सजा खुद को मत दीजिये।

किसी विद्वान ने कहा है कि :–

गुस्से की हालत में कोई फैसला मत करो,

खुशी की हालत में कोई वादा मत करो।

10. सदैव मधुर वाणी बोलिये।

ऐसा करने से आप तनाव से बचेंगे क्योंकि यदि सामने वाले ने कटु शब्द कहे और आपने भी कटु शब्द कहें तो तनाव बढ़ता चला जायेगा।

एक विद्वान ने कहा है कि लब्ज ही वह चीज है जिसके कारण इंसान या तो दिलों में उतर जाते है या दिलों से उतर जाते है।

इस तरह बोलिये की दूसरे आपको सुनना पसन्द करें और इस तरह सुनिये की दूसरे आप से बात करना पसन्द करें।

Speak in such a way that others love to listen to you.

Listen in such a way that others love to speak to you.

कभी–कभी हम वार्तालाप के दौरान ऐसी चीजों में अनावश्यक बहस में पड़ जाते हैं जिनका कोई अर्थ नहीं है यदि वास्तव में बहस आवश्यक हो तो करें और अनावश्यक हो तो एक विद्वान का यह कथन ध्यान रखें :– आप खुश रहना चाहते हैं या सही साबित होना चाहते हैं चुनाव आपका है।

“Water and words” easy to flow but impossible to recollect

So speak only when you feel your words are better than the silence.

अतः सदैव सोच समझकर और जहाँ आवश्यक हो वहीं बोलना चाहिए।

एक विद्वान ने कहा है कि सोचो वह जो बोल सको, बोलो वह जो लिख सको और लिखों वह जिस पर हस्ताक्षर करके किसी को दे सको।

उक्त सिद्धांत सोचते समय, बोलते समय और लिखते समय ध्यान में रखना चाहिए।

साथ ही आप का मूढ़ कैसा है यह सामने वाले को पता नहीं होता है लेकिन खराब मूढ़ होने पर भी बोलते समय अपने मूढ़ को शब्दों पर हावी न होने दें और यह ध्यान रखें कि :–

Don't mix your words with your mood because you will have many options to change the mood but you will never get any option to replace the spoken words.

एक विद्धान ने कहा है कि :–

"Silence" and "Smile" are two powerful roots. "Smile" is the way to solve any problem. "Silence" is the way to avoid many problems.

11. गलत फहमियाँ या संवाद हीनता न बनने दें प्रायः यह भी तनाव के बहुत बड़े कारण हैं और ऐसी गलतफहमियाँ यदि पैदा हो तो तत्काल दूर करने कर प्रयास करें और ऐसा करने में खुद पहल करें।

एक विद्वान ने कहा है कि जब नाखून बढ़ जाते हैं तो हम उन्हें काटते हैं अंगुलियों को नहीं काटते है इसी तरह जब हमारे बीच गलतफहमियां बढ़ जाती है तब हमें हमारे ईगो को काटना चाहिए, रिश्तों को नहीं हम प्रायः रिश्ते खत्म कर लेते है बजाय ईगो को काटने के, जो उचित नहीं है।

12. दूसरों का **दिल दुखाने वाली बात** करने से सदैव बचें।

यदि किसी के बारे में कुछ अच्छा बोल सकते हैं तो अवश्य बोले कम से कम कड़वा न बोलें क्योंकि आपके कड़वे शब्दों की प्रतिक्रिया में भी सामने वाले से भी ऐसे ही शब्द आएंगे और फिर तनाव बढ़ेगा।

13. लोगों की प्रतिक्रिया पर पुत्र और पिता एवं गधे की कहानी याद रखें और यह भी याद रखें दूसरे आपके बारें में क्या सोचते है ? यह भी यदि आपने सोच लिया तो लोगों को सोचने के लिए क्या बचेगा।

कुछ तो लोग कहेंगे लोगों का काम है कहना, छोड़ो बेकार की बातें में कहीं बीत न जाये रैना। यह पंक्ति फिल्म अमरप्रेम की एक गीत की है यह गीत भी ध्यान रखना चाहिए। **लेकिन इसका तात्पर्य यह नहीं है कि हम हमारे सुधार की संभावना के द्वार ही बंद कर लें जहाँ आवश्यक हो वहाँ स्वयं को परिष्कृत करते रहना चाहिए।**

14. अपनी रूचि के अनुसार मधुर संगीत सुनना चाहिए संगीत मन को प्रसन्न रखता है और अवसाद को कम करता है अतः **कर्णप्रिय संगीत** सुनते रहना चाहिए।

15. प्रत्येक न्यायाधीश को **सादा किन्तु पौष्टिक आहार** लेना चाहिए और किसी भी स्थान का पानी पीने से बचना चाहिए। यदि आप बाहर है तो बिसलरी के पानी का सेवन करें क्योंकि पानी और जंकफूड वर्तमान में स्वास्थ्य की खराबी के बहुत बड़े कारण है किसी विद्वान ने कहा है **जैसा खाया अन्न, वैसा होवे मन** अतः सदैव सादा और पौष्टिक आहार लें स्वच्छ जल पीए और शाकाहार अपनायें। शाकाहार भी क्रोध नियंत्रण में सहायक हो सकता है।

16. किसी भी प्रकार के **नशे से सदैव दूर रहें** नशा तनाव बढ़ाने में और तंत्रिका तंत्र या नर्वस सिस्टम को प्रभावित करने में महत्वपूर्ण भूमिका निभाता है।

17. **नकारात्मक चिन्तन** वाले व्यक्तियों से दूरी बनायें और **सकारात्मक चिन्तन** वालों से नजदीकी बढ़ाए। प्रत्येक स्थान पर दोनों ही प्रवृत्ति के लोग मिलेंगे उनकी जल्द से जल्द पहचान कर लें और यह सूत्र अपनाएं क्योंकि आप जिन व्यक्तियों के साथ ज्यादा रहते हैं उनका प्रभाव आप पर पड़ना अवश्यंभावी होता है।

18. **अपने बच्चों पर सदैव नजर रखें** और उन्हें समय दें कभी–कभी अचानक हमें हमारे बच्चें की कोई ऐसी गतिविधि पता लगती है जिसको लेकर हम भारी तनावग्रस्त हो जाते हैं और ऐसी गतिविधियां एक दिन में जन्म नहीं लेती है अतः अपने बच्चों की गतिविधियों पर नजर रखें और उन्हें एक अच्छा नागरिक बनाने के सर्वोत्तम प्रयास करें और पूरे दिन में से या सप्ताह में जैसी भी सुविधाजनक हो उन्हें समय अवश्य दें। ऐसा करके भी आप तनाव से बचेंगे।

19. किसी विद्वान ने कहा है कि नौकरी और **छोकरी** या छोकरा या तो **अपने पसन्द की ढूढ़ लें** या जो भी मिलें उसे पसन्द करना शुरू कर दें। अगर आप ऐसा नहीं करते हैं तो निश्चित रूप से आप धीरे–धीरे **अवसाद** की ओर बढ़ेंगे और इससे **तनाव** बढ़ेगा।

    न्यायाधीश का पद ऐसा है जिसमें उसे लोगों से संपर्क करने से बचना होता है और अलूफ रहना होता है और ऐसा रहना भी पड़े तो उसमें तनावग्रस्त नहीं होना चाहिए क्योंकि हर नौकरी की कुछ न कुछ अनिवार्य आवश्यकताएं होती हैं और ऐसे समय में एक शेर भी ध्यान रखना चाहिए :–

    अकेलेपन से मुझे मोहब्बत सी हो गयी है,
    आँखों को मेरे इंतजार की आदत सी हो गयी है।

20. सदैव कुछ न कुछ **नया और रचनात्मक** सीखने का प्रयास करें क्योंकि ज्ञान ही शक्ति है इससे आपकी मानसिक शक्ति भी बढ़ेगी और आप व्यस्त भी रहेंगे।

21. कोई भी **अच्छा आइडिया** दिमाग में आते ही उसे तत्काल पॉकिट डायरी में लिखें और उस पर काम करना शुरू कर दें। प्रायः हम किसी बिन्दु विशेष पर सोचते बहुत हैं और करते कुछ नहीं हैं और कभी–कभी किसी बिन्दु पर बिना सोचे बहुत सा काम कर लेते हैं और बाद में सोचने पर पता लगता है कि जो कुछ किया वह बेकार था और तनाव बढ़ता है अतः **सही समय पर सोचिए, सही दिशा में सोचिए और सही बात सोचिए।**

22. एक विद्वान ने कहा है कि अगर आपको वह फसल पसन्द नहीं है जो आप काट रहे है तो उन बीजों की जांच करें जो आपने बोयें हैं। अतः **आप जो कुछ परिणाम पाते हैं वह आपके ही प्रत्यक्ष या अप्रत्यक्ष कर्मों का फल होता है सही परिणाम पाना है तो सही कर्म कीजिए।**

23. एक साप्ताहिक या पाक्षिक **टाइम–टेबिल** बनाइए और उस पर सतत चलिए यह भी तनाव कम करने में कारगर होगा क्योंकि आपके काम समय पर होते चले जाएंगे तो यह तनाव कम करने में सहायक होगा।

24. **आलस और काम टालने की प्रवृत्ति** ये ऐसी बुरी आदतें हैं जो करते समय अच्छी लगती है लेकिन अंततः ये दोनों आदतें तनाव की जननी है अतः आलस न करें और काम टालने की प्रवृत्ति से सदैव बचें।

25. अपनी **आर्थिक स्थिति** पर सदैव थोड़े–थोड़े अंतराल में **विश्लेषण करते रहें**। आपके क्या उत्तरदायित्व है आपकी कितनी आमदनी है आपका कितना खर्च है और आप अपनी दायित्वों की पूर्ति के लिए आपको कब कितने धन की आवश्यकता होगी इस पर विचार करके बजट निर्धारण और निवेश योजनाएं बनाएं ताकि जब अपने दायित्व पूर्ति के लिए धन की आवश्कता हो तब आपको तनाव ग्रस्त न होना पड़े और कर्ज के लिए इधर–उधर न भागना पड़े।

    रोग, ऋण और विवादों को यथा संभव टालने का प्रयास करना चाहिए।

26. एक **आकस्मिक निधि** के रूप में अलग से बैंक खाता रखें जिसमें अपनी आवश्यकतानुसार और अपनी आय के अनुसार तीन से 10 लाख रूपये के बीच की राशि अलग रखी रहने दें जो किसी भी प्रतिकूल परिस्थिति आने के समय आपके लिए सहायक होगी।

27. **यूनिट** के लिए अपने न्यायालय की सारी पत्रावलियों को भौतिक सत्यापन करके एक वर्षवार और प्रकरण के प्रकार के अनुसार सूचियाँ बनवा लें ताकि आपको वास्तविक लम्बित प्रकरणों की जानकारी लग सकेंगी और उनमें यह परीक्षण कर लें कि कौन से ऐसे प्रकरण हैं जो आसानी से निपट सकते हैं दूसरा कौन से ऐसे प्रकरण हैं जो कुछ अधिक प्रयास करने से निपट सकते हैं और कौन से ऐसे प्रकरण है जिनमें गंभीर प्रयास लगेंगे और उस अनुसार वर्ष के प्रारंभ से ही रणनीति बना लें और प्रयास प्रारंभ कर दें ताकि यूनिट को लेकर स्थिति स्पष्ट रहें और तनाव से बचा जा सकें।

28. **नवीनतम वैधानिक स्थिति** के टच में रहें ताकि जब विधिक स्थिति के बारे में आवश्यकता पड़े तब बिना किसी तनाव या घबराहट के आप अपना न्यायिक कार्य कर सकें।

29. किसी भी प्रकार की और कितनी ही छोटी बीमारी यदि हो तो तत्काल योग्य चिकित्सक से परामर्श लें और उस पर तत्काल ध्यान दें इसे अनदेखा न करें।

30. एक अंधे व्यक्ति ने भगवान से पूछा :–

    Can there be anything worse than losing eye sight ?

    God :- Yes, losing your vision.

    अतः हमें हमारा **विजन** सदैव स्पष्ट रखना चाहिए कि हम क्या चाहते हैं और क्यों चाहते हैं। कुछ व्यक्ति हमेशा असंतुष्ट ही रहते हैं इसका एक कारण यह भी होता है कि उन्हें यही नहीं पता है कि आखिर वे चाहते क्या हैं अतः अपना विजन स्पष्ट रखें ताकि तनाव से बचाव होगा।

31. यदि आपका कोई सहकर्मी, मित्र, परिवार का सदस्य, पति या पत्नी, प्रेमी या प्रेमिका आपके साथ ऐसा कुछ कर दें जो आपको उचित नहीं लगे तो इस बात को लेकर भी अनावश्यक तनाव ग्रस्त

नहीं होना चाहिए और ऐसे समय में बशीर बदर के एक शेर की ये पंक्तियाँ ध्यान में रखना चाहिएः–

उसकी भी कोई मजबूरी रही होगी, यूं ही कोई बेवफा नहीं होता।

32. किसी विद्वान ने कहा है कि बुरी आदतें डालना आसान होता है लेकिन उनके साथ जीना मुश्किल होता है और अच्छी आदतें डालना मुश्किल होता है लेकिन उनके साथ जीना आसान हो जाता है।

अतः हमें सदैव अच्छी से **अच्छी आदतें** डालने का प्रयास करना चाहिए ताकि हमारा जीवन आसान हो जायें।

33. हमें सदैव **आशावादी** रहना चाहिए। एक बच्चे ने स्वामी विवेकानंद जी से पूछा कि स्वामी जी सब कुछ खो देने से ज्यादा बुरा क्या है ?

स्वामी जी ने उत्तर दिया वह उम्मीद खो देना जिसके भरोसे हम सब कुछ खोया हुआ वापस पा सकते हैं।

34. यदि आपको जीवन में किसी भी तरह की समस्या है तो गौतम बुद्ध का निम्न प्रसंग ध्यान रखें :–

एक गांव में एक महिला का पुत्र मर गया वह रोते–रोते गौतम बुद्ध के पास गयी और उनसे कहा आप इतने बड़े संत है क्या मेरे पुत्र को जीवित नहीं कर सकते ? गौतम बुद्ध बोले कि यह तो बड़ा आसान है लेकिन तुम्हें पाँच ऐसे घरों से आटा लेकर आना पड़ेगा जिनमें कोई मौत न हुई हो।

महिला खुश होकर दौड़ी–दौड़ी गाँव में गयी और वह पूरे गांव में सभी घरों में गयी लेकिन उसे एक भी घर ऐसा नहीं मिला जिसमें आज तक कोई मौत न हुई हो। तब उस महिला की आंखें खुल गयी और वह अपने बच्चे की लाश जो गौतम बुद्ध के पास छोड़कर आई थी उसे लेकर चुपचाप आ गयी।

कहने का तात्पर्य यह है कि इस दुनिया में प्रत्येक व्यक्ति के पास कुछ न कुछ समस्या अवश्य रहती है कोई बतलाता है कोई नहीं बतलाता है क्योंकि **दुखों का कोई बाजार नहीं होता है लिहाजा अपने अहसासों का विज्ञापन नहीं करना चाहिए बल्कि अपनी समस्या उसी आदमी के सामने रखना चाहिए जो उसको हल करने में कुछ मदद कर सकता हो।**

35. एक विद्वान ने कहा है कि :–

आप हसिएँ, सब आपके साथ हसेंगे।

आप रोइऍ, लेकिन अकेले रोइऍ।

स्वप्रबंधन

यदि एक बार आप समय प्रबंधन और तनाव प्रबंधन सीख लें और न्यायाधीश के सफलता के सूत्र पर सोचना प्रारंभ कर दें तो स्व प्रबंधन स्वतः ही हो जायेगा।

1. स्व प्रबंधन का आंकलन इस बात से करना चाहिए कि :–

   आपने जीवन में क्या किया और आपने जीवन में क्या पाया तथा आपमें जीवन में क्या कर सकने की क्षमता थी और आपमें जीवन में क्या पाने की क्षमता थी बस यही अंतर एक सफल आदमी और असफल आदमी में होता है।

   अतः अपनी क्षमताओं को पहचानिएं और उस अनुसार पूरी लगन और उत्साह से अपने निर्धारित लक्ष्य की ओर बढ़ते चले जाइये और निम्नलिखित वाक्य को गलत साबित कर दीजिए :–

   99% Indians work on the principle of rockets.

   It does not mean we aim for the sky but it means that we do not work unless our tail is on fire.

2. हमें यह भी ध्यान रखना चाहिए कि कब हमें किसी की मदद करना है और कब केवल उसकी बात सुनना है कभी–कभी हम किसी व्यक्ति की बात पूरी सुने बिना और समझे बिना अपना मत प्रकट कर देते हैं अतः धैर्यपूर्वक सुनिए और यह ध्यान रखिए कि :–

   Almost all your problems end once you learn to understand where to participate and where to get involved.

3. जीवन के ये सूत्र भी स्व प्रबंधन के लिए ध्यान रखना चाहिए :–

   Six ethics of life

   1. Before you pray, believe.
   2. Before you speak, listen.
   3. Before you spend, earn.
   4. Before you write, think.
   5. Before you quit, try.
   6. Before you die, live.

यदि आप उक्तानुसार समय प्रबंधन, तनाव प्रबंधन, स्व प्रबंधन के उक्त सूत्रों पर या उनमें से आपकी परिस्थितियों के अनुसार जो भी आपको उपयुक्त लगे उन पर यदि आप लगातार चलेंगे तो आप एक सफल और सुफल न्यायाधीश बन सकेंगे। मेरी बहुत –बहुत शुभकामनाएँ।

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LEGAL POSITION FOR DETERMINING COMPENSATION IN THE LIGHT OF SECTION 23 OF THE LAND ACQUISITION ACT, 1894

Judicial Officers of Districts
Chhatarpur, Narsinghpur and Shivpuri*

With enormous expansion of State's activity in promoting public welfare, acquisition of private lands for public purpose has become far more numerous than ever before. Promotion of public purpose however, to be balanced with the rights of individuals, whose lands are acquired, depriving them of their livelihood, while at the same time, keeping in view the interests of the State. Article 31 (A) of the Constitution of India categorically states that no law which provides for acquisition by the State of an estate can be held void as being ***ultra vires*** of Article 14 or Article 19 of the Constitution. It also provided for payment of compensation at a rate not less than the market value of the property. Acquisition and requisition of property falls in the concurrent list, which means that both the Centre and the State Government can make laws on the matter. There are number of local and special laws which provide for acquisition of land under them but the main law that deals with acquisition is the Land Acquisition Act, 1894. Land can be acquired either by the State or by the Central Government for the purposes listed under State and Central lists, respectively unless the Central Government delegates the task to the State Government under Article 258 (1) of the Constitution. The term "appropriate Government" in the Act would imply the Government whether Central or State that issues a notification under Section 4 to acquire the land.

Section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") reads as under –

> **23. Matters to be considered in determining compensation. – (1)** In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration–
>
> **Firstly,** the market-value of the land at the date of the publication of the notification under section 4, sub-section (1);
>
> **Secondly,** the damage sustained by the person interested, by reason of the taking of any standing crops, trees which may be on the land at the time of the Collector's taking possession thereof;
>
> **Thirdly,** the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property; movable or immovable, in any other manner, or his earnings;

Fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) ***bona fide*** resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation. – In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of thirty per centum on such market value, in consideration of the compulsory nature of the acquisition.

Section 2 (d) of the Act defines the expression 'Court' that means a principal Civil Court of original jurisdiction unless, the appropriate Government has appointed as it is hereby empowered to do a special judicial officer within any specified local limits to perform functions of the Court under this Act.

Compulsory acquisition of property involves expropriation of private rights in the property. It is a restraint on the right of private owners to be able to dispose off property according to their wish. The law of Land Acquisition is intended to legalise the taking up, for public purposes, or for a company, of land which is private property of individuals, the owners and occupiers, and pay equitable compensation therefor calculated at market value of land acquired, plus an additional sum on account of compulsory character of acquisition.

Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification, under Section 4 (1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fit of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality. It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made; (i) when sale is within a reasonable time or the date of notification under Section 4 (1) ; (ii) it should be a ***bona fide*** transaction; (iii) it should be of the land acquired or of the land adjacent to the land acquired; and (iv) it should possess similar advantages. It is only when these factors are present, it can merit a consideration as a comparable sale case (see Special ***Land Acquisition Officer v. T. Adinarayan Shetty, AIR 1959 SC 429.***)

Hon'ble the Supreme Court in the case of ***Viluben Jhalejar Contractor (Dead) by LRs. v. State of Gujarat, (2005) 4 SCC 789*** has held that Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal amount which is the determination of the market value of the land on the date of the publication of the notification under sub-section (1) of Section 4. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchaser. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbouhood at or about the date of notification under Section 4 (1) or otherwise, other sale instances as well as other evidence have to be considered. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle.

Hon'ble the Supreme Court has further held that for determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors *vis-à-vis* the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

	Positive factors	***Negative Factors***
(i)	Smallness of size	(i) largeness of area
(ii)	Proximity to a road	(ii) Situation in the interior at a distance from the road
(iii)	Frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv)	Nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v)	Regular shape	(v) remoteness from developed locality acquisition
(vi)	Level ***vis-à-vis*** land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser

Special value for an owner of an adjoining property to whom it may have some very special advantage, whereas a smaller plot may be within the reach of many a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price. The purpose for which acquisition is made is also a relevant factor for determining the market value. In ***Basava v. Spl. Land Acquisition Officer, (1996) 9 SCC 640***, deduction to the extent of 65% was made towards development charges.

Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to three decisions of Hon'ble the Supreme Court *viz*. ***The Collector of Lakhimpur v. Bhuban Chandra Dutta, AIR 1971 SC 2015; Prithvi Raj Taneja (dead) by LRs. v. the State of Madhya Pradesh and another, AIR 1977 SC 1560*** and ***Smt. Kausalya Devi Bogra and Ors. etc. v. Land Acquisition Officer, Aurangabad and anr., AIR 1984 SC 892***.

While determining compensation for compulsory acquisition, the relevant factors are – the purpose for which the land was acquired, potentiality of the land, its potential use, its location, market price of the land sold in near proximity just prior to the acquisition and the appreciation of the value of the land for every subsequent year. The Courts for making assessment can safely take into account the documentary as well as the oral evidence led by the parties in support of these factors. The Court has also to take into consideration in order to avoid element of speculation for fixation of marked value with reference to comparable sales as to whether the sale is within the reasonable time of the date of notification, whether it is bonafide sale, whether it is for the land adjacent to the land acquired and whether it possess similar advantages. Certified copies of sale-deeds relating to similar lands situated in the vicinity can be relied upon without examining vendee or vendor or anybody else connected with the sale. Increase of 15% per year on the sale deed comparable can be taken for

assessment of the market value on the date of notification under Section 4 of the Land Acquisition Act. Sale deed representing highest value out of the basis of comparable sale transaction, application of principle of average price is illegal. In absence of sale deed, in respect of market value of a particular village, sale-deeds of contiguous, similarly situated village can also be considered.

Section 23 (1A) of the Land Acquisition Act, 1894 was inserted, w.e.f., 24.09.1984, by way of amendment to the Act which was made applicable to proceedings pending on or after 30.04.1982. The said sub-section (1A) provides that in addition to the market value of the land, the Court would in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under Section 4, sub-Section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. In sub-section (2) of Section 23 of the Act, the words “thirty per centum” were replaced by the words “fifteen per centum”, w.e.f., 24.09.1984 and it was also made applicable to certain awards made and order passed after 30.04.1982

In ***Brig. Sahib Singh Kalha v. Amritsar Improvement Trust, (1982) 1 SCC 419,*** Hon’ble the Apex Court opined that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town-life. Accordingly, it was held that a deduction of 20 percent of the total acquired land should be made for land over which infrastructure has to be raised (space for roads etc.). Apart from the aforesaid, it was also held that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage etc.) also needs to be taken into consideration. To cover the cost component, for raising infrastructure, the Hon’ble Court held that the deduction to be applied would range between 20 percent to 33 percent. Commutatively viewed, it was held that deductions would range between 40 and 53 percent.

In ***Chimanlal Hargovinddas v. Land Acquisition Officer, (1988) 3 SCC 751*** while referring to the factors which ought to be taken into consideration while determining the market value of acquired land, Hon’ble the Apex Court observed that a smaller plot was within the reach of many, whereas for a larger block of land, there was implicit disadvantage. As a matter of illustration, it was mentioned that a large block of land would first have to be developed by preparing its layout plan. Thereafter, it would require carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out that there would be other known hazards of an entrepreneur. Based on the aforesaid likely disadvantages, it was held that these factors could be discounted by making deductions by way of allowance at an appropriate rate ranging from 20 percent to 50 percent. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified that the applied deduction would depend on whether the acquired

land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long and other like entrepreneurial hazards.

In ***Kasturi v. State of Haryana, (2003) 1 SCC 354,*** Hon'ble the Supreme Court has held that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities etc. It was also opined that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained that the acquired land may be plain or uneven, the soil of the acquired land may be soft or hard, the acquired land may have a hillock or may be low lying or may have deep ditches. Accordingly, it was pointed out that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In ***Kasturi's case*** (supra) it was held that normal deduction on account of development would be 1/3rd of the amount of compensation. It was however, clarified that in some cases, the deduction could be more than 1/3rd and in other cases even less than 1/3rd . Following the decision rendered by in ***Brig. Sahib Singh Kalha's case*** (supra), Hon'ble the Supreme Court in ***Land Acquisition Officer v. Nookala Rajanallu, (2003) 12 SCC 334,*** applied a deduction of 53 percent to determine the compensation payable to the landowners.

In para 21 of the judgment in ***Viluben Jhalejar's*** case (supra), it was held by Hon'ble the Supreme Court that for development, i.e. preparation of layout plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and on account of other hazards of an entrepreneur, the deduction could range between 20 percent and 50 percent of the total market price of the exemplar land.

In ***Atma Singh v. State of Haryana, (2008) 2 SCC 568,*** Hon'ble the Apex Court after making a reference to a number of decisions on the point and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land, concluded that deductions of 20 percent onwards, depending on the facts and circumstances of each case could be made. However, in ***Lal Chand v. Union of India, (2009) 15 SCC 769,*** it was held by Hon'ble the Supreme Court that to determine the market value of a large tract of undeveloped agricultural land (with potential for development) with reference to sale price of small developed plot(s) deduction varying between 20 percent to 75 percent of the price of such developed plot(s) could be made.

In ***Subh Ram v. State of Haryana, (2010) 1 SCC 444,*** Hon'ble the Supreme Court opined that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructural developmental costs (costs for raising infrastructure), i.e. in all 2/3rd (or 67

percent). Similarly in ***A.P. Housing Board v. K. Manohar Reddy, (2010) 12 SCC 707,*** having examined the existing case law on the point, it was concluded by Hon'ble the Apex Court that deductions on account of development could vary between 20 percent to 75 percent. In the peculiar facts of the case, a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

In this connection, another decision of the Hon'ble Apex Court in the case of ***Land Acquisition Officer v. M.K. Rafiq Sahib, (2011) 7 SCC 714*** is worth- mentioning. In this case Hon'ble the Apex Court after having concluded, that the land which was subject matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it. Concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50 percent, ought to be increased to 60 percent.

Based on the precedents on the issue referred to above, Hon'ble the Supreme Court recently in the case of ***Chandrashekar (dead) by LRs. and others v. Land Acquisition Officer and another, (2012) 1 SCC 390*** divided the quantum of deductions (to be made from the market value determined on the basis of the developed exemplar transaction) on account of development, into two components. Firstly, space/area which would have to be left out, for providing indispensable amenities like formation of roads and adjoining pavements, laying of sewers and rain/flood water drains, overhead water tanks and water lines, water and effluent treatment plants, electricity sub-stations, electricity lines and street lights, telecommunication towers etc. Besides the aforesaid, land has also to be kept apart for parks, gardens and playgrounds. Additionally, development includes provision of civic amenities like educational institutions, dispensaries and hospitals, police stations, petrol pumps etc. This first component may conveniently be referred to as deductions for keeping aside area/space for providing developmental infrastructure. Secondly, deduction has to be made for the expenditure/expense which is likely to be incurred in providing and raising the infrastructure and civic amenities referred to above, including costs for levelling hillocks and filling up low lying lands and ditches, plotting out smaller plots and the like. This second component may conveniently be referred to as deductions for developmental expenditure/expenses.

Hon'ble the Supreme Court further observed in this case that it is essential to earmark appropriate deduction, out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land.

The Apex Court further held that if the land is free from any charge, it will fetch higher price in comparison to land under charge in case of ***Rajendra Vasudev Deshprabhu (dead) through LRs & ors. v. Deputy Collector (Retd.) & Land Acquisition Officer, Panaji, AIR 2012 SC 228***.

Looking to th e huge price rise in the market for immovable property, Hon'ble the Supreme Court has held in ***Ashrafi and others v. State of Haryana and others, (2013) 5 SCC 527*** that on the basis of base year, the value should be assessed on the basis of 12% compoundable interest annually.

In the matter of exemplar sale method, Hon'ble the Supreme Court has held that post notification transaction should not be taken into consideration (in authority ***Natesam Pillai v. Spl. Tahsildar, Land Acquisition, Tiruchy, 2010 AIR SCW 5892***).

Hon'ble the Supreme Court has differentiated price escalation of land between urban area and rural area and held that in rural area, it is about half the rate of escalation as in urban area (in authority ***General Manager, Oil and Natural Gas Corporation Ltd., v. Rameshbhai Jivanbhai Patel & anr., 2008 AIR SCW 5947***)

For determination of compensation if there is no exemplar sale available, the other mode for determination of compensation may be yield method. For that purpose, multiplier of 10 should be used as held by Hon'ble the Supreme Court in the case of ***Assistant Commissioner-cum-Land Acquisition Officer, Bellary v. S.T. Pompanna Setty, (2005) 9 SCC 662.*** Similar view was earlier taken by Hon'ble Supreme Court in ***Special Land Acquisition Officer v. Virupax Shankar Nadagouda, (1996) 6 SCC 124***.

In case of ***Special Land Acquisition Officer v. Karigowda, 2010 AIR SCW 4163,*** Hon'ble the Apex Court has held:

> "By development of law, the Courts have adopted different methods for computing the compensation payable to the land owners depending upon the facts and circumstances of the case. The Courts have been exercising their discretion by adopting different methods, ***inter alia*** the following methods have a larger acceptance in law;
>
> (a) ***Sales Statistics Method :*** in applying this method, it has been stated that sales must be genuine bonafide, should have been executed at the time proximate to the date of notification u/s. 4 of the Act, the land covered by the sale must be in the vicinity of the acquired land and land should be comparable to the acquired land. The land covered under the sale instance should have similar potential and occasion as that of the acquired land.

(b) ***Capitalization of Net Income Method:*** This method has also been applied by the Courts. In this method of determination of market value, capitalization of net income method or expert opinion method has been applied.

(c) ***Agriculture Yield Basis Method:*** Agricultural yield of the acquired land with reference to revenue records and keeping in mind the potential and nature of the land wet (irrigated), dry and barren (*banjar*). Normally, where the compensation is awarded on agricultural yield or capitalization method basis, the principle of multiplier is also applied for final determination. These are broadly the methods which are applied by the Courts with further reduction on account of development charges. In some cases, depending upon the peculiar facts, this Court has accepted the principle granting compound increase at the rate of 10% to 15% of the fair market value determined in accordance with law to avoid any unfair loss to the claimants suffering from compulsive acquisition. However, this consideration should squarely fall within the parameters of S. 23 while taking care that the negative mandate contained in S. 24 of the Act is not offended. How one or any of the principles aforestated is to be applied by the Courts, would depend on the facts and circumstances of a given case."

The compensation may also be determined on the basis of belting method where such land is in urban locality and it could, by mere laying of road be readily turned into building plots and utilized as such and where prices fetched by comparable sales of similar building plots in the vicinity of the acquired land at about the time of acquisition are available. But it cannot be turned into building plots for utilization unless going for regular layout of building plots and laying of roads, drains and after providing the amenities for user of such plots then it would be inappropriate to determine the market value of such land on belting method as held in ***Calcutta Metropolitan Development Authority State of W.B. through First Land Acquisition Collector v. Dominion Land & Industries Ltd. Kalidas Chakraborty, (1995) 4 SCC 231.***

In conclusion, it is submitted that the legal position for determining compensation of the land acquired under the provisions of the Land Acquisition Act, 1894 especially with reference to Section 23, has been crystallized by the various authoritative pronouncements of Hon'ble the Supreme Court as indicated hereinabove.

Therefore in determining the amount of compensation to be awarded for land acquired under the Act, the Courts are required to take into consideration the law laid down by Hon'ble the Supreme Court so that there may not be any irreparable loss to the land looser and at the same time, there may not be any unjust enrichment to the appropriate Government.

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PROCEDURE FOR SPEEDY AND EXPEDITIOUS DISPOSAL OF CASES FALLING UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881

Indian Bank Association and others v. Union of India and others

Judgment dated 21.4.2014 passed by the Supreme Court in Writ Petition (Civil) No.18 of 2013.

Extracts from the judgment:

21. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:-

DIRECTIONS:

(1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complaint. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

(3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

(4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.

(5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

22. We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

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INTERIM DIRECTIONS IN THE FORM OF MANDAMUS ISSUED BY SUPREME COURT RELATING TO THE COMMISSION OF OFFENCE OF RAPE

State of Karnataka by Nonavinakere Police v. Shivanna @ Tarkari Shivanna

Order dated 25.4.2014 passed by the Supreme Court in Special Leave Petition (Crl.) No. 5073/2011

Extracts from Order:

9. We have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

> (i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.
>
> (ii) The investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady judicial Magistrate.
>
> (iii) The investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady judicial Magistrate as aforesaid.
>
> (iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.
>
> (v) Medical Examination of the victim: Section 164A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.

PART - II
NOTES ON IMPORTANT JUDGMENTS

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

(i) Whether in eviction suit, title of the landlord is finally adjudicated? Held, No – In eviction suit the question of title to the properties in question may be incidentally gone into, but cannot be decided finally.

(ii) It is not necessary that denial of title by the tenant should be anterior to the filing of eviction suit – Denial of the landlord's title in the written statement can provide a ground for eviction of a tenant.

Keshar Bai v. Chhunulal

Judgment dated 07.01.2014 passed by the Supreme Court in Civil Appeal No.106 of 2014, reported in AIR 2014 SC 1394

Extracts from the judgment:

The High Court has, however, gone on to say that by this piece of evidence no decree of eviction can be passed against the respondent under Section 12(1)(c) of the M.P. Accommodation Control Act because the respondent will have no occasion to establish in what circumstances he denied the title of the appellant. The High Court has further held that the respondent was within permissible limit in asking the appellant to produce documentary evidence about his title as a landlord. The High Court, in our opinion, fell into a grave error in drawing such a conclusion. Even denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. It is also settled position in law that it is not necessary that the denial of title by the landlord should be anterior to the institution of eviction proceedings. This is so stated by this Court in ***Majati Subbarao v. P.V.K. Krishnarao (deceased) by LRs, AIR 1989 SC 2187***.

The High Court has expressed that the respondent was justified in asking the appellant to produce the documents. Implicit in this observation is the High Court's view that the respondent could have in an eviction suit got the title of the appellant finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. Similar question fell for consideration of this Court in ***Bhogadi Kannabaluand ors. v. Vugginna Pydamma and ors., (AIR 2006 SC 2403: 2006 AIR SCW 3052)*** In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub-letting under the A.P. Tenancy Act. This Court referred to its decision in ***Tej Bhan Madan v. II Additional District Judge and Ors., AIR 1988 SC 1413*** in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between landlord and tenant and that this principle, in its

basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the courts below in favour of the landlady was not liable to be disturbed. The position on law was stated by this Court as under:

> "In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding."

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112. AYURVEDIC, UNANI TATHA PRAKRITIC CHIKIT SAVYAVASAYI ADHINIYAM, 1970 (M.P.) – Section 2 (h) and Schedule Part B, Entry No. 51 (since deleted by M.P. Act No. 21 of 1989)

Whether a person having degree of Ayurved Ratna Ved Visharad from Hindi Sahitya Sammelan Prayag Allahabad can be an Ayurved medical practitioner? Held, No.

Nizamuddin Ansari v. State of M.P. and others

Judgment dated 12.02.2013 passed by the High Court of M.P. in Writ Petition No. 2227 of 2005, reported in 2014 (2) MPHT 479

Extracts from the judgment:

It is contended by the petitioner that he has obtained a degree of Ayurved Ratana from Hindi Sahitya Sammelan Prayag, on 14-6-1989. The said degree was recognised as a degree for the purposes of registration of Ayurved doctors in the respondent No.3-Council, as was mentioned in the M.P. Ayurvedic, Unani Tatha Prakritic Chikitsa Vyavasai Adhiniyam, 1970 (hereinafter referred to as "the Act" for brevity). An amendment was made in the said Act in the year 1989, which came to be published in the Gazette on 4-11-1989, deleting the degree of Ayurved Ratna or Vaidya Visharad granted by Hindi Sahitya Sammelan Prayag. It is contended that since the petitioner has obtained degree before its deletion from the aforesaid Act, the same was to be treated as recognised by the State Government and, thus, the petitioner was entitled to be registered by the respondent No.3 as an Ayurved Medical Practitioner.

This is not in dispute that the petitioner when made the application on 16-8-1989, the degree obtained by him was duly recognised by the State Government as no amendment in the Act was done by that time. However, this particular aspect is considered by the Apex Court in the case of ***Rajasthan Pradesh V.S. Sardarshahar and another v. Union of India and others, AIR 2010 SC 2221.*** The Apex Court considering the law made by Parliament has categorically dealt with

the degree and diploma of Vaidya Visharad or Ayurved Ratna from Hindi Sahitya Sammelan Prayag, Allahabad, and has reached to the conclusion that the same were never recognised by the Parliamentary Act or by the Central Council and, therefore, were not to be treated as eligible qualification to register any person as Medical Practitioner in Ayurved. The Apex Court has not only directed to remove the name of such persons, but has also directed that such person should not be allowed to indulge in any kind of medical practice. In Paragraph 45 of the report, the Apex Court has categorically directed thus:-

> "45. In view of the above, Civil Appeal arising out of SLP (c) No. 21043 of 2008 is allowed and it is held that a person, who acquired the certificate, degree or diploma from Hindi Sahitya Sammelan Prayag after 1967 is not eligible to indulge in any kind of medical practice. All other Civil Appeals are dismissed. No costs."

Even if, order was passed by this Court in the case of ***Prafulla Shrivastava v. State of M.P. and others, W.P. No. 1348/2000,*** decided on 9-8-2000, the said order is not helpful to the petitioner now in view of the law laid down by the Apex Court and, therefore, no benefit could be granted to the petitioner. Of course, amendment was made after making of the application by the petitioner for his registration as a Medical Practitioner in Ayurved, in the State Act, but once it is held by the Apex Court that any degree or diploma granted by Hindi Sahitya Sammelan Prayag, Allahabad, after 1967, is not requisite qualification to indulge any person in any kind of medical practice, no such direction can be given to the respondents to register the petitioner as Medical Practitioner in Ayurved. Secondly, the order was passed on the earlier writ petition of the petitioner as has been indicated herein above by which the petitioner was directed to make a fresh application for registration. The fresh application made by the petitioner would only after the order of this Court and, therefore, would be after 4-1-1989. If the application is to be considered, again the petitioner is not to be allowed to practice as a Medical Practitioner in Ayurved because the degree obtained by him is no longer recognised by the State Government for the said purposes.

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113. CIVIL PROCEDURE CODE, 1908 – Section 10

Stay of suit – Applicability of section 10 CPC, test therefor – One of the tests is whether decision of the former suit would operate as *res judicata* in the latter suit or not?

Dadolwa and another v. Ramakant and others

Judgment dated 05.08.2013 passed by the High Court of M.P. in Writ Petition No. 16927 of 2012, reported in 2014 (2) MPHT 434

Extracts from the judgment:

The matter in issue is the earlier suit was as to whether the plaintiffs of that suit were the owners of the suit property (including the disputed property of the

present suit). Further, whether defendant Nos. 1 to 3 of the earlier suit rightly sold the disputed property to Ramakant, plaintiff of the present (later) suit, vide registered sale-deed, dated 7-8-1998 for Rs. 32,000/-. The said issue is also directly and substantially in issue in the present suit as to whether the said sale-deed was rightly executed in favour of the present plaintiff-Ramakant, who was the fourth defendant in the earlier suit. The parties of the present (later) suit were also the parties in the earlier suit.

One of the tests in order to attract provisions of Section 10, CPC is as to whether the decision of the former suit would be operated as res judicata in the present suit and, therefore, if the earlier suit is decreed by this Court its decision will operate as ***res judicata*** in the present suit. In this context, I may profitably place reliance upon the Division Bench decision of this Court in ***A.C. Naha Roy v. National Coal Development Corporation Ltd. and others, AIR 1973 MP 14,*** Para 4. Hence, according to me, the trial of the present (later) suit cannot proceed because the matter in issue of the present suit was also directly and substantially in issue in the previously instituted suit, which was filed by the present defendants/petitioners.

I do not find any merit in the contention of learned Counsel for the plaintiffs/respondents that the present suit is for injunction and, therefore, it cannot be stayed. True, the present suit is for injunction, but in the earlier suit the present petitioners, who were plaintiffs have sought for cancellation of the sale-deed executed by defendant Nos. 1 to 3 of that suit in favour of defendant No. 4-Ramakant (plaintiff of present suit) and further to deliver possession.

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114. CIVIL PROCEDURE CODE, 1908 – Section 47
CONSTITUTION OF INDIA – Article 226/227
Power of Executing Court – Concession, non grant of – Law explained – Executing Court has to act within the bounds of the decree and can neither go beyond it nor widen its scope.

Madanmohan v. Kabulbai
Judgment dated 27.11.2013 passed by the High Court of M.P. in Writ Petition No. 8130 of 2012, reported in 2014 (2) MPHT 386

Extracts from the judgment:

Learned Counsel for the petitioner argued at length and submits that learned Court below committed error in dismissing the application filed by petitioner. It is submitted that since the petitioner has constructed the house, which is three storied, therefore, in the facts and circumstances of the case the only remedy was to compensate the respondent in terms of money. It is submitted that the petition be allowed and impugned order passed by learned Court below be set aside and the respondent be compensated.

Learned Counsel for respondent supports the order and submits that respondent is fighting for the cause right from 1987. It is submitted that after completing the battle of 26 years having a decree in his favour which was

confirmed by Hon'ble Apex Court learned Court below has rightly dismissed the application filed by petitioner. It is submitted that the petition filed by the petitioner has no merits and the same be dismissed.

In the matter of ***Pothuri Thulasidas v. Potru Nageshwara Rao, AIR 2005 A.P. 171,*** Hon'ble Court has held that once decree has become final, it is not open to judgment debtor to plead new facts in execution. He cannot be permitted to open fresh round of litigation by pleading any fact contrary to decree. In the matter of ***Jagpal Singh v. State of Punjab, AIR 2011 SC 1123,*** Hon'ble Apex Court has held that in a case of illegal encroachment on ***Gram Panchayat Land, Regularising such illegalities*** cannot be permitted. In the matter of ***Vedic Girls Senior Secondary School, Arya Samaj Mandir Jhajjar v. Rajwanti & ors., 2007 (3) MPLJ 425,*** Hon'ble Apex Court has held that Executing Court is bound to act within the bound of the decree and cannot travel beyond it or to widen its scope. In the matter of ***Hari Ram v. Jyoti Prasad, AIR 2011 SC 952,*** Hon'ble Apex Court has observed that encroachment on Public Street is a continuing wrong. In the matter of ***Deepak Kumar Mukharji v. Kolkata Municipal Corporation, (2013) 5 SCC 336,*** wherein in a case of multi-storied building in violation of sanctioned plan and Municipal Corporation Act and Municipal Corporation Building Rules, which continued by builder despite stop of work notice and after completion of unauthorised construction work, application was moved by builder for its regularisation, Hon'ble Apex Court has held that corporation must demolish unauthorised construction within a month.

From perusal of the record, it is evident that there was a lane having five feet in width upon which as per respondent the encroachment was made by the petitioner having width of one feet six inch in complete length of house. In spite of pendency of suit, petitioner did not bother and constructed the house, with the result the lane narrowed down to three feet six inches approximately. At this stage, when respondent is having a decree which is affirmed up to Supreme Court no concession could have been made by the Executing Court, therefore, learned Executing Court has rightly dismissed the application.

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115. CIVIL PROCEDURE CODE, 1908 – Section 149 and Order 7 Rule 11(b) & (c)

LIMITATION ACT, 1963 – Section 5

(i) Discretionary power of court to allow party to make payment of deficient stamp of court fees – The discretion is generally exercised in favour of litigating parties unless there is manifest ground of *mala fide*.

(ii) Condonation of delay – Non-condonation of delay for non-payment of court fees – Propriety in the light of Article 39-A of the Constitution – Duty of the court is to look that justice is meted out to people irrespective of their socio-economic and cultural rights or gender identity – Appellant entitled for legal aid and waiver of court fees subject to filing of affidavit regarding income.

(iii) If sufficient cause is established, delay should be condoned.

Manoharan v. Sivarajan and others

Judgment dated 25.11.2013 passed by the Supreme Court in Civil Appeal No. 10581 of 2013, reported in (2014) 4 SCC 163

Extracts from the judgment:

Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the Court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment etc. This Section also empowers the Court to retrospectively validate insufficiency of stamp duties etc. It is also a usual practice that the Court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the Court dismisses the appeal. In the present case, the appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learned sub Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fide. The Court, while extending the time for or exempting from the payment of court fee, must ensure bona fide of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned sub Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned sub Judge is wrong and is liable to be set aside and accordingly set aside.

Further, Article 39A of the Constitution of India provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties. Therefore, in the light of the legal principle laid down by this Court, the appellant deserved waiver of court fee so that he could contest his claim on merit which involved his substantive right. The Court of sub Judge erred in rejecting the case of the appellant due to non- payment of court fee. Hence, we set aside the findings and the decision of the Court of sub Judge and condone the delay of the appellant in non-payment of court fee which resulted in rejection of his suit.

In view of the reasons assigned while answering point nos. 1, 2 and 3 in favour of the appellant, the impugned judgment passed by the High Court is set aside and the application filed by the appellant for condonation of delay is allowed. Therefore, we allow the appeal by setting aside the judgments and decree of both the trial court and the High Court and remand the case back to the trial court for payment of court fee within 8 weeks. If for any reason, it is not possible for the appellant to pay the court fee, in such event, he is at liberty to approach the jurisdictional district legal service authority and Taluk Legal Services Committee seeking for grant of legal aid for sanction of court fee amount payable on the suit before the trial court. If such application is filed, the same shall be considered by

such committee and the same shall be facilitated to the appellant to get the right of the appellant adjudicated by the trial court by securing equal justice as provided under Article 39A of the Constitution of India read with the provision of Section 12(h) of the Legal Services Authorities Act read with the Rule of Kerala State. We further direct the trial court to adjudicate on the rights of the parties on merit and dispose of the matter as expeditiously as possible.

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116. CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11
LIMITATION ACT, 1963 – Section 5 and Article 20

(i) Dismissal of suit – Pleadings, examination of – Only pleadings in the plaint are required to be examined – Pleadings raised by defendant in the written statement are not required to be looked into while deciding an application under Order 7 Rule 11 CPC.

(ii) Suit for recovery of money barred by limitation – As section 5 of the Limitation Act is not applicable to suit and period of limitation under Article 20 of the Limitation Act is three years, suit filed after three years from the date of arising of cause of action is liable to be dismissed under Order 7 Rule 11 CPC, provided facts as to suit being barred by limitation emerges from the plaint itself and no evidence is required to be recorded.

Neelam Kumar Bachani and another v. Bhishamlal

Judgment dated 10.04.2013 passed by the High Court of M.P. in Civil Revision No. 424 of 2012, reported in 2014 (1) MPHT 515

Extracts from the judgment:

It is settled law that if an application under Order 7 Rule 11 of CPC for dismissal of the suit is filed at the preliminary stage, as prescribed under the provisions of the aforesaid order, only the pleadings in the plaint are required to be examined. The pleadings raised by the defendants in the written statement are not required to be looked into while deciding an application under Order 7 Rule 11 of CPC. However, it is also to be seen that the law of limitation varies with respect to prescription of limitation for filing the suit of different descriptions. A suit for loan transaction may be based on the cause of action which accrued after payment of the loan amount. For example, if an agreed date for repayment of the loan amount is prescribed and on demand within the said period or day, the loan amount is not repaid, the cause of action would accrue on refusal of repayment of loan and the limitation would start from the date of refusal of the repayment of the loan. However, there are specific safeguards prescribed in cases where the amount is paid by cheques. As far as the cheques are concerned, the same are treated as bill of exchange as per the definition given under Section 2 (c) of the Limitation Act. A specific bar is also created under the Limitation Act in Section 3, where it is said that subject to the provisions contained in Sections 4 to 24 (inclusive) every suit instituted, appeal preferred, and application made after the prescribed period of limitation shall be dismissed,

although limitation has not been set up as a defence. Section 4 of the Limitation Act prescribes nothing but enlargement of the period of limitation if on the last date of filing of the suit, appeal or application expires on a day when the Court is closed, only upto the day when the Court reopens. The period of limitation as prescribed under Limitation Act can be extended only in case of an appeal or any application, but the provisions of Section 5 of the Limitation Act are not made applicable to the suits.

The cause of action for filing of the suit for recovery of the alleged loan amount would start from 15-5-2009. From the averments made in the plaint, it is clear that the suit ought to have been filed by 14-5-2012. The period of three years limitation had expired on this day. The suit was not filed on the said date. On the other hand, the suit was said to be filed on 23-8-2012, when it was presented in the Court though the plaint was dated 22-6-2012. If these facts are taken together, only on the basis of pleadings in the plaint, it is apparently clear that the suit filed by the non-applicant was barred by limitation. No evidence was required to be recorded as these facts have emerged only from the plaint. Any oral evidence would not have changed the accrual of the cause of action to the non-applicant as in terms of the law made in the Limitation Act, the postponement of the right to sue should be in writing. If this was not, then again it was not necessary to prove anything by adducing evidence.

The Full Bench of this Court was dealing in the matter of limitation and it was of the opinion that the question of limitation is normally a mixed question of facts and law and cannot be decided except by recording evidence. However, the facts as were taken into consideration by the Full Bench of this Court in the case of ***Santosh Chandra and others v. Gyan Sunder Bai and others, 1970 JLJ 290,*** were altogether different. The said case was not with respect to counting of limitation for the purposes of filing a suit on the strength of a bill of exchange or cheque. Again the reliance placed in the case ***Mrityunjay Prasad v. Santosh Kumar Mishra and others, 2005 (3) M.P.H.T. 492*** it totally misconceived, because in that case the question of whether limitation for filing of a suit for declaration with respect to the change of entry of a birth or death in the register was being considered by this Court. Again in the case of ***Sharda Talkies (Firm) v. Madhulata Vyas and others, 1996 MPLJ 697,*** a loan transaction not dependent on a cheque was being considered. The said case was being considered under a loan transaction for which limitation prescribed under the Limitation Act is under Article 22 and not under Article 20 or 35. As has been said herein above, for different suit, different provisions of limitations are made under the limitation Act. Lastly, the reliance placed in the case of ***Rajendra Singh v. Sheetaldas, 1992 (I) MPWN 104,*** is also misconceived as the delay in filing of a Miscellaneous Appeal under the Motor Vehicles Act was being condoned by this Court in exercise of power under Section 5 of the Limitation Act. Provisions of Section 5 of the Limitation Act are not attracted for condoning delay in filing a suit.

The Apex Court in the case of ***Sant Lal Mahton v. Kamla Prasad and others, AIR 1951 SC 477*** has categorically dealt with an acknowledgment and an admission to that effect made in the written statement. Even if the acknowledgment made in the reply to the notice sent by the applicants is taken into consideration, it will not mean that the same was in fact an acknowledgment of the fact that right to sue on the strength of the cheque given in favour of the applicants, was enlarged by the applicants. If that is not there, the limitation would start only from the date of issuance and encashment of the cheque for the purposes of filing of the suit. In such a situation, again the suit was filed beyond the limitation and this aspect is not disputed by the non-applicant even before this Court while making his submission. This being so, for proving such facts which were specifically stated in the plaint no evidence was required. It was to be seen by the Court below that the suit filed by the non-applicant would be barred by limitation and since there is no provision to enlarge limitation for filing of such suit and no such power is vested in the Court, the suit of the non-applicant was liable to be dismissed under the provisions of Order 7 Rule 11 of CPC. Having failed to appreciate such legal position, the Court below erred in exercising the jurisdiction vested in it in appropriate manner and in rejecting the application of the applicants under Order 7 Rule 11 of CPC.

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117. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 10, Order 9 Rule 6 and Order 21 Rule 58
REGISTRATION ACT, 1908 – Section 49
CONTRACT ACT, 1872 – Section 74

(i) Imposition and recovery of penalty on breach of contract – Impermissible under Contract Act – The court would have to scrutinize the pleadings as well as evidence to determine that they are not in the nature of penalty and rather as a fair pre-estimate of what the damages are likely to arise in case of breach of contract.

(ii) Though defendant has failed to file written statement or remained *ex parte*, it is the duty of the court to diligently ensure that the plaint stands proved and the prayers are worthy of being granted.

(iii) It is the duty of the court to consider genuineness of power of attorney – Validity of sale agreements and powers of attorney executed in genuine transactions is not affected by the verdict of *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana, AIR 2012 SC 206*.

Maya Devi v. Lalta Prasad
Judgment dated 19.02.2014 passed by the Supreme Court in Civil Appeal No. 2458 of 2014, reported in AIR 2014 SC 1356

Extracts from the judgment:

Paragraph 27 of the judgment of this Court in ***Suraj Lamp and Industries Private Limited (2) Through Director v. State of Haryana & Anr AIR 2012 SC 206: 2011 AIR SCW 6385*** reads as follows:

> "27. We make it clear that our observations are not intended to in any way affect the validity of sale agreements and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a power of attorney empowering the developer to execute agreements of sale or conveyances in regard to individual plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding "SA/GPA/will transactions" are not intended to apply to such bona fide/genuine transactions."

The Trial Court had framed the following issues in Suit No.407/2007, from which subject of proceedings emanates:

> "(1) Whether the plaintiff is entitled for the suit amount? If so to what sum? OPP
>
> (2) Whether the plaintiff is entitled for the interest? If so at what rate and for which period? OPP
>
> (3) Relief."

The Trial Court having accepted the payment of Rs.1,70,000/- without insisting on any proof, did not go into the question whether a covenant stipulating that double the amount of earnest money would be payable in the event the contract was not performed, is legal in terms of the Indian Contract Act. The imposition and the recovery of penalty on breach of a contract is legally impermissible under the Indian Contract Act. As regards liquidated damages, the Court would have to scrutinize the pleadings as well as evidence in proof thereof, in order to determine that they are not in the nature of a penalty, but rather as a fair pre-estimate of what the damages are likely to arise in case of breach of the contract. No evidence whatsoever has been led by the Plaintiff to prove that the claim for twice the amount of earnest money was a fair measure or pre-estimate of damages.

Finally another aspect which has come to the fore is the approach of the Trial Court in the adjudicate on of the suit. The plaint contains an averment that the suit property had already been sold. The Defendant Shri Prem Chand Verma, (his wife Smt. Nirmal Verma was not impleaded) had appeared in the Trial Court and filed his Written Statement in which, whilst admitting the documentation

executed between the parties, he had denied that he had been served with any legal notice and set up the defence that he was entitled to forfeit the amount received by him because the Plaintiff/Decree Holder had failed to pay the balance sale consideration as envisaged in the Deed of Agreement for Earnest Money. After filing his Written Statement he stopped appearing, and the suit proceeded ***ex-parte***. Significantly, the Deed of Agreement for Earnest Money as well as the Written Statement predicate Defendant's title on a Will, and in this context there is no evidence on record that it had taken effect because of the death of the Testator. In the event, as is to be expected, no appeal against the judgment and decree came to be filed, and, therefore, the decision was not tested before or scrutinized by the Appellate Court. The absence of the Defendant does not absolve the Trial Court from fully satisfying itself of the factual and legal veracity of the Plaintiff's claim; nay, this feature of the litigation casts a greater responsibility and onerous obligation on the Trial Court as well as the Executing Court to be fully satisfied that the claim has been proved and substantiated to the hilt by the Plaintiff. Reference to ***Shantilal Gulabchand Mutha v. Tata Engineering and Locomotive Company Limited, (2013) 4 SCC 396,*** will be sufficient. The failure to file a Written Statement, thereby bringing Order VIII Rule 10 of the CPC into operation, or the factum of Defendant having been set ex parte, does not invite a punishment in the form of an automatic decree. Both under Order VIII Rule 10 CPC and on the invocation of Order IX of the CPC, the Court is nevertheless duty-bound to diligently ensure that the plaint stands proved and the prayers therein are worthy of being granted.

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***118. CIVIL PROCEDURE CODE, 1908 – Order 17 Rule 1**

Adjournment, grant of – Order 17 of CPC does not forbid grant of adjournment where the circumstances are beyond the control of the party – There is no restriction on the number of adjournments to be granted – It cannot be said that even if the circumstances are beyond the control of the party after having obtained third adjournment, no further adjournments would be granted, e.g. a party may be suddenly hospitalized on account of some serious ailment or there may be serious accident or some act of God leading to devastation – In some extreme cases, it may be necessary to grant adjournment despite the fact that three adjournments had already been granted – It would depend upon the facts and circumstances of each case, on the basis whereof, the court would decide to grant or refuse adjournment.

Uttam Singh v. State of M.P. and others

Judgment dated 10.12.2013 passed by the High Court of M.P. in Second Appeal No. 530 of 2013, reported in 2014 (1) MPHT 503

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119. CIVIL PROCEDURE CODE, 1908 – Order 20 Rule 18

If once in a joint Hindu family, partition has taken place, it is presumed that there is a complete partition of all the properties – One who alleges otherwise, burden lies upon him to prove his allegations.

Kesharbai alias Pushpabai Eknathrao Nalawade (D) by L.Rs. & anr. v. Tarabai Prabhakarro nalawade & Ors.

Judgment dated 14.03.2014 passed by the Supreme Court in Civil Appeal No. 3867 of 2014, reported in AIR 2014 SC 1830

Extracts from the judgment:

In our opinion, presumption is wrong in law in view of the fact the High Court has affirmed the findings of the trial court that in 1985, there was a complete partition and the parties had acted on the same. It is a settled principle of law that once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. Undoubtedly the joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. This proposition of law has been applied by this court in a number of cases. We may notice here the judgment of this Court in ***Bhagwati Prasad Sah & Ors. v. Dulhin Rameshwari Kuer & Anr., AIR 1952 SC 72*** wherein it was ***inter alia*** observed as under:

> "Before we discuss the evidence on the record, we desire to point out that on the admitted facts of this case neither party has any presumption on his side either as regards jointness or separation of the family. The general principle undoubtedly is that a Hindu family is presumed to be joint unless the contrary is proved, but where it is admitted that one of the coparceners did separate himself from the other members of the joint family and had his share in the joint property partitioned off for him, there is no presumption that the rest of the coparceners continued to be joint. There is no presumption on the other side too that because one member of the family separated himself, there has been separation with regard to all. It would be a question of fact to be determined in each case upon the evidence relating to the intention of the parties whether there was a separation amongst the other co-parceners or that they remained united. The burden would undoubtedly lie on the party who asserts the existence of a particular state of things on the basis of which he claims relief."

This principle has been reiterated by this Court in ***Addagada Raghavamma & Anr. v. Addagada Chenchamma & Anr, AIR 1964 SC 136***.

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120. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 1(1) (4) & (5)

(i) What is the right mode of appropriation of payment made under a money decree? Unless the decree contains a specific direction, in ordinary course, if money is received without a definite appropriation, it is first applied in payment of interest and on its satisfaction, in payment of the principal.

(ii) Order 21 Rule 1 (4) and (5) CPC is not related to appropriation, except stating when interest ceases to run.

V. Kala Bharathi and others v. Oriental Ins. Co. Ltd., Br. Chitoor

Judgment dated 01.04.2014 passed by the Supreme Court in Civil Appeal No. 3056 of 2008, reported in AIR 2014 SC 1563 (3 Judge Bench)

Extracts from the judgment:

In the judgment of ***Industrial Credit and Development Syndicate (ICDS) Ltd. v. Smithaben H. Patel & Ors., AIR 1999 SC 1036, Venkatadri Appu Rao v. Partha Sarathy Appa Rao, AIR 1922 PC 233, Meghraj v. Bayabai, AIR 1970 SC 161*** and ***Gurpreet Singh v. Union of India, 2006 AIR SCW 5813*** referred to by the High Court in the impugned judgment, this Court and the Privy Council consistently have taken a view that in case of appropriation of amount unless the decree contains a specific provision, the amounts have to be appropriated as contemplated under Order 21 Rule 1. If there is a shortfall in deposit, the amount has to be adjusted towards interest and costs, then it has to be adjusted towards principal. The High Court has failed to appreciate this fact and misdirected itself in observing that these judgments are prior to the amendment to Order 21 Rule 1. In our considered view, as far as this aspect is considered, there is no much difference in the provisions prior to or subsequent to the amendment, because in the objects and reasons for amendment to Order XXI Rule 1, as observed by the Constitution bench in ***Gurpreet Singh v. Union of India, 2006 AIR SCW 5813*** the legislative intent in enacting sub-rules (4) and (5) is that interest should cease on the deposit being made and notice given or on the amount being tendered outside the court in the manner provided. The intent of the rule making authority is to leave no room for any frivolous pleas of payment of money due under a money decree.

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121. CIVIL PROCEDURE CODE, 1908 – Order 21 Rule 12 and Section 115

Decree for possession in favour of three joint decree holders, execution and satisfaction of – In case of joint decree for possession, unless and until the possession of the entire decretal suit property is given to all the joint decree holders, it cannot be said that the decree has been satisfied in full even if the possession of the part of the suit property has been given to one or more decree holders.

Hari Singh and others v. Sudhir Singh and others

Judgment dated 07.03.2013 passed by the High Court of M.P. in Civil Revision No. 332 of 2004, reported in 2014 (3) MPHT 57

Extracts from the judgment:

Since a joint decree of possession and injunction has been passed in favour of all the three decree holders, unless and until the possession of the entire decretal suit property is given to all the three joint decree holders it cannot be said that the decree has been satisfied in full satisfaction even if the possession of the decree or part of the suit property has been given to two decree holders, i.e., respondent Nos. 3 and 4, namely, Gopal Singh and Kusum Bai respectively. From the impugned order, it is gathered that as per the averment made in the application by the judgment debtors Sudhir Singh and Shashikala that decree holders Hari Singh has already handed over his share to the purchaser and therefore, now because the judgment debtor Nos. 3 and 4 have delivered the possession of remaining portion of the decretal property to the decree holders Gopal Singh and Kusum Bai, therefore, decree has been fully satisfied. According to me, whether there was a partition in the family of decree holders or not and if there was a partition whether decree holder Hari Singh handed over the possession of his share in the year 1994, as stated by the judgment debtor in their application are disputed questions of fact and therefore, when it is denied by the decree holder Hari Singh and other applicant Nos. 2 to 5, it cannot be said that the possession of his share has been delivered by Hari Singh to the applicant Nos. 2 to 5. The Supreme Court in ***Jagdish Dutt and another v. Dharam Pal and others, AIR 1999 SC 1694*** has categorically held that where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the right of the parties by an appropriate decree in a partition suit. The Supreme Court further held that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. Hence, according to me, a joint decree can be satisfied only if it is executed as a whole and therefore, the learned Executing Court has acted illegally with material irregularity in exercise of its jurisdiction by dismissing the execution application in its full satisfaction. The decision of ***M/s India Umbrella Manufacturing Co. and others v. Bhagabandei Agarwalla (dead) by L.Rs. and others, AIR 2004 SC 1321*** placed reliance by learned Counsel for the respondent Nos. 1 and 2 is not against the applicants because in this decision also it has been decided that unless and until the share is defined and partition has taken effect the execution cannot be dismissed in full satisfaction.

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***122. CIVIL PROCEDURE CODE, 1908 – Order 39 Rules 1 and 2**

Suit for partition and possession of joint family property – Temporary injunction against other coparcenor (s) in respect of alienation, grant of – Other co-parcenor (s) may be injuncted from alienating the joint family property – ***Sunil Kumar and another v. Ram Prakash and others, AIR 1988 SC 576*** **distinguished in which alienation of property by karta of**

the joint family was in question and it was held that permanent injunction cannot be granted against karta of the family, being Manager of the property, who has right to dispose of joint family property to meet out legal necessity to discharge his antecedent debt which is not tainted with immorality.

Kanchan Singh and another v. Daulat Singh (since deceased) and others

Judgment dated 28.02.2014 passed by the High Court of M.P. in Writ Petition No. 1435 of 2012, reported in 2014 (3) MPHT 45

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123. CIVIL PROCEDURE CODE, 1908 – Order 47 Rule 1 and Section 11

(i) *"Res judicata"* means a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgments – *Res judicata* is accepted for truth – The doctrine contains the rule of conclusiveness of the judgment.

(ii) Even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to litigation – The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*.

(iii) The ratio of any decision must be understood in the light of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it – The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.

(iv) What is basic requirement for review? The first and foremost requirement of entertaining a review petition is that the concerned order suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment or order cannot be disturbed.

Dr. Subramanian Swamy v. State of Tamil Nadu and others

Judgment dated 06.01.2014 passed by the Supreme Court in Civil Appeal No.10620 of 2013, reported in (2014) 5 SCC 75

Extracts from the judgment:

The scope of application of doctrine of ***res judicata*** is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and ***"res judicata"*** literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". ***Res judicata pro veritate accipitur*** is the full maxim which has, over the years, shrunk to mere ***"res judicata"***, which means that res judicata is accepted for truth. Doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence ***interest reipublicae ut sit finis***

litium (it concerns the State that there be an end to law suits) and partly on the maxim ***nemo debet bis vexari pro una et eadem cause*** (no man should be vexed twice over for the same cause).

It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."

The issue can be examined from another angle. The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. [Vide ***Rajender Kumar v. Rambhai, (2007)15 SCC 513***].

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124. CRIME AGAINST WOMEN AND CHILDREN:

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(g), 3 and 3 Expln. I (iv) (c)

(i) What is domestic violence and continuing domestic violence? Despite various orders, if husband disobeys the court orders, that is continuing domestic violence by the husband against his wife

(ii) Conduct of parties prior to DV Act, 2005 can be taken into consideration – Wife having been harassed since 2005, entitled for protection order along with maintenance as allowed by Trial Court – She is also entitled for damages for injuries including mental torture and emotional distress – Husband directed to pay compensation and damages of Rs. 5 lac.

Saraswathy v. Babu

Judgment dated 25.11.2013 passed by the Supreme Court in Criminal Appeal No. 1999 of 2013, reported in (2014) 3 SCC 712

Extracts from the judgment:

Section 2 (g) of DV Act, 2005 states that "domestic violence" has the same meaning as assigned to it in Section 3 of DV Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates to "economic abuse" which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the explanation

in domestic relationship including access to the shared household as evident from clause (iv) (c) of Section 3.

In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household, matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term 'Domestic Violence' as defined under Section 3 of the DV Act, 2005.

The other issue that whether the conduct of the parties even prior to the commencement of the DV Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in ***V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183***. In the said case, this Court held as follows:

> "12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the DV Act, 2005, the conduct of the parties even prior to the coming into force of the DV Act, could be taken into consideration while passing an order under Section 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the DV Act, 2005,"

We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the DV Act, 2005, which defines "domestic violence" in wide term. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force DV Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the Trial Court and the Appellate Court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under Section 18 and 19 of the DV, Act, 2005 along with the maintenance as allowed by the Trial Court under Section 20 (1) (d) of the DV, Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay

compensation and damages to the extent of Rs. 5,00,000/- in favour of the appellant-wife.

The order passed by the High Court is set aside with a direction to the respondent-husband to comply with the orders and directions passed by the courts below with regard to residence and maintenance within three months. The respondent-husband is further directed to pay a sum of Rs. 5,00,000/- in favour of the appellant-wife within six months from the date of this order. The appeal is allowed with aforesaid observations and directions. However, there shall be no separate order as to costs.

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***125. CRIMINAL PROCEDURE CODE, 1973 – Section 2 (wa)**

(i) Victim, connotation of – A victim is an aggrieved party who is the ultimate sufferer in the commission of a crime and is as much interested in the decision of trial, appeal or revision as is the accused or the State – He is an aggrieved person not only in a crime but also in investigation, inquiry, trial, appeal, revision, review and also the procedure by which the inherent powers of the High Court under section 482 CrPC are invoked.

(ii) Victim – Transfer of appeal – Right of hearing, importance of – Right to opportunity of hearing of the victim reiterated – The law recognizes importance of victim in a crime and also in all the subsequent proceedings contemplated by Cr.P.C which take place right from the lodging of FIR till decision in appeal or revision – Therefore, order of transfer of trial if passed without hearing the victim causes prejudice to the victim as he has not only a right to know the venue of conduction of trial but also to oppose on cogent grounds, an attempt to transfer trial made on anyone's behest.

Uday Bhan v. State of M.P. and another

Judgment dated 06.12.2013 passed by the High Court of M.P. in Misc. Cri. Case No. 184 of 2013, reported in 2014 (2) MPHT 44 (DB)

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126. CRIMINAL PROCEDURE CODE, 1973 – Sections 24, 437 and 439

(i) No vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution – Their counsel can only assist the Public Prosecutor.

(ii) Section 437 Cr.P.C. provides for production of an accused before a court other than the court of Sessions or High Court but it does not create any bar of jurisdiction against Sessions Court or High Court.

(iii) Meaning of custody, arrest and detention – Explained.

(iv)If two or more mutually irreconcilable decisions of the Supreme Court of co-ordinate Bench are cited before a Judge, the inviolable recourse is to apply the earlier view.
***Per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*.**

Sundeep Kumar Bafna v. State of Maharashtra & anr.

Judgment dated 27.03.2014 passed by the Supreme Court in Criminal Appeal No. 689 of 2014, reported in 2014 (2) Crimes 161 (SC)

Extracts from the judgment:

The terms 'custody', 'detention' or 'arrest' have not been defined in the CrPC, and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance. The Oxford Dictionary (online) defines custody as imprisonment, detention, confinement, incarceration, internment, captivity; remand, duress, and durance. The Cambridge Dictionary (online) explains 'custody' as the state of being kept in prison, especially while waiting to go to court for trial. Longman Dictionary (online) defines 'custody' as 'when someone is kept in prison until they go to court, because the police think they have committed a crime'. Chambers Dictionary (online) clarifies that custody is 'the condition of being held by the police; arrest or imprisonment; to take someone into custody to arrest them'. Chambers' Thesaurus supplies several synonyms, such as detention, confinement, imprisonment, captivity, arrest, formal incarceration. The Collins Cobuild English Dictionary for Advance Learners states in terms of that someone who is in custody or has been taken into custody or has been arrested and is being kept in prison until they get tried in a court or if someone is being held in a particular type of custody, they are being kept in a place that is similar to a prison. The Shorter Oxford English Dictionary postulates the presence of confinement, imprisonment, durance and this feature is totally absent in the factual matrix before us. The Corpus Juris Secundum under the topic of 'Escape & Related Offenses; Rescue' adumbrates that 'Custody, within the meaning of statutes defining the crime, consists of the detention or restraint of a person against his or her will, or of the exercise of control over another to confine the other person within certain physical limits or a restriction of ability or freedom of movement.' This is how 'Custody' is dealt with in Black's Law Dictionary, (9th ed. 2009):-

> "Custody-The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority. The term is very

> elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Term "custody" within statute requiring that petitioner be "in custody" to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of ***liberty. U. S. ex rel. Wirtz v. Sheehan, D. C.Wis 319 F. Supp. 146, 147.*** Accordingly, persons on probation or released on own recognizance have been held to be "in custody" for purposes of habeas corpus proceedings."

A perusal of the dictionaries thus discloses that the concept that is created is the controlling of a person's liberty in the course of a criminal investigation, or curtailing in a substantial or significant manner a person's freedom of action. Our attention has been drawn, in the course of rejoinder arguments to the judgment of the Full Bench of the High Court of Madras in ***Roshan Beevi v. Joint Secretary, 1984(15) ELT 289*** (Mad), as also to the decision of the Court in ***Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440;*** in view of the composition of both the Benches, reference to the former is otiose. Had we been called upon to peruse ***Deepak Mahajan*** (supra) earlier, we may not have considered it necessary to undertake a study of several Dictionaries, since it is a convenient and comprehensive compendium on the meaning of arrest, detention and custody.

Courts in Australia, Canada, U.K. and U.S. have predicated in great measure, their decisions on paragraph 99 from Vol. II Halsbury's Laws of England (4th Edition) which states that – "Arrest consists of the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer". The US Supreme Court has been called upon to explicate the concept of custody on a number of occasions, where, coincidentally, the plea that was proffered was the failure of the police to administer the Miranda caution, i.e. of apprising the detainee of his ***Constitutional rights. In Miranda v. Arizona 384 US 436 (1966),*** custodial interrogation has been said to mean "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way". In ***Minnesota v. Murphy, 465 US 420 (1984),*** it was opined by the U.S. Supreme Court that since "no formal arrest or restraint on freedom of movement of the degree associated with formal arrest" had transpired, the Miranda doctrine had not become operative. In ***R. v. Whitfield 1969 CareswellOnt 138,*** the Supreme Court of Canada was called upon to decide whether the police officer, who directed the accused therein to stop the car and while seizing him by the shirt said "you are under arrest:",could be said to have been "custodially arrested" when the accused managed to sped away. The plurality of the Supreme Court declined to draw any distinction between an arrest amounting to custody and a mere or bare arrest and held that the accused was not arrested and thus

could not have been guilty of “escaping from lawful custody”. More recently, the Supreme Court of Canada has clarified in ***R. v. Suberu, [2009] S.C.J.No.33*** that detention transpired only upon the interaction having the consequence of a significant deprivation of liberty. Further, in ***Berkemer v. McCarty, 468 U.S. 420 (1984),*** a roadside questioning of a motorist detained pursuant to a routine traffic stop was not seen as analogous to custodial interrogation requiring adherence to ***Miranda*** rules.

It appears to us from the above analysis that custody, detention and arrest are sequentially cognate concepts. On the occurrence of a crime, the police is likely to carry out the investigative interrogation of a person, in the course of which the liberty of that individual is not impaired, suspects are then preferred by the police to undergo custodial interrogation during which their liberty is impeded and encroached upon. If grave suspicion against a suspect emerges, he may be detained in which event his liberty is seriously impaired. Where the investigative agency is of the opinion that the detainee or person in custody is guilty of the commission of a crime, he is charged of it and thereupon arrested. In ***Roshan Beevi v. Joint Secretary, (1984) (15) ELT 289 (Mad)***, the Full Bench of the High Court of Madras, speaking through S. Ratnavel Pandian J, held that the terms ‘custody’ and ‘arrest’ are not synonymous even though in every arrest there is a deprivation of liberty is custody but not vice versa. This thesis is reiterated by Pandian J in ***Deepak Mahajan*** by deriving support from ***Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559.*** The following passages from ***Deepak Mahajan*** (supra) are worthy of extraction:-

> “Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice versa and that both the words ‘custody’ and ‘arrest’ are not synonymous terms. Though ‘custody’ may amount to an arrest in certain circumstances but not under all circumstances. If these two terms are interpreted as synonymous, it is nothing but an ultra legalist interpretation which if under all circumstances accepted and adopted, would lead to a startling anomaly resulting in serious consequences, vide ***Roshan Beevi*** (supra).

> While interpreting the expression 'in custody' within the meaning of Section 439 CrPC, Krishna Iyer, J. speaking for the Bench in ***Niranjan Singh*** (supra) observed that:
>
> "He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions." (emphasis added)
>
> If the third sentence of para 48 is discordant to ***Niranjan Singh***, (supra) the view of the co-ordinate Bench of earlier vintage must prevail, and this discipline demands and constrains us also to adhere to Niranjan Singh; ergo, we reiterate that a person is in custody no sooner he surrenders before the police or before the appropriate Court. This enunciation of the law is also available in three decisions in which Arijit Pasayat J spoke for the 2-Judge Benches, namely ***(a) Nirmal Jeet Kaur v. State of M.P., (2004) 7 SCC 558*** and ***(b) Sunita Devi v. State of Bihar, (2005) 1 SCC 608, and (c) Adri Dharan Das v. State of West Bengal, (2005) 4 SCC 303,*** where the Co-equal Bench has opined that since an accused has to be present in Court on the moving of a bail petition under Section 437, his physical appearance before the Magistrate tantamounts to surrender. The view of Niranjan Singh (see extracted para 49 infra) has been followed in ***State of Haryana v. Dinesh Kumar, (2008) 3 SCC 222.*** We can only fervently hope that member of Bar will desist from citing several cases when all that is required for their purposes is to draw attention to the precedent that holds the field, which in the case in hand, we reiterate is ***Niranjan Singh*** (supra)

(iv) It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.

(i) No vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing. Reverting to the case in hand, we are of the opinion that the complainant or informant or aggrieved party who is himself an accomplished criminal lawyer and who has been represented before us by the erudite Senior Counsel, was not possessed of any vested right of being heard as it is manifestly evident that the Court has not formed any opinion adverse to the prosecution. Whether the accused is to be granted bail is a matter which can adequately be argued by the State Counsel. We have, however, granted a full hearing to Senior Advocate and have perused detailed written submissions since we are alive to impact that our opinion would have on a multitude of criminal trials.[See: ***Thakur Ram v. State of Bihar, AIR 1966 SC 911*** (3 Judge Bench)]

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127. CRIMINAL PROCEDURE CODE, 1973 – Section 154
INDIAN PENAL CODE, 1860 – Sections 302, 376 and 394

(i) Defective investigation in a very heinous crime of rape, robbery and murder – Accused persons were acquitted due to above lapses in investigation and prosecution – Directions issued by Hon'ble the Apex Court to remedy the situation.

(ii) Help of modern tools and techniques should be taken in investigation like DNA profile, blood group test, etc. to prove a particular fact.

State of Gujarat v. Kishanbhai and others

Judgment dated 07.01.2014 passed by the Supreme Court in Criminal Appeal No. 1485 of 2008, reported in (2014) 5 SCC 108

Extracts from the judgment:

We direct that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified,

if necessary by requiring further investigation. It should also be ensured that the evidence gathered during investigation is truly and faithfully utilised, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons, against whom there is sufficient evidence, will have to suffer the rigours of criminal prosecution. By following the above procedure, in most criminal prosecutions, the agencies concerned will be able to successfully establish the guilt of the accused.

Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore essential that every State should put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A Standing Committee of senior officers of the police and prosecution departments should be vested with the aforesaid responsibility. The consideration at the hands of the above Committee should be utilised for crystallising mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution official's course-content drawn from the above consideration. The same should also constitute course-content of refresher training programmes for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials should be vested in the same Committee of senior officers referred to above. Judgments like the one in hand (depicting more than ten glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course-content will be reviewed by the above Committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of courts, and on the basis of experiences gained by the Standing Committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence when they are made liable to suffer departmental action for their lapses.

On the culmination of a criminal case in acquittal, the investigating/prosecuting official(s) concerned responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the official concerned be

withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigating and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

A copy of the instant judgment shall be transmitted by the Registry of this Court, to the Home Secretaries of all State Governments and Union Territories, within one week. All the Home Secretaries concerned, shall ensure compliance with the directions recorded above. The records of consideration, in compliance with the above direction, shall be maintained.

We hope and trust that the Home Department of the State of Gujarat, will identify the erring officers in the instant case, and will take appropriate departmental action against them, as may be considered appropriate, in accordance with law.

There has now been a great advancement in scientific investigation on the instant aspect of the matter. The investigating agency ought to have sought DNA profiling of the blood samples, which would have given a clear picture whether or not the blood of the victim Gomi was, in fact on the clothes of the respondent-accused Kishanbhai. This scientific investigation would have unquestionably determined whether or not the respondent-accused was linked with the crime. Additionally, DNA profiling of the blood found on the knife used in the commission of the crime (which the respondent-accused Kishanbhai had allegedly stolen from Dineshbhai Karsanbhai Thakore, PW 6), would have uncontrovertibly determined, whether or not the said knife had been used for severing the legs of the victim Gomi, to remove her anklets.

Inspite of so much advancement in the field of forensic science, the investigating agency seriously erred in not carrying out an effective investigation to genuinely determine the culpability of the respondent-accused Kishanbhai.

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128. CRIMINAL PROCEDURE CODE, 1973 – Section 195

INDIAN PENAL CODE, 1860 – Section 188

Offence under section 188 IPC – Bar under section 195 (1) (a) CrPC, applicability of – Cognizance in respect of offence under section 188 IPC – Can only be taken on the complaint in writing of the concerning public servant or to whom he is administratively subordinate – The

provisions contained in sub-section (1) of section 195 of CrPC are mandatory in nature and cognizance cannot be taken on the basis of chargesheet filed by the police.

Prashant Chouhan v. State of M.P.

Judgment dated 06.03.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 312 of 2013, reported in 2014 (2) MPHT 526

Extracts from the judgment:

From bare perusal of section 2 (d) of the Cr.P.C., it is clear that the complaint should be made orally or in writing directly to the Magistrate and not to the police. In the case in hand, though the complaint was made but it was not made directly to the Magistrate, it was addressed to the Station House Officer, Police Station, Padav, District Gwalior and on that basis crime was registered, therefore, it is crystal clear that cognizance was taken by learned Trial Court, overlooking the provisions of Section 195 (1) (a) (i) of the Code.

There is no dispute that petitioner has been subjected to prosecution for the alleged commission of offence punishable under Section 188 IPC. It is also not in dispute that the allegation against the petitioner is that he has disobeyed the order/instructions issued by District Magistrate, Gwalior in relation to availability of books, uniform and stationaries at eight shops and providing the list of book as per syllabus and sellers to the Additional District Magistrate/District Education Officer prior to starting of academic session. Section 195 of the Code contains general provisions with regard to taking cognizance of offence by the Magistrate however, in respect of certain offences, special provisions have been made prescribing the manner in which, and the circumstances, in which, the cognizance could be taken by the Court. Section 195 (1) provides that no Court shall take cognizance of certain offences enumerated in clauses (a) and (b), except in the manner provided therein. The provisions contained in sub-section (1) are mandatory in nature and are not directory. The statutory mandate prohibits taking of cognizance except in the manner provided therein.

So far as commission of offence under Section 188 of IPC is concerned, the provisions contained in clause (a) are applicable, which mandate that no Court shall take cognizance of the offence punishable under Section 188 of IPC, except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. Thus, the Court is prohibited from taking cognizance of the offence punishable under Section 188 of IPC except when the complaint in writing is made by the concerned public servant. The statutory scheme with regard to cognizance of commission of offence under Section 188 of IPC is that complaint has to be filed before the Magistrate concerned having territorial jurisdiction either by the concerned public servant, whose order is alleged to have been disobeyed or by any other public servant to whom, the concerned public servant is administratively subordinate.

This being so, the aforesaid discussion makes it clear that for the offence under Section 188 of IPC without complaint filed directly to the Magistrate, Court cannot take cognizance, therefore, on police report the Trial Court was not obliged to take cognizance of the offence.

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129. CRIMINAL PROCEDURE CODE, 1973 – Sections 202 and 204

Whether it is mandatory for a Magistrate to examine all the witnesses cited in the complaint in cases triable by Sessions Court before passing any order under section 203 or 204 of Cr.P.C? Held, No.

Mukhidevi v. State of M.P. and others

Judgment dated 20.02.2013 passed by the High Court of M.P. in Criminal Revision No. 733 of 2012, reported in 2014 (2) MPHT 373

Extracts from the judgment:

The mute question for consideration in this case is that in the light of proviso to Section 202 (2) of Cr.PC the examination of all the witnesses cited in the list of witnesses filed along with complaint is mandatory before taking cognizance?

The aforesaid question was considered by the Apex Court in the case of ***Shivjee Singh v. Nagendra Tiwary and other,*** reported in ***2010 (5) M.P.H.T. 413 (SC) = 2010 Cri.LR (SC) 628,*** and after taking into consideration of all its earlier judgments on the subject ruled that the complainant is not bound to examine all the witnesses named in the complaint, but can examine those witnesses, who are material to make out a Prima facie case against the accused persons. The examination of all the witnesses cited in the complaint is not a condition precedent for taking cognizance by the Magistrate. The relevant para reads as under:-

> "16. As a sequel to the above discussions, we hold that examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant in furtherance of the direction given by the Magistrate in terms of proviso to Section 202 (2) is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint and the High Court committed serious error in directing the Chief Judicial Magistrate to conduct further inquiry and pass fresh order in the light of proviso to Section 202(2) Cr.PC."

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130. CRIMINAL PROCEDURE CODE, 1973 – Section 204

(i) Can a Magistrate recall or review an order passed by him? Held, No – There is no provision in Cr.P.C. which empowers the Magistrate to recall or review an order passed by him. ***Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57*** **relied on.**

(ii) Rider by Hon'ble the Apex Court for passing adverse remarks against the Subordinate Courts – Unless the facts disclose a designed effort to frustrate the cause of justice with *mala fide* intention, caustic and harsh comments should be avoided.

Judges do commit mistakes – Superior courts are there to correct such mistakes – They can convey their message through their orders which should be authoritative but not uncharitable – The use of derogatory language, invariably has a demoralising effect on the Subordinate Judiciary.

Sujoy Kumar Chanda v. Damayanti Majhi and another

Judgment dated 20.02.2014 passed by the Supreme Court in Criminal Appeal No. 273 of 2006, reported in (2014) 5 SCC 181

Extracts from the judgment:

We are of the opinion that the learned Sessions Judge was right in saying that the order passed by the learned SDJM dated 5-1-2002 was without jurisdiction and in violation of the High Court's earlier order dated 23-7-2001. In the facts of this case, the learned SDJM having once refused to issue process against the appellants, he could not have recalled that order by a subsequent order. In this connection, we may refer to the judgment of this Court in ***Bindeshwari Prasad Singh v. Kali Singh, (1977) 1 SCC 57*** wherein this Court has clarified that there is absolutely no provision in the Code empowering the Magistrate to review or recall an order passed by him. This view has been reiterated by this Court thereafter in several authoritative pronouncements.

In this context, observations made by this Court in ***K.P. Tiwari v. State of M.P., 1994 Supp (1) SCC 540*** may be usefully referred to:

> "4..... The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err. It is well said that a Judge who has not committed an error is yet to be born. And that applies to Judges at all levels from the lowest to the highest. Sometimes, the difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. On such occasions, the lower courts are not necessarily wrong and the higher courts always right. It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost down their

necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive."

Again in ***Braj Kishore Thakur v. Union of India, (1997) 4 SCC 65*** this Court observed as under:

"2. Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders or courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that a Judge who has not committed any error is yet to be born".

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131. CRIMINAL PROCEDURE CODE, 1973 – Sections 320 and 482

(i) Compounding in non-compoundable cases is impermissible – Monitory compensation cannot wipe out crime against society.

(ii) Offence under section 307 IPC is non-compoundable – Criminal justice system has a larger objective to achieve the safety and protection of people at large.

(iii) Quashing of criminal proceedings on the basis of settlement between victim and offender is different from compounding of offence – Power of compounding is prescribed under section 320 Cr.P.C – Quashing of proceedings under section 482 Cr.P.C is guided by material on record as to whether ends of justice would justify exercise of such power.

State of Rajasthan v. Shambhu Kewat and another

Judgment dated 28.11.2014 passed by the Supreme Court in Criminal Appeal No. 2018 of 2013, reported in (2014) 4 SCC 149

Extracts from the judgment:

We may point out that in ***Gian Singh v. State of Punjab,(2012) 10 SCC 303*** this Court has held that quashing of offence or criminal proceedings on the ground of settlement between an offender and the victim is not the same thing as compounding of offences. This Court also held that the power of compounding of offences conferred on a Court under Section 320 CrPC is materially different

from the power conferred under Section 482 for quashing of criminal proceedings by the High Court. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC and the Court is guided solely and squarely thereby, while, on the other hand, the formation of opinion by the High Court for quashing a criminal proceeding or criminal complaint under Section 482 CrPC is guided by the material on record as to whether the ends of justice would justify such exercise of power, although the ultimate consequence may be acquittal or dismissal of indictment.

The Court also opined that the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 CrPC. This Court further opined that the inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power, namely, (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. This Court also cautioned that while exercising the power of compounding the offence, the court must have due regard to the nature and gravity of the crime.

We notice, in this case, admittedly, the offence committed under Section 307 IPC is not compoundable. In ***Ishwar Singh v. State of M.P., (2008) 15 SCC 667,*** the accused was alleged to have committed an offence punishable under Section 307 IPC and, with reference to Section 320 CrPC, it was held that Section 307 was not a compoundable offence and there is express bar in Section 320 that no offence shall be compounded if it is not compoundable under the Code. In ***Gulab Das and others v. State of Madhya Pradesh, (2011) 10 SCC 765,*** a different note was struck by this Court, but certain reasons for compounding the offence under Section 307 IPC were stated. In that case, this Court noticed that the incident had taken place in the year 1994 and the parties were related to each other. Both the accused persons, at the time of the incident, were in their 20's. Further, it was also noticed that a cross case was registered against the complainant also in which he was convicted and sentenced. Further, it was also noticed that the accused persons had also undergone certain period of sentence. The case which was settled between the parties, involved offences punishable under Section 325 read with Section 34 and also under Section 323 IPC. It was in such circumstances that the Court felt that the settlement arrived at between the parties was a sensible once so as to give quietus to the controversy. The Court while upholding the conviction reduced the sentence awarded to the accused to the period they had already undergone.

We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, is because the Code has identified which conduct should be brought within the

ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.

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

Anticipatory bail – Condition, reasonability of – The words "any conditions" used in the provisions should not be regarded as conferring absolute power on a Court to impose any condition that it chooses to impose – Conditions imposed in granting anticipatory bail must be just, fair and reasonable and should not be so harsh as to generate undue harassment to the applicant.

Deepak Nagle v. State of M.P.

Judgment dated 20.03.2014 passed by the High Court of M.P. in Writ Petition No. 10120 of 2013, reported in 2014 (2) MPHT 531

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133. CRIMINAL TRIAL:

(i) Anticipatory bail – Inapplicability of section 438 Cr.P.C in a particular State – Accused can seek relief under section 226 of the Constitution but High Court has to exercise its power sparingly and, only in appropriate cases, anticipatory bail can be granted.

(ii) Writ petition under Article 226 dismissed – Grant of relief after dismissal is impermissible.

Hema Mishra v. State of Uttar Pradesh and others

Judgment dated 16.01.2014 passed by the Supreme Court in Criminal Appeal No. 146 of 2014, reported in (2014) 4 SCC 453

Extracts from the judgment:

I may, however, point out that there is unanimity in the view that in spite of the fact that Section 438 has been specifically omitted and made inapplicable in the State of Uttar Pradesh, still a party aggrieved can invoke the jurisdiction of the High Court under Article 226 of the Constitution of India, being extraordinary jurisdiction and the vastness of the powers naturally impose considerable responsibility in its application. All the same, the High Court has got the power

and sometimes duty in appropriate cases to grant reliefs, though it is not possible to pin-point what are the appropriate cases, which have to be left to the wisdom of the Court exercising powers under Article 226 of the Constitution of India.

I am also faced with the situation that on dismissal of the writ by the High Court under Article 226 of the Constitution of India, while examining the challenge for quashing the FIR or a charge-sheet, whether the High Court could grant further relief against arrest for a specific period or till the completion of the trial. This Court in ***State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12,*** while dealing with the scope of Article 226 of the Constitution, held as follows :-

> "Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions had been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and... that was not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the ***status quo ante***. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution... The language of Article 226 does not permit such an action."

The language of Article 226 does not permit such an action and once the Court finds no merits in the challenge, writ petition will have to be dismissed and the question of granting further relief after dismissal of the writ, does not arise. Consequently, once a writ is dismissed, all the interim reliefs granted would also go.

It is pertinent to mention that though the High Courts have very wide powers under Art.226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the extent of including the provision of anticipatory bail as a blanket provision.

Thus, such a power has to be exercised very cautiously keeping in view, at the same time, that the provisions of Article 226 are a devise to advance justice and not to frustrate it. The powers are, therefore, to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by authorities indiscriminately making pre-arrest of the accused persons. In entertaining such a petition under Art.226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Art.226 is not to be exercised liberally so as to convert it into Section 438, Cr.P.C. proceedings, keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as to back door entry via Art.226. On the other hand, wherever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its power under Art. 226 of the Constitution. It is again clarified that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified.

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134. CRIMINAL TRIAL:

(i) Investigation – I.O. submitted charge sheet without report of forensic lab – Public Prosecutor also failed to guide I.O. – Magistrate who committed the matter to Sessions Court failed to apply his mind – Judicial Officer and Public Prosecutors owe a greater responsibility to ensure compliance of law in a criminal case.

(ii) Death by poisoning alleged but FSL report not produced – Doctor who conducted post-mortem not examined – Content of post-mortem report not discussed in the judgment – Conviction reversed.

(iii) Offence under section 304-B not established i.e. occurrence of death of deceased other than normal circumstances not established – Evidence on record was sufficient to sustain conviction under section 498-A.

Chhotan Sao and another v. State of Bihar

Judgment dated 17.12.2013 passed by the Supreme Court in Criminal Appeal No. 1613 of 2008, reported in (2014) 4 SCC 54

Extracts from the judgment:

One disturbing feature of the case is that the doctor who conducted the post-mortem of the body of Babita Devi was not examined at the trial. The post-mortem report (Ext. 3) came to be marked at the trial through PW 11 Dr. Arbind Prasad, a Professor in Forensic Science Department, MMCH, Gaya, who claimed that he worked with the author (one Dr. Kapildeo Prasad) of the post-mortem report. Dr. Arbind Prasad further deposed that he could and did recognize the

handwriting and signature on Ext. 3 to be that of Dr. Kapildeo Prasad. The content of the post-mortem is not discussed anywhere in the judgment of the trial court or in the judgment of the High Court. On the other hand, at para 20 of the trial court judgment it is recorded as follows:

> "One thing is that from Ext. 3, post-mortem report it would appear that viscera was sent for post-mortem but that report has not been received and no apparent injury external or internal has been found on post-mortem examination of the dead body."

It is on the basis of such scanty medical evidence that both the trial court and the High Court rushed to the conclusion that the death of Babita Devi occurred "otherwise than under normal circumstances"

It is argued by the learned counsel for the appellants that the judgment of the High Court confirming the judgment of the Sessions Court insofar as it recorded a finding that Babita Devi died an unnatural death is based on no evidence. Therefore, even if it is assumed for the sake of arguments that both the courts below rightly reached a concurrent finding that there were demands of dowry by the accused prior to the death of Babita Devi and that Babita Devi was subjected to either cruelty or harassment for such a demand, the offence under Section 304-B is not established as one important element of section 304-B i.e. the death of Babita Devi occurred otherwise than under normal circumstances, is not established by any legally admissible evidence on record.

No doubt the prosecution has adduced sufficient evidence to establish all other facts necessary to prove the offence under section 304-B IPC except the cause of death. As seen from the trial court judgment there are no injuries on the body of the deceased. Even according to the first information report the death was caused due to poisoning which the deceased was compelled to consume. In such circumstances, the non-examination of the doctor who conducted the post-mortem coupled with the failure to produce the forensic laboratory report regarding the examination of viscera of the deceased leaves a gaping hole in the case of the prosecution regarding the nature of the death of Babita Devi.

The learned counsel for the State placed reliance on the decision of this Court in ***Bhupendra v. State of M.P., (2014) 2 SCC 106*** to which one of us, Ranjana Prakash Desai, J., was a party. In the said case, no doubt this Court held that the production of chemical examination report is not mandatory. The Court held as follows:

> "23. These decision clearly bring out that a chemical examination of the viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under

section 304-B IPC or under section 306 IPC takes place; in a case of an unnatural death inviting section 304-B IPC (read with the presumption under section113-B of the Evidence Act, 1872) or section 306 IPC (read with the presumption under section 113-A of the Evidence Act, 1872) as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary."

On the facts of that case, this Court reached to the conclusion that there was sufficient evidence on record to come to the conclusion that the death was due to poisoning.

Coming to the case on hand, the conclusion recorded by both the courts below that Babita Devi died an unnatural death is not based on any legal material on record. None of the witnesses spoke to the factum of their witnessing Babita Devi consuming poison either under compulsion or otherwise. The statement in the FIR by PW 8 is based on hearsay evidence. Yaddu Sah of Gopalpur, on whose information PW 8 learnt about the death of Babita Devi, and who reported to the police, is not examined at the trial.

In the circumstances, we are of the opinion that the surviving appellant must be acquitted of the offence under section 304-B. The appeal is allowed to that extent.

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135. EVIDENCE ACT, 1872 – Sections 3 and 8

(i) Appreciation of evidence of pardanashin lady – The face of a pardanashin lady may not be seen by others but she can see others – Identification cannot be rejected on the ground of pardanashini.

(ii) I.O. mentioned opinion of general public in case dairy – It has no relevance to a criminal case – A court deciding criminal case must go by legal evidence adduced before it – Undue importance should not be given to such type of entries.

(iii) Career or high position in life is not relevant because crimes are also committed by men holding high positions and having bright career.

(iv) Where there is an eye witness of incident, the absence of motive pales into insignificance.

Ashok Rai v. State of U.P. & ors.

Judgment dated 15.04.2014 passed by the Supreme Court in Criminal Appeal No. 1508 of 2005, reported in 2014 (2) Crimes 155 (SC)

Extracts from the judgment:

The trial court has erroneously recorded that the accused had no motive

to kill deceased Kailash Rai. The High Court has rightly observed that Umesh Chandra Rai-A6 was the first cousin of deceased Kailash Rai. The appellant and A1-Bashisht Rai belonged to the same family of Loknath, Ramnath Rai and Deonath Rai and there was civil as well as criminal litigation pending between their family and the family of deceased Kailash Rai. Umesh Chandra Rai-A6 was unhappy about the family partition. He had a grouse against his first cousin PW1-Kamla Rai over the partition dispute. PW1-Kamla Rai is the brother of deceased Kailash Rai. Umesh Chandra Rai-A6 had developed intimacy with other accused who were as it is not on good terms with PW1-Kamla Rai's family. Thus, it is not possible to say that motive is absent in this case. Consequently, the argument that the appellant had no enmity with deceased Kailash Rai; that PW1-Kamla Rai was sleeping outside the room and, therefore, the appellant could have easily killed PW1-Kamla Rai instead of taking the risk of going inside and killing deceased Kailash Rai must also be rejected. The relations between the two sides were undoubtedly strained. In such a situation, it is difficult to fathom the undercurrents. As to why the accused chose deceased Kailash Rai and not PW1-Kamla Rai is difficult to say. But the fact remains that there was enmity between the two sides and there is reliable evidence on record to establish that the appellant was involved in the murder of deceased Kailash Rai. In any case, the prosecution has examined PW4-Bijula Devi, who is an eye-witness. When there is eye-witness account on record, the absence of motive pales into insignificance. It was submitted that if it is held that there is strong motive, then, there must be corroboration to PW4's evidence to rule out false implication. In this case evidence of PW- 1 & PW-2 and other attendant circumstances provide corroboration to PW4's evidence.

Evidence of PW4-Bijula Devi is forthright and convincing. According to her, she woke-up when the appellant pressed her mouth. She saw Umesh Chandra Rai-A6 pressing her husband's head hard. She saw Bashisht Rai-A1 cut her husband's neck with a dao. She stated that Umesh Chandra Rai-A6 had a gandasa in his hand and the appellant had a sword in his hand. She further stated that when her husband tried to move he received two more injuries on his chest. We have reproduced the injuries sustained by the deceased. They are consistent with this evidence. PW4 further stated that after assaulting deceased Kailash Rai, the accused ran away. She started shouting. She lit her torch before the accused could reach the door. They turned at her; looked at her and ran away. Hearing her cries, PW1-Kamla Rai and others came there. She narrated the incident to them. Thus, PW4 had ample opportunity to see the accused. They were in close proximity with her and she had seen them in torch light. It would be difficult for her to forget the faces of her husband's assailants. It is stated that PW4 is a pardanashin lady. The trial court has observed that being a pardanashin lady she would not know the accused. It is argued that she may identify Umesh Chandra Rai-A6, he being her brother-in-law, but she could not have identified others. This submission does not impress us. As rightly

contended by the State counsel, the face of a pardanashin lady cannot be seen by general public, but she can see them. The accused and PW1-Kamla Rai's family reside in the same village. Their houses are situated in the same area and in close vicinity. Besides, there are disputes between the two sides. As rightly observed by the High Court, the appellant belonged to the clan of PW4's in-laws. It is not possible, therefore, to hold that PW4 would not know the appellant and could not have seen him before, merely because she stated that she did not know some persons from the village.

It was wrong for the trial court to suggest that Bashisht Rai-A1 would not indulge in such activities because he had a bright career and future and indirectly apply that yardstick to the appellant. Career or a position of a man in life is irrelevant. Crimes are also committed by men holding high positions and having bright future. Trial court grossly erred in relying on such extraneous circumstance and rightly the High Court dismissed this circumstance as irrelevant.

Perversity of the trial court's judgment becomes apparent when one finds the undue importance given by it to the diary entries made by the investigating officer PW7-Sheomurthy Singh. PW7 stated that it was mentioned by him in the case diary that it was the opinion of general public that involvement of the accused except Umesh Chandra Rai-A6 is false. The trial court made a perverse observation that the investigating officer never tried to find out whether this rumour is true and submitted charge-sheet. Such reliance on diary entries is not permissible (***Mohd Ankoos and ors. v. Public Prosecutor of A.P. Hyderabad, (2010) 1 SCC 94*** and ***Shamshul Kanwar v. State of U.P., (1995) 4 SCC 430***). Besides, the general feeling of the society has no relevance to a criminal case. A court deciding a criminal case must go by the legal evidence adduced before it. The trial court's order thus suffered from a gross error of law warranting the High Court's interference.

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136. EVIDENCE ACT, 1872 – Sections 3 and 27

(i) Dead body was recovered from the house of accused on the information given by him – It is for the accused to explain as to how it was found concealed in his house – He offered no explanation – Accused also last seen with deceased – Conviction upheld by the Apex Court.

(ii) Importance of expert scientific evidence like DNA in cases based on circumstantial evidence – Explained.

Dharam Deo Yadav v. State of Uttar Pradesh

Judgment dated 11.04.2014 passed by the Supreme Court in Criminal Appeal No. 369 of 2006, reported in 2014 (2) Crimes 127 (SC)

Extracts from the judgment:

PW 14 has categorically stated that he had got information that the appellant would reach the Shivpur railway station and, hence, he rushed to the

railway station with the informant and found out the accused at the platform. PW 14 interrogated him and he disclosed his name and address. He admitted that he was the guide of Diana and since Diana wished to go to his village, he went along with her on 10.08.1997. The accused had also confessed to have committed the murder of Diana and buried her dead body in his house. PW 14 then, accompanied by PW 15, took the accused to his village and the accused with the key in his possession, opened the lock of his house and pointed out the place where the dead body of Diana had been buried.

Accused himself dug the place with a spade and the skeleton was recovered. PW 14 then arrested the accused and, on his disclosure about the involvement of the other accused persons, they were also arrested Inquest on the skeleton was made in the presence of SDM, PW 16. Contention was raised that the statement/admission of the accused (annexure Exh. P-5) was inadmissible under Section 27 of the Evidence Act, since the accused was not in the custody of PW 14. The evidence of PWs 14 and 15 would indicate that they could recover the skeleton of Diana only on the basis of the disclosure statement made by the accused that he had buried the dead body in his house. Recovery of a dead body or incriminating material from the place pointed out by the accused, points out to three possibilities –

(i) that the accused himself would have concealed;

(ii) that he would have seen somebody else concealing it and

(iii) he would have been told by another person that it was concealed there.

Since the dead body was found in the house of the accused, it is for him to explain as to how the same was found concealed in his house.

Criminal Judicial System in this country is at cross-roads, many a times, raliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. Investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law.

Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness etc., whereas forensic evidence is free from those infirmities.

Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasizing the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.

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137. EVIDENCE ACT, 1872 – Section 24

How to appreciate extra-judicial confession? An extra-judicial confession can solely form the basis of conviction if the same is voluntary, true and made in a fit state of mind – The courts cannot be unmindful of this legal position.

Baskaran and another v. State of Tamil Nadu

Judgment date 25.04.2014 passed by the Supreme Court in Criminal Appeal No. 121 of 2008, reported in 2014 (2) Crimes 202 (SC)

Extracts from the judgment:

It is no doubt true that this Court time and again has held that an extra-judicial confession can be relied upon only if the same is voluntary and true and made in a fit state of mind. The value of the evidence as to the confession like any other evidence depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. But it is not open to any court to start with the presumption that extra-judicial confession is insufficient to convict the accused even though it is supported by the other circumstantial evidence and corroborated by independent witness which is the position in the instant case. The Courts cannot be unmindful of the legal position that even if the evidence relating to extra-judicial confession is found credible after being tested on the touchstone of credibility and acceptability, it can solely form the basis of conviction.

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138. EVIDENCE ACT, 1872 – Section 27

EXCISE ACT, 1915 (M.P.) – Sections 34 (1) & (2) and 47-A

Disclosure statement of co-accused, evidentiary value of – In the absence of any cogent evidence, only on the basis of disclosure statement of the co-accused, accused cannot be convicted.

Suresh Upadhyay v. State of M.P. and another

Judgment dated 05.03.2014 passed by the High Court of M.P. in Misc. Criminal No. 837 of 2014, reported in 2014 (3) MPHT 91

Extracts from the judgment

The accusation of prosecution is that 1250 quarters country made liquor

was seized from a white Scorpio Car bearing No. MP 06 BA 0121. It is alleged that the present petitioner was also sitting in that vehicle and during search he ran away from the spot. Name of present petitioner was disclosed by co-accused Shailendra Singh Gurjar in his memo, who was arrested on the spot.

Learned Counsel for the petitioner submitted that except the evidence regarding sitting in the aforesaid vehicle, there is no evidence against the present petitioner, therefore, only on the basis of disclosure statement given under Section 27 of Evidence Act by the co-accused Shailendra Singh, present petitioner cannot be convicted.

By refuting the submissions of petitioner's learned Counsel, learned Public Prosecutor for respondent No. 1/State submitted that since at this stage no evidence can be seen, hence the present petition is bereft of merits of merits and same be dismissed, although she has admitted that only on the basis of disclosure statement of co-accused Shailendra Singh, petitioner has been made an accused.

After taking into consideration the entire arguments advanced by learned Counsel for the parties and the material available on record, it appears that there is no cogent evidence collected by the prosecution against the petitioner, which connects him to the present crime, therefore, only on the basis of disclosure statement of co-accused, petitioner cannot be convicted.

On giving anxious consideration to the issue involved in this petition, this Court is of the considered view that only on the basis of disclosure statement of co-accused Shailendra Singh petitioner cannot be grilled, hence the petition filed by the petitioner is allowed. FIR registered at Crime No. 268/2013 for the offence punishable under Sections 34 (1), (2) and 47 (A) of M.P. Excise Act and also the entire subsequent criminal proceedings are hereby quashed.

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139. HINDU MARRIAGE ACT, 1955 – Section 13 (i) (ia)

(i) Divorce on the ground of cruelty – When to be granted?

(a) Wife used to remain absent from the house for many hours – If asked for reasons, she used to give threat for lodging false report against husband.

(b) Husband had been beaten by wife using a bat.

(c) Husband compelled to leave the house of his parents and resided in rented accommodation.

(d) Wife made false allegations against the character of in-laws and also levelled false allegations of demand for dowry – Cruelty held proved, decree of divorce granted.

(ii) Permanent alimony – Husband is a permanent employee in bank – Hon'ble High Court fixed permanent alimony at Rs.7,50,000 looking to the social background of the parties, the needs of the wife, financial status of the husband, prevailing prices of the essential commodities, etc.

Smt. Indu Kushwah v. Manoj Singh Kushwah

Judgment dated 14.05.2013 passed by the High Court of M.P. in Civil First Appeal No. 32 of 2011, reported in AIR 2014 MP 71 (DB)

Extracts from the judgment:

False and wild allegations against the character of mother-in-law and father-in-law make it graphically clear that she had really humiliated and caused mental cruelty. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable. The respondent felt humiliated both in private and in public life. Undoubtedly, it created a dent in the reputation of entire family of the respondent which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and cherished value this side of the grave. Thus, it would not be out of place to state that brain and the bones of the respondent must have felt the chill of humiliation. Cruel behavior of the appellant/wife has frozen the emotions and snuffed out the bright candle of feeling of the respondent. We have no scintilla of doubt that the appellant has committed cruelty which comes within the purview of provision of section 13 (1) (1-a) of the Hindu Marriage Act 1955.

Considering the status of the parties, their social background, the needs of the appellant-wife, financial status of the respondent, prevailing prices of the essential commodities etc., we fix the permanent alimony at Rs.7,50,000/-.

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140. HINDU MARRIAGE ACT, 1955 – Section 13-B

Divorce by mutual consent – Marriage solemnized on 28.06.2012 – Spouses are living separately from 15.07.2012 i.e. only after 17 days of the marriage – They lived separately for more than 18 months – There is no possibility of their living together – Held, appropriate case to grant divorce by mutual consent.

Ritika Sisodiya v. Pankaj Sisodiya

Judgment dated 12.02.2014 passed by the High Court of M.P. in Civil First Appeal No. 5 of 2014, reported in AIR 2014 MP 66 (DB)

Extracts from the judgment:

The parties before us have stated that they are living separately for more than 18 months since 15.07.2012 and there is no possibility of them living together.

In another judgment delivered in the case of ***Manish Sirohi v. Smt. Meenakshi, AIR 2007 Allahabad 211*** in similar circumstances, the Division Bench of Allahabad High Court taking recourse of Section 14 of the Act granted divorce by mutual consent.

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141. INDIAN PENAL CODE, 1860 – Sections 96, 100, 302 and 304

(i) Whether plea of right of private defence should always be taken in examination under section 313 Cr.P.C.? Held, No – It can be culled from the material on record also.

(ii) If accused exceeds the right of private defence, he should be convicted under section 304 part 1 of I.P.C.

State of Rajasthan v. Manoj Kumar & others

Judgment dated 11.04.2014 passed by the Supreme Court in Criminal Appeal No. 885 of 2007, reported in 2014 (2) Crimes 187 (SC)

Extracts from the judgment:

In the case at hand, the plea of right of private defence arises on the base of materials on record. As far as onus is concerned, we find that there is ocular and documentary evidence to sustain the concept of preponderance of probability. It cannot be said that there is no material on record or scanty material to discard the plea. Thus, the aforesaid submissions being unacceptable, are hereby repelled.

Learned counsel for the State next contended that when the accused persons had exceeded their right of private defence and caused the death of the deceased, all of them should have been convicted under Section 302/34 IPC. In this regard, we may refer with profit to certain authorities before we advert to the facts unfurled in the case at hand. In ***Munshi Ram and ors. v. Delhi Administration, 1968 (2) SCR 455***, while dealing with right to private defence, this Court has observed that law does not require a person whose property is forcibly tried to be occupied by trespassers to run away and seek the protection of the authorities, for the right of private defence serves a social purpose and that right should be liberally construed. The Court further stated that such a right not only will be a restraining influence on bad characters but it will encourage the right spirit in a free citizen, because there is nothing more degrading to the human spirit than to run away in the face of peril. In ***Mohd. Ramzani v. State of Delhi, 1980 Supp SCC 215*** the Court has observed that it is further well-established that a person faced with imminent peril of life and limb of himself or another, is not expected to weigh in “golden scales” the precise force needed to repel the danger. Even if he in the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it. In Bhanwar Singh and others v. State of Madhya Pradesh, (2008) 16 SCC 657 it has been ruled to the effect that for a plea of right of private defence to succeed in totality, it must be proved that there existed a right to private defence in favour of the accused, and that this right extended to causing death and if the court were to reject the said plea, there are two possible ways in which this may be done, i.e., on one hand, it may be held that there existed a right to private defence of the body, however, more harm than necessary was caused or, alternatively, this right did no textend to

causing death and in such a situation it would result in the application of Section 300 Exception 2.

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142. INDIAN PENAL CODE, 1860 – Section 120-B/302

EVIDENCE ACT, 1872 – Section 8

(i) Conspiracy to murder – Highly incriminating circumstances if put together, point to only one direction that appellant and none else committed murder – Conviction confirmed.

(ii) Appreciation of evidence – Contradictions, inconsistencies, exaggerations or embellishments – Minor discrepancies does not shake the prosecution case.

(iii) Conduct of accused prior to, during and after commission of crime – Complete link in the chain of circumstances.

(iv) Commutation of death sentence to life, when warranted – Principle explained.

Mahesh Dhanaji Shinde v. State of Maharashtra

Judgment dated 27.02.2014 passed by the Supreme Court in Criminal Appeal No. 1210 of 2012, reported in (2014) 4 SCC 292 (3 Judge Bench)

Extracts from the judgment:

The above conclusions which we have thought proper to draw on a consideration of the evidence of the prosecution appears to be more or less in conformity with what has been found by the High Court to have been proved by the prosecution (para 96 of the impugned judgment). In the light of the above facts, we do not entertain any doubt, whatsoever, that in the present case the prosecution has succeeded in proving a series of highly incriminating circumstances involving the accused all of which, if pieced together, can point only to one direction, namely, that it is the accused-appellants and nobody else who had committed the crimes in question. We, therefore, have no hesitation in affirming the impugned common judgment and order of the High Court holding the accused A-1, A-2, A-3 and A-6 in Sessions Case No. 3/2005 and 5/2005 guilty of commission of the offences alleged including the offence under Section 302 IPC read with Section 120-B IPC. We also agreewith the finding of the High Court that the accused A-1, A-2 and A-3 in Sessions Case No. 4/2005 are guilty of commission of the offence under Section 302 IPC read with Section 120-B IPC, insofar as the death of Shankar Sarage (DB-1) is concerned.

Having held that the accused-appellants are liable to be convicted for the offences, inter alia, under Section 302/120B IPC, the next question, and perhaps a question of equal if not greater significance, that would require consideration is the measure of punishment that would be just, adequate and complete. It has already been noted that in two of the cases the accused-appellants have been awarded death penalty whereas in the third case the sentence of life

imprisonment has been imposed in reversal of the verdict of acquittal rendered by the learned Trial Court.

Death penalty jurisprudence in India has been widely debated and differently perceived. To us, the essential principles in this sphere of jurisprudence has been laid down by two Constitution Benches of this Court in ***Jagmohan Singh v. State of U.P., (1973) 1 SCC 20*** which dealt with the law after deletion of Section 367(5) of the old Code but prior to the enactment of Section 354(3) of the present Code and the decision in ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684.*** Subsequent opinions on the subject indicate attempts to elaborate the principles of law laid down in the aforesaid two decisions and to discern an objective basis to guide sentencing decisions so as to ensure that the same do not become judge centric.

In a recent pronouncement in ***Sunil Dutt Sharma v. State (Govt. of NCT of Delhi), (2014) 4 SCC 375*** it has been observed by this Court that the principles of sentencing in our country are fairly well settled – the difficulty is not in identifying such principles but lies in the application thereof. Such application, we may respectfully add, is a matter of judicial expertise and experience where judicial wisdom must search for an answer to the vexed question — whether the option of life sentence is unquestionably foreclosed? The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the judge to reach the 'truth'.

At the same time, all the four accused were young in age at the time of commission of the offence i.e. 23-29 years. They belong to the economically, socially and educationally deprived section of the population. They were living in acute poverty. It is possible that, being young, they had a yearning for quick money and it is these circumstances that had led to the commission of the crimes in question. Materials have been laid before this Court to show that while in custody all the accused had enrolled themselves in Yashahantrao Chavan Maharashtra Open University and had either completed the B.A. Examination or are on the verge of acquiring the degree. At least three of the appellants (A-2, A-3 and A-6) have, at different points of time, participated in different programmes of Gandhian thoughts and have been awarded certificates of such participation. In prison, A-2 has written a book titled "Resheemganth" and A-3 has been associated with the said work. There is no material or information to show any condemnable or reprehensible conduct on the part of any of the appellants during their period of custody. All the circumstances point to the possibility of the accused-appellants being reformed and living a meaningful and constructive life if they are to be given a second chance. In any case, it is not the stand of the State that the accused-appellants, are beyond reformation or are not capable of living a changed life if they are to be rehabilitated in society. Each of the accused have spent over 10 years in incarceration. Though it must not be understood in any other manner the entire case against the accused is built on circumstantial evidence.

Balancing the two sets of circumstances i.e. one favouring commutation and the other favouring upholding the death penalty, we are of the view that in the present case the option of life sentence is not "unquestionably foreclosed". Therefore, the sentence of death awarded to the accused should be commuted to life imprisonment. We order, accordingly, and direct that each of the accused-appellants, namely, Santosh Manohar Chavan, Amit Ashok Shinde, Yogesh Madhukar Chavan and Mahesh Dhanaji Shinde shall undergo imprisonment for life for commission of the offence under Section 302/120B IPC. The sentences awarded to the accused-appellants by the High Court for commission of all other offences under the IPC and the Arms Act are affirmed to run concurrently. We also make it clear that the custody of the appellants for the rest of their lives will be subject to remissions if any, which will be strictly subject to the provisions of the Sections 432 and 433-A of the CrPC.

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143. INDIAN PENAL CODE, 1860 – Section 302

(i) Double murder – Guilt of accused established beyond reasonable doubt – No attempt to explain incriminating circumstances or plea of *alibi* on the part of accused – Conviction confirmed.

(ii) In the matter of circumstantial evidence, motive assumes greater significance.

Subhasish Mondal alias Bijoy v. State of West Bengal

Judgment dated 21.11.2013 passed by the Supreme Court in Criminal Appeal No. 1391 of 2008, reported in (2014) 4 SCC 180

Extracts from the judgment:

The evidence before us is that someone entered and exited the quarter of the deceased through an exit hole of the bathroom and the door of the room in which the brother and mother of accused was found, was closed from inside.

The investigation also revealed that a silver chain was found at the scene of the crime, which the P.W.2 stated later on in her deposition that it belonged to her, and the accused had taken that silver chain with locket of Goddess Kali from her prior to the occurrence. She identified the silver necklace lying on the floor by the side of the dead body of Debasis, her elder brother and also said that he put a locket of Shiva on the said chain later on. She further stated on record that her brother, the accused used to mix with antisocial elements and was addicted to wine and on account of this, their mother was not inclined to give the service of their deceased father to the accused but instead opined that the employment on compassionate ground be given to the elder brother, Debasis and that if it is given to the accused, then he will be spoiled.

From the evidence of the witnesses discussed above, it is apparent that the accused had a clear motive to have committed the brutal murder of his elder brother and his mother and the circumstances point to the guilt of the

accused. He held a strong grudge against his mother and elder brother as his mother had given the name of his brother for the job of his deceased father instead of his name. The motive of vengeance is established and in cases in which only circumstantial evidence is available, motive assumes a great importance.

In the case of ***Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396*** this Court citing the case of ***Wakkar v. State of U.P. (2011) 3 SCC 306*** held that in cases of circumstantial evidence, motive is very important, unlike cases of direct evidence. In the case at hand, it is evident that the prosecution case that the motive of the accused in killing his elder brother and mother was out of vengeance has to be accepted. The trial court has stated that it was crystal clear that there was a family feud between the accused and the deceased over the service in the railway workshop on the death of their father.

In the present case too, the accused has simply entered a plea of innocence. No other explanation has been offered by the accused in spite of the incriminating circumstances that pointed to his guilt. It is our view that this is a suspicious facet of this case, the mere denial of guilt on the part of the accused. This, along with the fact that he was seen loitering around after the occurrence and the silver chain that he took from his sister, P.W. 2, was found at the site of the murder all point to the guilt of the accused. His motive of vengeance as he was angry at being denied his father's job led to him murdering his elder brother and mother. It is also on record that he was addicted to wine and mixed with anti-social elements. Further, a railway ticket was found by the complainant, P.W.1, A. Srinivasa Rao for the date of 31st August, 2001 from Howrah which presumably belonged to the accused as he lived in Howrah and the murder happened in Kharagpur. All these circumstances which form a reliable chain of events proved the hypothesis that the accused is guilty of the gruesome murder of his family - his elder brother and his mother.

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144. INDIAN PENAL CODE, 1860 – Sections 302 and 120-B r/w/s 201
CRIMINAL PROCEDURE CODE, 1973 – Section 131

(i) Murder of wife by husband and disposal of corpus by burning in tandoor of restaurant – Chain of circumstances is complete which indicate the guilt of A-1 – With the established circumstances, inference goes only to show the guilt of A-1 – Conviction confirmed.

(ii) Confession by co-accused though he was not involved in greater offence of murder, how long can be used against main accused – Law explained.

(iii) Injuries, wounds and weapons – Murder by gunshot injuries – Witnesses who were neighbours not stating about gun shots – Held, would not adversely affect prosecution case because it

might be possible that sound might not have transmitted through closed doors.

(iv) Expiration of armed license or its renewal has nothing to do with core of the prosecution case – Irrelevant facts cannot adversely affect prosecution case – Extension of license is irrelevant fact.

(v) Minor procedural irregularities are irrelevant in the matter – Although the offence is brutal but brutality alone cannot justify death sentence – Death sentence commuted to life imprisonment for whole life.

Sushil Sharma v. State (NCT of Delhi)

Judgment dated 08.10.2013 passed by the Supreme Court in Criminal Appeal No. 693 of 2007, reported in (2014) 4 SCC 317 (3 Judge-Bench)

Extracts from the judgment:

In support of its case, the prosecution examined 85 witnesses. Seven Court witnesses were also examined. We shall refer to the important witnesses as we proceed further. All the accused pleaded not guilty to the charges and claimed to be tried. During the trial, A2-Keshav moved an application confessing his guilt so far as the charges against him under Section 201 read with Section 120-B of the IPC are concerned. He requested the court to dispose of his case in view of the confession. He, inter alia, stated that he had not conspired to murder the deceased. He was serving in Bagia Restaurant of the appellant and, at his command, he put the dead body of the deceased in the tandoor. At the trial, A2-Keshav admitted the correctness of the contents of his confessional application. However, he added that it was moved because the Special Public Prosecutor told him that he would be released at the final stage of the trial.

The Counsel for the appellant has stated that according to the prosecution on 11/7/1995, a revolver and arms licence were recovered from the hotel room of the appellant at Pai Vihar, Bangalore. The same were put in a parcel sealed with the seal of N.S. It is submitted that on 15/10/1995, the licence period was extended to cover up the lacunae and an entry was made on the seized licence to that effect and this suggests tampering. We find no substance in this allegation. It appears from the evidence that the appellant had made an application for extension of licence on 18/1/1994 which was granted on 15/10/1995 by PW-55-A, ACP Ram Narain. The evidence on record indicates that what was recovered on 11/7/1995 is licence (Ex-PW-47/E) and according to PW-55A, ACP Ram Narain, he made the entry of extension dated 15/10/1995 on the licence (Ex-PW- 55/A). There is, therefore, no question of tampering with the seized licence. Besides, no question was put to any of the officers about the co- relation between the said two exhibits. In any case, expiry of arms licence has nothing to do with the core of the prosecution case. We reject this submission.

We shall now go to the medical evidence. We have already reproduced the observations made by PW-85 Dr. Joginder Pal in his Medico Legal Report

after he received the dead body. We have also reproduced the relevant portions of the post-mortem notes and the cause of death given by CW-6 Dr. Sarangi. According to CW-6 Dr. Sarangi, the cause of death was hemorrhagic shock consequent to various ante-mortem injuries found on the dead body. He has opined that the burns present on the said body must be probably inflicted after the death. It was argued that it is doubtful whether the death was caused due to firearm injuries. It was pointed out that PW-85 Dr. Joginder Pal, the Casualty Medical Officer at RML Hospital has stated that he did not find any firearm injuries in the neck or in the head or in the nape of the deceased. Moreover, CW-6 Dr. Sarangi also did not notice any bullet mark or bullet present in the dead body. In fact, he stated that the brain matter was intact. Doubt was cast on the opinion of the Board of Doctors, who extracted the two bullets and opined that those two bullets caused death. It was argued that the skull from which bullets were recovered was not the skull of the deceased. We have no hesitation in rejecting all these submissions which are aimed at creating doubt about the Report of the Board of Doctors.

So far as PW-85 Dr. Joginder Pal is concerned, admittedly, he did not conduct the post-mortem. He conducted superficial examination of the dead body. Obviously, therefore, he did not notice any firearm injury in the neck or in the head or in the nape of the deceased. It is true that CW-6 Dr. Sarangi did not notice any evident bullet marks or the bullets embedded in the skull. Possibly the bullets were so embedded that they were not visible to the naked eye. In this connection, it is necessary to turn to PW-81 IO Niranjan Singh's evidence. He stated that as he found empty cartridges, a lead bullet and a bullet hole on a ply in the said flat, he suspected that a firearm must have been used in this incident. Therefore, he requested CW-6 Dr. Sarangi to conduct X-ray examination of the dead body. However, X-ray examination was not conducted. These facts were mentioned by him in letter (Ex-PW-81/X-11). Since no X-ray examination was done on 9/7/1995, he discussed the need of having a second post-mortem with the DCP, New Delhi and ACP, Connaught Place. He wrote a letter containing queries about re-post-mortem and handed it over to PW-57 SI Ombir Singh and directed him to hand over the same to the Board of Doctors. According to him, on 9/7/1995, he had requested Dr. Aditya Arya, DCP for constitution of Board of Doctors. Copy of the letter to Dr. Arya is at Ex-PW-81/X-11. The Commissioner requested the Lt. Governor and by the order of Lt. Governor of New Delhi, the Board of Doctors was constituted. PW-44 Dr. Bharat Singh, PW-68 Dr. T.D. Dogra and Dr. S.K. Khanna were selected as members of the Board. On 12/7/1995, at about 10.30 a.m., the members of the Board of Doctors reached the Lady Hardinge Mortuary to conduct second post-mortem. CW-6 Dr. Sarangi was also there and he had a conversation with them. Second post-mortem report (Ex-PW-44/A) indicates that it was partly conducted at Lady Hardinge Mortuary and thereafter the body was shifted to the Civil Hospital for X-ray. Skull was X-rayed. X-ray revealed two bullets embedded in the skull.

We would also like to make it clear that there is absolutely no reason to doubt the prosecution case that the skull of which X-ray was taken was that of the deceased. CW-6 Dr. Sarangi stated that on the request of PW-81 IO Niranjan Singh, the skull bone was separated for superimposition. PW-81 IO Niranjan Singh stated that he received the skull on 5/7/1995. He stated that at the time of post-mortem, he gave application dated 5/7/1995 to the Autopsy Surgeon for preserving the skull for superimposition. Thus, the skull was merely separated for the purpose of superimposition but remained in the mortuary along with the dead body. The first post-mortem report dated 5/7/1995 records that the skull was preserved for superimposition. The skull along with the body remained in the mortuary of Lady Hardinge Medical College after the first post-mortem and was not sent for superimposition. On application dated 9/7/1995 submitted by PW-81 IO Niranjan Singh, an order was passed for the second post-mortem. This application shows that though a request was made for skull superimposition test, the dead body with its head was still preserved in the Lady Hardinge Medical College mortuary and process of superimposition had not started till then. The second post-mortem report records that the body was kept in the mortuary of Lady Hardinge Medical College in a plastic bag and was taken out from the same. It was a dead body with the skull separated. The evidence clearly shows that the separated skull remained along with the body in the mortuary of the Lady Hardinge Medical College from 5/7/1995 till 12/7/1995. The second post- mortem was conducted on 12/7/1995. During the second post-mortem, the dead body was taken to Civil Hospital for X-ray and, thereafter, it was brought back to the Lady Hardinge Mortuary. The body along with the skull was later taken to AIIMS for conducting superimposition. The defence has not been able to create any doubt in our minds that the skull was not that of the deceased. Minor discrepancies, if any, in the evidence of witnesses are natural in a case of this type. They will not have any adverse impact on the basic case of the prosecution which is borne out by cogent and reliable evidence.

We may add here that the CFSL Report dated 27/7/1995 states that the two bullets recovered from the skull of the deceased were stained with blood of ‘B’ group. This establishes that the blood group of the deceased was ‘B’. It is pertinent to note that the CFSL Report dated 17/7/1995 states that the various articles such as cloth piece, carpet piece, chatai, etc. recovered on 4/7/1995 from the said flat were stained with the blood of ‘B’ group. Similarly, it states that the polythene sheet which was recovered from the Bagia Restaurant was also stained with the blood of ‘B’ group. It is pertinent to note that the CFSL Report dated 27/7/1995 also shows that in the dicky of Car No.DL-2CA-1872, blood was detected. Therefore, the prosecution case that the deceased was murdered in the said flat by shooting her in the head by the appellant; that the body of the deceased was wrapped in the polythene sheet and carried by the appellant in his car bearing No.DL-2CA-1872 to the Bagia Restaurant and that it was burnt there in the tandoor, is proved.

Attempt has been made to create confusion and caste a doubt on the entire procedure of second post-mortem by pointing out some discrepancies in the evidence of PW-44 Dr. Bharat Singh and PW-57 SI Ombir Singh as regards the time when the second post-mortem was conducted. We repeat that the evidence of the doctors who were concerned with the second post-mortem and their report inspires confidence. It is reliable. Hence, we reject this submission. At the cost of repetition, we must note that minor discrepancies in the evidence of witnesses as regards dates and time cannot have any adverse impact on the prosecution case because in this case, its substratum is firmly established by cogent and reliable evidence.

We have no doubt that the chain of the above circumstances is complete and unerringly points to the guilt of the appellant. The established circumstances are capable of giving rise to inference which is inconsistent with any other hypothesis except the guilt of the appellant. The prosecution has, therefore, proved that the appellant alone has committed the murder of the deceased in the said flat on 2/7/1995. The appellant conspired with A2-Keshav to do away with the dead body of the deceased so as to cause disappearance of the evidence of murder and, at the instance of the appellant, A2-Keshav burnt the dead body in the tandoor. The appellant has, therefore, rightly been convicted under Section 302 of the IPC and also for offence under Section 201 read with Section 120-B of the IPC. A2-Keshav has been acquitted of offence punishable under Section 302 read with Section 120-B of the IPC. However, he has been rightly convicted for offence punishable under Section 201 read with Section 120-B of the IPC. As already stated, he has not appealed against the said order of conviction. In view of the above, we confirm the conviction of the appellant for offence punishable under Section 302 of the IPC and also for offence punishable under Section 201 read with Section 120-B of the IPC. Having confirmed the conviction, we must now consider as to whether the death sentence awarded by the trial court and confirmed by the High Court should be confirmed.

In light of the above judgments, we would now ascertain what factors which we need to take into consideration while deciding the question of sentence. Undoubtedly, we must locate the aggravating and mitigating circumstances in this case and strike the right balance. We must also consider whether there is anything uncommon in this case which renders the sentence to life imprisonment inadequate and calls for death sentence. It is also necessary to see whether the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

We notice that mere brutality of the murder or the number of persons killed or the manner in which the body is disposed of has not always persuaded this Court to impose death penalty. Similarly, at times, in the peculiar factual matrix, this Court has not thought it fit to award death penalty

in cases, which rested on circumstantial evidence or solely on approver's evidence. Where murder, though brutal, is committed driven by extreme emotional disturbance and it does not have enormous proportion, the option of life imprisonment has been exercised in certain cases. Extreme poverty and social status has also been taken into account amongst other circumstances for not awarding death sentence. In few cases, time spent by the accused in death cell has been taken into consideration along with other circumstances, to commute death sentence into life imprisonment. Where the accused had no criminal antecedents; where the State had not led any evidence to show that the accused is beyond reformation and rehabilitation or that he would revert to similar crimes in future, this Court has leaned in favour of life imprisonment. In such cases, doctrine of proportionality and the theory of deterrence have taken a back seat. The theory of reformation and rehabilitation has prevailed over the idea of retribution.

In the nature of things, there can be no hard and fast rules which the court can follow while considering whether an accused should be awarded death sentence or not. The core of a criminal case is its facts and, the facts differ from case to case. Therefore, the various factors like the age of the criminal, his social status, his background, whether he is a confirmed criminal or not, whether he had any antecedents, whether there is any possibility of his reformation and rehabilitation or whether it is a case where the reformation is impossible and the accused is likely to revert to such crimes in future and become a threat to the society are factors which the criminal court will have to examine independently in each case. Decision whether to impose death penalty or not must be taken in light of guiding principles laid down in several authoritative pronouncements of this Court in the facts and attendant circumstances of each case.

We must now examine the present case in light of our observations in the preceding paragraphs.

The appellant was the State President of the Youth Congress in Delhi. The deceased was a qualified pilot and she was also the State General Secretary of Youth Congress (Girls Wing), Delhi. She was an independent lady, who was capable of taking her own decisions. From the evidence on record, it cannot be said that she was not in touch with people residing outside the four walls of her house. Evidence discloses that even on the date of incident at around 4.00 p.m. she had contacted PW-12 Matloob Karim. She was not a poor illiterate hapless woman. Considering the social status of the deceased, it would be difficult to come to the conclusion that the appellant was in a dominant position qua her.

The appellant was deeply in love with the deceased and knowing full well that the deceased was very close to PW-12 Matloob Karim, he married her hoping that the deceased would settle down with him and lead a happy life. The evidence on record establishes that they were living together and were married but unfortunately, it appears that the deceased was still in touch with PW-12 Matloob Karim. It appears that the appellant was extremely possessive of the

deceased. The evidence on record shows that the appellant suspected her fidelity and the murder was the result of this possessiveness.

We have noted that when the appellant was taken to Lady Hardinge Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, therefore, to say that he was remorseless.

The fact that he absconded is undoubtedly a circumstance which will have to be taken against him, but the same, in our considered view, would be more relevant to the issue of culpability of the accused which we have already decided against him rather than the question of what would be the appropriate sentence to be awarded which is presently under consideration.

The medical evidence does not establish that the dead body of the deceased was cut. The second post-mortem report states that no opinion could be given as to whether the dead body was cut as dislocation could be due to burning of the dead body. There is no recovery of any weapon like chopper which could suggest that the appellant had cut the dead body.

It is pertinent to note that no member of the family of the deceased came forward to depose against the appellant. In fact, in his evidence, PW-81 IO Niranjan Singh stated that the brother and sister-in-law of the deceased stated that they were under the obligation of the appellant and they would not like to depose against him.

Murder was the outcome of strained personal relationship. It was not an offence against the Society. The appellant has no criminal antecedents. He is not a confirmed criminal and no evidence is led by the State to indicate that he is likely to revert to such crimes in future. It is, therefore, not possible in the facts of the case to say that there is no chance of the appellant being reformed and rehabilitated. We do not think that that option is closed.

Though it may not be strictly relevant, we may mention that the appellant is the only son of his parents, who are old and infirm.

As of today, the appellant has spent more than 10 years in death cell.

Undoubtedly, the offence is brutal but the brutality alone would not justify death sentence in this case.

The above mitigating circumstances persuade us to commute the death sentence to life imprisonment. In several judgments, some of which, we have referred to hereinabove, this Court has made it clear that life sentence is for the whole of remaining life subject to the remission granted by the appropriate Government under Section 432 of the Cr.P.C., which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive checks in Section 433-A of the Cr.P.C. We are inclined to issue the same direction.

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145. INDIAN PENAL CODE, 1860 – Sections 302 and 301

(i) Murder – Death sentence – Mere pendency of criminal case is not an aggravating circumstance – Cannot be taken into consideration while awarding death sentence – Prosecution has to satisfy R-R test – Pendency of large number of criminal cases against accused might be a factor for awarding sentence but it is not relevant for awarding capital punishment.

(ii) Appellant involved in 24 criminal cases out of which, three were for murder, two were for attempt to murder – If lesser punishment awarded, he would be a menace to the society – Fit case for rigorous imprisonment for twenty years without remission.

(iii) Testimony of hostile witness cannot be discarded as a whole – Relevant part which is admissible in evidence can be used for either party.

(iv) Sentence – While awarding sentence in appropriate cases, the courts can call report of Probation Officers and examine whether there is likelihood of the accused indulging in any crime or there is any probability of his reformation and rehabilitation.

Birju v. State of Madhya Pradesh

Judgment dated 14.02.2014 passed by the Supreme Court in Criminal Appeal No. 1352 of 2012, reported in (2014) 3 SCC 421

Extracts from the judgment:

We have held in ***Shankar Kisnrao Khade v. State of Maharashtra (2013) 5 SCC 546*** that even if the crime test and criminal test have been fully satisfied, to award the death sentence, the prosecution has to satisfy the R-R Test. We have noticed that one of the factors which weighed with the trial court as well as the High Court to award death sentence to the accused was his criminal antecedents.

The High Court while dealing with the criminal antecedents of the accused stated as follows:

> "14. The appellant is having criminal antecedent, which is clear from the statement of investigating officer (PW-12) Mohan Singh in para 12, wherein he has deposed that the appellant is a notified bully in the concerned police station and as many as 24 criminal cases were registered against him by the police, out of which three cases of murder and two were attempt to commit murder. In all these cases, after investigation, appellant was charge sheeted for trial before the court of law. In cross-examination, this statement has been challenged by the defence. In paragraph 13 only question was put to this witness that along with the charge sheet list of criminal cases were not filed, on which the witness replied that same is available in the case diary. After

this answer, counsel for the appellant did not ask the Court to verify this fact and also no suggestion was given to this witness that appellant was not facing prosecution in all the above mentioned criminal cases. These facts are sufficient to hold that appellant was fully aware about the use and consequence of the deadly weapon like pistol, and when his demand was not satisfied; he used the same intentionally to commit murder of the child, Arman. The injuries show that pistol was fired very accurately and the bullet pierced through and through at the vital part of the body i.e. skull. When appellant was using firearm for causing injury to infant Arman, he must be knowing the consequence that because of use of such deadly weapon, there would be no chance for survival of a child aged one year."

Further, the High Court also, after referring to the various cases, where this Court had awarded death sentence, considered the present case as rarest of rare one and stated as follows:

"26. In the light of aforesaid legal position for considering whether the instant case falls within the category of rarest in rare case, we visualize the following circumstances:-

(i) The offence was not committed under the influence of extreme mental or emotional disturbance.

(ii) The appellant is a quite matured person aged about 45 years. He is neither young nor old.

(iii) Looking to his criminal antecedent i.e. he was charge sheeted for commission of 24 criminal cases, out of which 3 were under Section 302 of "the IPC" and 2 were under Section 307 of "the IPC", therefore, there is no probability that the accused would not commit acts of violence in future and his presence in society would be a continuing threat to society.

(iv) There is no probability or possibility of reformation or rehabilitation of the appellant.

(v) In the facts and circumstances of the present case, accused/appellant cannot morally justify the commission of murder of child aged one year by him.

(vi) There is no direct or indirect evidence available to say that accused acted under the duress or domination of another person.

(vii) The condition of appellant/accused was not such, which may show that he was mentally defective and the said defect impaired his capacity to appreciate the criminality of his conduct.

(viii) It is purely a cold blooded murder and evidence on record clearly showing the fact that appellant has absolutely no regard for life and limb of others."

We have in ***Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546*** dealt with the question as to whether the previous criminal record of the accused would be an aggravating circumstance to be taken note of while awarding death sentence and held that the mere pendency of few criminal cases, as such, is not an aggravating circumstance to be taken note of while awarding death sentence, since the accused is not found guilty and convicted in those cases. In the instant case, it was stated, that the accused was involved in 24 criminal cases, out of which three were registered against the accused for murder and two cases of attempting to commit murder and, in all those cases, the accused was charge- sheeted for trial before the court of law. No materials have been produced before us to show that the accused stood convicted in any of those cases. Accused has only been charge-sheeted and not convicted, hence, that factor is not a relevant factor to be taken note of while applying the R-R test so as to award capital punishment. May be, in a given case, the pendency of large number of criminal cases against the accused person might be a factor which could be taken note of in awarding a sentence but, in any case, not a relevant factor for awarding capital punishment. True, when there are more than two dozen cases, of which three relate to the offence of murder, the usual plea of false implication by the defence has to be put on the back seat, and may have an impact on the sentencing policy, since the presence of the accused could be a continuing threat to the society and hence calls for longer period of incarceration.

We also notice, while laying down various criteria in determining the aggravating circumstances, two aspects, often seen referred to in ***Bachan Singh v. State of Punjab (1980) 2 SCC 684, Machhi Singh and others v. State of Punjab (1983) 3 SCC 470 and Rajendra Pralhadrao Wasnik v. State of Maharashtra (2012) 4 SCC 37,*** are (1) the offences relating to the commission of heinous crime like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal conviction; and (2) the offence was committed while the offender was engaged in the commission of another serious offence. First criteria may be a relevant factor while applying the R-R test, provided the offences relating to heinous crimes like murder, rape, dacoity etc. have ended in conviction.

We may first examine whether "substantial history of serious assaults and criminal conviction" is an aggravating circumstance when the court is dealing with the offences relating to the heinous crimes like murder, rape, armed docoity etc. Prior record of the conviction, in our view, will be a relevant factor, but that conviction should have attained finality so as to treat it as aggravating circumstance for awarding death sentence. The second aspect deals with a

situation where an offence was committed, while the offender was engaged in the commission of another serious offence. This is a situation where the accused is engaged in the commission of another serious offence which has not ended in conviction and attained finality.

In the instant case, the High Court took the view that there was no probability that the accused would not commit criminal acts of violence and would constitute a continuing threat to the society and there would be no probability that the accused could be reformed or rehabilitated. In ***Shankar Kisanrao Khade's case*** (supra), while dealing with the criminal test (mitigating circumstances), this Court noticed one of the circumstances to be considered by the trial Court, while applying the test, is with regard to the chances of the accused not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated. We find, in several cases, the trial Court while applying the criminal test, without any material on hand, either will hold that there would be no possibility of the accused indulging in commission of crime or that he would indulge in such offences in future and, therefore, it would not be possible to reform or rehabilitate him. Courts used to apply reformative theory in certain minor offences and while convicting persons, the Courts sometimes release the accused on probation in terms of Section 360 Cr.P.C. and Sections 3 and 4 of the Probation of Offenders Act, 1958. Sections 13 and 14 of the Act provide for appointment of Probation Officers and the nature of duties to be performed. Courts also, while exercising power under Section 4, call for a report from the Probation Officer. In our view, while awarding sentence, in appropriate cases, while hearing the accused under Section 235 (2) Cr.P.C., Courts can also call for a report from the Probation Officer, while applying the Crime Test guideline No.3, as laid down in ***Shankar Kisanrao Khade's case*** (supra). Court can then examine whether the accused is likely to indulge in commission of any crime or there is any probability of the accused being reformed and rehabilitated.

We are, however, of the view that this is a fit case where we can apply the principle laid down in ***Swami Shraddananda (2) v. State of Karnataka (2008) 13 SCC 767.*** In that case, this Court took the view that there is a third category of cases in which Court can, while awarding the sentence for imprisonment of life, fix a term of imprisonment of 14 or 20 years (with or without remission) instead of death penalty and can, in appropriate cases, order that the sentences would run consecutively and not concurrently. Above sentencing policy has been adopted by this Court in several cases, since then, the latest being ***Gurvail Singh v. State of Punjab (2013) 10 SCC 631.*** We have indicated that this a case where the accused is involved in twenty four criminal cases, of which three are for the offence of murder and two are for attempting to commit murder. In such circumstances, if the appellant is given a lesser punishment and let free, he would be a menace to the society.

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Murder or culpable homicide not amounting to murder – There was an affair between the deceased Sukumar Ray and Bandana, who is daughter of one of the accused persons – Deceased went to the house of accused to meet Bandana – Accused persons were annoyed to see the deceased and beat him up – Apex Court held that it is a case of grave and sudden provocation and would come under exception I to section 300 IPC, therefore, the offence would squarely come within the purview of part I of section 304 IPC and not under section 304 IPC.

Saroj alias Suraj Panchal and another v. State of West Bengal

Judgment dated 03.04.2014 passed by the Supreme Court in Criminal Appeal No. 734 of 2014, reported in (2014) 4 SCC 802

Extracts from the judgment:

It is not in dispute that there was a love affair between Bandana Panchal and Sukumar Ray and it was not liked by the family members of Bandana Panchal. On the night of the occurrence at about 8.00 p.m. Sukumar Ray went to the house of Bandana Panchal to meet her. Annoyed by the presence of Sukumar Ray in the night in their house the appellants and other accused persons beat Sukumar Ray and dragged him from the first floor to the ground floor through wooden staircase which resulted in injuries. Nobody would tolerate such an intruder into their house in the night hours. By no means can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under the First Exception to Section 300 IPC. The fact situation bears great similarity to that in the decisions in ***Mangesh v. State of Maharashtra, (2011) 2 SCC 123*** and ***State of Punjab v. Jagtar Singh, (2011) 14 SCC 678***.

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147. INDIAN PENAL CODE,1860 – Sections 302 and 307 r/w/s 149

(i) Deceased murdered brutally – Injured witness brutally attacked – His evidence is reliable – Trial Court convicted five persons – Acquittal of four accused and conviction of one by the High Court confirmed.

(ii) Evidence of interested/related witness should not always be suspected but scrutinized with caution.

(iii) If evidence of witnesses, to be disbelieved on the ground of some improvement, there could be hardly any witness on whom reliance can be placed.

(iv) *Falsus in uno, falsus in omnibus* is a rule of caution and not a rule of law – If it is not feasible to separate truth from falsehood, the court is not required to construct a new case, but in the present case truth and falsehood are not inextricably mixed up.

Sheesh Ram and others v. State of Rajasthan

Judgment dated 29.01.2014 passed by the Supreme Court in Criminal Appeal No. 191 of 2004, reported in (2014) 3 SCC 689

Extracts from the judgment:

PW-2 Khushiram, PW-3 Rameshwar and PW-4 Yadram have corroborated this witness. It is submitted that all these witnesses are related and therefore their evidence cannot be relied upon. Assuming they are related to each other and, hence, interested witnesses, it is well settled that the evidence of interested witnesses is not always suspect. It has to be scrutinized with caution and can be accepted if it is found reliable. Presence of PW-5 Bhagwan Singh at the scene of offence can hardly be disputed since he is an injured witness. His evidence has strengthened the prosecution case. Evidence of PWs-3, 4 and 5 also inspires confidence. So far as the acquitted accused are concerned, the evidence of these witnesses qua them is found to be exaggerated. But, on account of that, their entire evidence cannot be discarded. All these witnesses stated that the acquitted accused had lathis and they dealt lathi blows on PW-5 Bhagwan Singh. This part of their evidence is disbelieved. It is true that these witnesses have improved the prosecution story to some extent. But, that improvement or that exaggerated version can be safely separated from the main case of the prosecution. So far as the main prosecution case is concerned, all the witnesses are consistent. This is not a case where truth and falsehood are inextricably mixed up. Witnesses tend to exaggerate the prosecution story. If the exaggeration does not change the prosecution story or convert it into an altogether new story, allowance can be made for it. If evidence of a witness is to be disbelieved merely because he has made some improvement in his evidence, there would hardly be any witness on whom reliance can be placed by the courts.

It is trite that the maxim '*falsus in uno falsus in omnibus'* has no application in India. It is merely a rule of caution. It does not have the status of rule of law. In ***Balaka Singh v. State of Punjab, (1975) 4 SCC 511*** this Court has said that where it is not feasible to separate truth from falsehood, because the grain and the chaff are inextricably mixed up, and in the process of separation, an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made, the Court cannot make an attempt to separate truth from falsehood. But, as we have already noted, this is not a case where the grain and chaff are inextricably mixed up. The evidence of the eye-witnesses is not discrepant on the material aspect of the prosecution case. Reliance can, therefore, be placed on them. In this connection, reliance placed by the counsel for the State on ***Rizan v. State of Chhattisgarh, (2003) 2 S.C.C. 661*** is apt. The same principle is reiterated by this Court in ***Rizan*** (supra)***.*** We may quote the relevant paragraph from ***Rizan (supra)***

> "Even if a major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where the chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See ***Nisar Ali v. State of U.P., AIR 1957 SC 366***)"

The appellants examined the defence witnesses. Testimony of the defence witnesses is not believed by the trial court as well as the High Court. We find no reason to take a contrary view. It is pertinent to note that Kamal, the brother of the appellants was murdered and for that murder, complainant Heera and some of the witnesses are facing trial. There is, therefore, strong motive to kill Balram, son of Heera. It is not possible, however, to come to a conclusion that because of this enmity, the appellants have been falsely implicated. We have already discussed the evidence on record. The evidence of eye-witnesses, particularly the evidence of PW-5 Bhagwan Singh, the injured eye-witness, is trustworthy. Therefore, the argument that on account of previous enmity, the appellants have been involved in this case is rejected. Taking an overall view of the matter and examined in light of ***Balaka Singh*** (supra) and ***Rizan*** (supra) we are of the opinion that no interference is necessary with the impugned judgment. The appeal is dismissed.

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148. INDIAN PENAL CODE, 1860 – Sections 302, 307 and 201

(i) Murder committed in extremely brutal, grotesque, diabolical and dastardly manner – Accused was in dominating position compared to the boy – Held, imprisonment for a period of thirty years without remission in addition to period already undergone would be adequate looking to the facts.

(ii) R to R is "society centric" and not "judge centric" – It has to be examined whether conscience of the society is served or not and whether society abhor such crime or not.

(iii) Accused, 35 years old has attained sufficient maturity to distinguish good from bad – He had not acted in emotional or mental stress but committed offence to satisfy his lust in perverted way.

(iv) Courts are duty bound to collect evidence about possibility of rehabilitation and reformation along with criminal past of the convict to impose appropriate sentence under section 354(3) – State is obliged to furnish such materials to court.

(v) Pederasty – Consent of minor boy irrelevant.

Anil alias Anthony Arikswamy Joseph v. State of Maharashtra

Judgment dated 20.02.2014 passed by the Supreme Court in Criminal Appeal No. 1419 of 2012, reported in (2014) 4 SCC 69

Extracts from the judgment:

In ***Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546,*** we have dealt with the various principles to be applied while awarding death sentence. In that case, we have referred to the cases wherein death penalty was awarded by this Court for murder of minor boys and girls and cases where death sentence had been commuted in the cases of murder of minor boys and girls. In ***Shankar Kisanrao Khade*** (supra), we have also extensively referred to the principles laid down in ***Bachan Singh v. State of Punjab (1980) 2 SCC 684*** and ***Machhi Singh v. State of Punjab (1983) 3 SCC 470*** and the subsequent decisions. Applying the tests laid down in ***Shankar Kisanrao Khade*** (supra), we are of the view that in the instant case the crime test and criminal test have been fully satisfied against the accused. Still, we have to apply the R-R test and examine whether the society abhors such crimes and whether such crimes shock the conscience of the society and attract intense and extreme indignation of the community.

We may point out that apart from what has been stated in ***Bachan Singh's case*** (supra) and ***Machhi Singh's case*** (supra) this Court in various cases like ***Om Prakash v. State of Haryana, (1999) 3 SCC 19, State of U.P. v. Sattan, (2009) 4 SCC 736, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498,*** held that Court must state special reasons to impose death penalty, hence, the R-R Test.

R-R Test

The R-R test, we have already held in ***Shankar Kisanrao Khade' case*** (supra), depends upon the perception of the society that is "society- centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation

and antipathy of certain types of crimes like sexual assault and murder of minor girls, intellectually challenged minor girls, minors suffering from physical disability, old and infirm women, etc.

The R-R Test is found satisfied in several cases by this Court like in ***Bantu v. State of U.P., (2008) 11 SCC 113,*** wherein this Court affirmed the death sentence in a case where minor girl of five years was raped and murdered. This Court noticed that the victim was an innocent child and the murderer was in a dominating position, which the Court found as a vital factor justifying the award of capital punishment. ***Shivaji v. State of Maharashtra, (2008) 15 SCC 269,*** was a case where a married person having three children, known to the family of the deceased, ravished the life of a girl aged 9 years and strangulated her to death, this Court affirmed the death sentence awarded by the High Court. ***Mohd. Mannan v. State of Bihar, (2011) 5 SCC 317,*** was a case where a minor girl aged 7 years was kidnapped, raped and murdered by an accused aged between 42-43 years. This Court held that he would be a menace to society and would continue to be so and could not be reformed and hence confirmed the death sentence. ***Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) 4 SCC 37*** was a case where a 3 year old child was raped and murdered by an accused of 31 years old. This Court noticed the brutal manner in which the crime was committed and the pain and agony undergone by the minor girl. This Court confirmed the death sentence.

In ***Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56,*** this Court opined that the death sentence, in a given case, can be awarded where the victims are innocent children and helpless women, especially when the crime is committed in a most cruel and inhuman manner which is extremely brutal, grotesque, diabolical and revolting. Reference may also be made to the Judgments of this Court in ***Dara Singh v. Republic of India (2011) 2 SCC 490, Surendra Koli v. State of U.P., (2011) 4 SCC 80 and Sudam v. State of Maharashtra (2011) 7 SCC 125***.

This Court in ***Mahesh v. State of Madhya Pradesh, (1987) 3 SCC 80*** deprecated the practice of taking a lenient view and not imposing the appropriate punishment observing that it will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and cruel acts. This Court further held that to give the lesser punishment for the appellants would be to render the justicing system of this country suspect and the common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. In ***Bantu v. State of U.P., (2008) 11 SCC 113*** this Court placing reliance on the Judgment in ***Sevaka Perumal v. State of T.N., (1991) 3 SCC 471*** observed as follows:

> "21. .....10.Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It

> is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.
>
> "91. Thus, it is evident that criminal law requires strict adherence to the rule of proportionality in providing punishment according to the culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. The "rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society. Where an accused does not act on any spur of the moment provocation and he indulged himself in a deliberately planned crime and meticulously executed it, the death sentence may be the most appropriate punishment for such a ghastly crime."

We may indicate, unlike ***Shankar Kisanrao Khade' case*** (supra), in this case offence under Section 377 IPC has been fully proved so also the offence under Section 302 IPC. Indian society and also the International society abhor pederasty, an unnatural sex, i.e. carnal intercourse between a man and a minor boy or a girl. When the victim is a minor, consent is not a defence, irrespective of the views expressed at certain quarters on consensual sex between adults.

In ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** this Court has categorically stated, "the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to the society", is a relevant circumstance, that must be given great weight in the determination of sentence. This was further expressed in ***Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498*** Many-a-times, while determining the sentence, the Courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the Court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. Facts, which the Courts, deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.

Legislative policy is discernible from Section 235 (2) read with Section 354(3) of the Cr.P.C., that when culpability assumes the proportions of depravity, the Court has to give special reasons within the meaning of Section 354(3) for imposition of death sentence. Legislative policy is that when special reasons do

exist, as in the instant case, the Court has to discharge its constitutional obligations and honour the legislative policy by awarding appropriate sentence, that is, the will of the people. We are of the view that incarceration for a further period of thirty years, without remission, in addition to the sentence already undergone, will be an adequate punishment in the facts and circumstances of the case, rather than death sentence. Ordered accordingly.

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149. INDIAN PENAL CODE, 1860 – Section 302 or 307/427

(i) Injuries inflicted by accused not immediately causing death – Intervening cause could not be ruled out – Injuries, on the person of deceased not sufficient in ordinary course of nature to cause shock – Court cannot assume that shock was caused due to injuries.

(ii) No internal injuries were found and gun was found from a distant place – Doctor nowhere stated that shock was caused due to injuries inflicted by the appellant – To hold the accused guilty of murder, prosecution has to firstly establish that there was culpable homicide – Accused held guilty under section 307 with sentence of 10 years rigorous imprisonment having intention to kill the deceased or had knowledge that the act would cause death.

M.B. Suresh v. State of Karnataka

Judgment dated 06.01.2014 passed by the Supreme Court in Criminal Appeal No. 985 of 2007, reported in (2014) 4 SCC 31

Extracts from the judgment:

We have bestowed our consideration to the rival submissions and we partly find substance in the submission of Mr. Basant R. Dr. Gunashekar V.C.(PW-10) had conducted the post-mortem examination on the dead body of the deceased Chandrashekar and, as stated earlier, had found nine injuries on his person out of which six were skin deep of the size of 0.5 or less than 0.5 cm., three circular wounds each measuring 0.5 cm. bone deep found over an area of 4 cm. x 4 cm. over the left side of the forehead as also a lacerated wound of the same size over the left side of the front of the neck and another muscle deep wound of the same size on the right arm. The doctor conducting the post-mortem examination was categorical in his evidence that no internal injuries were found and the gun was fired from a distant range.

As regards the cause of death, the doctor has opined that it was because of shock but he has nowhere stated that it was due to the injuries caused by the appellant. For holding an accused guilty of murder, the prosecution has first to prove that it is a culpable homicide. Culpable homicide is defined under Section 299 of the Indian Penal Code and an accused will come under the mischief of this section only when the act done by him has caused death. True it is that the

deceased died of shock but there is no evidence to show that the shock had occurred on account of the injuries caused by the appellant.

We cannot ignore that the case of the prosecution itself is that after the deceased sustained injuries while he was being taken to the hospital for treatment, he died on the way. Any mishandling of the deceased by the person carrying him to the hospital so as to cause shock cannot be ruled out. The doctor had not stated that the deceased profusely bled which could have caused shock. In the absence of any such evidence, we are in doubt as to whether the deceased suffered shock on account of the injuries sustained by him. It is not shown that the injuries found on the person of the deceased were of such nature, which in the ordinary course of nature could cause shock. We cannot assume that those injuries can cause shock in the absence of any evidence in this regard. The doctor has not even remotely suggested that the shock was caused due to the injuries sustained by the deceased. In the face of what we have observed above, we are not in a position of hold that it is the act of the appellant, which caused death. Hence, we are of the opinion that the conviction of the appellant under Section 302 of the Indian Penal Code cannot be sustained.

The next question which falls for our consideration is as to the offence for which the appellant M.B. Suresh would be liable. What has been proved against this appellant is that he shot at the deceased, but there is no evidence to show that it was the injury inflicted by the appellant which was the cause of death. However, from the facts proved, there is no doubt that he shot at the deceased with an intention to kill him or at least he had the knowledge that the act would cause the death. Accordingly, we are of the opinion that the allegations proved constitute an offence under Section 307 of the Indian Penal Code.

Mr. Basant R. has not assailed the conviction of the appellant M.B. Suresh other than Section 302 of the Indian Penal Code. As regards the conviction of the other accused Bhadregowda under Section 427, it is on correct appreciation of evidence, which does not call for interference in the present appeal.

In the result, Criminal Appeal No. 985 of 2007 is partly allowed, the conviction of the appellant M.B. Suresh under Section 302 of the Indian Penal Code is set aside and is altered to Section 307 of the Indian Penal Code and he is sentenced to undergo rigorous imprisonment for ten years. However, his conviction under other penal provisions is maintained. Sentences awarded to him shall run concurrently. As the appellant has already remained in custody for more than 10 years, we direct that he be set at liberty forthwith unless required in any other case.

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***150. INDIAN PENAL CODE, 1860 – Sections 302 and 404**

Offence under sections 302 and 404 IPC – Circumstantial evidence – Recovery of missing ornaments from the body of deceased, evidentiary value of.

Facts of the case:

Deceased went to field in the morning for grazing buffaloes – In the evening only buffaloes returned back – On search being made, her dead body was found from the meadow – Ornaments of the deceased were missing from the body – On being arrested, as per the information disclosed by the accused about the articles, such missing articles were seized from the possession of the accused – After completion of trial, Trial Court convicted and sentenced the accused under sections 302 and 404 IPC – In appeal, it was held that in cases where the evidence is of circumstantial nature, the chain of evidence must be so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused person – It was further held that the circumstances which are available against the accused are that of recovery of ornaments belonging to the deceased and death of the deceased is homicidal – No other incriminating circumstances appear from the record – In the absence of evidence of last seen and that of unusual conduct of the accused like absconding or motive of the crime or other co-relatives, circumstantial evidence which may lead to the crime of murder by accused only, on the basis of recovery of articles, accused cannot be held guilty for murder but was only liable to be convicted of the commission of an offence under section 404 IPC.

Madan v. State of M.P.

Judgment dated 24.10.2013 passed by the High Court of M.P. in Criminal Appeal No. 575 of 1999, reported in 2014 (2) MPHT 250 (DB)

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151. INDIAN PENAL CODE, 1860 – Section 304-B

CRIMINAL LAW:

(i) Sentence – Discretion of Court – Sentencing policy is judge centric or principle based – Principle relating to imposition of death sentence is equally applicable to all lesser sentences where Courts have discretion under statute to award higher or lesser sentence – For that purpose, crime test (aggravating circumstances) and criminal test (mitigating circumstances) are to be applied.

(ii) Relevant factors for determining quantum of sentence explained.

Sunil Dutt Sharma v. State (Government of NCT of Delhi)

Judgment dated 08.10.2013 passed by the Supreme Court in Criminal Appeal No. 1333 of 2013, reported in (2014) 4 SCC 375

Extracts from the judgment:

The principles culled out from ***Jagmohan Singh v. State of U.P., (1973) 1 SCC 20*** in ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** and the changes in proposition (iv)(a) and (v)(b) may now be specifically noticed.

In the light of the above conspectus, we will now consider the effect of the aforesaid legislative changes on the authority and efficacy of the propositions laid down by this Court in ***Jagmohan case*** (supra). These propositions may be summed up as under:

> "(i) The general legislative policy that underlines the structure of our criminal law, principally contained in the Indian Penal Code and the Criminal Procedure Code, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefor, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.
>
> With the solitary exception of Section 303, the same policy permeates Section 302 and some other sections of the Penal Code, where the maximum punishment is the death penalty.
>
> (ii) (a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible.
>
> "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (Referred to ***McGoutha v. California , 28 L Ed 2d 711***)
>
> (b) The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment.
>
> (iii) The view taken by the plurality in ***Furman v. Georgia, 33 L Ed 2d 346*** decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are

grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

(iv) (a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.

(b) The discretion is liable to be corrected by superior courts. The exercise of judicial discretion on well recognised principles is, in the final analysis, the safest possible safeguard for the accused.

In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially the same but the facts and circumstances of a crime are widely different. Thus considered, the provision in Section 302, Penal Code is not violative of Article 14 of the Constitution on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

(v)(a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the court at the pre-conviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.

(b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in Section 302 Penal Code,

“the court is principally* (the word ‘principally’ is emphasized in ***Bachan Singh’s case*** (supra) concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the CrPC. The trial does not come to an end until all the relevant facts are proved and the counsel

on both sides has an opportunity to address the court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is what Sections 306(2) and 309(2), CrPC purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons, are offered to show that they are constitutionally invalid and, hence, the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under Article 21". [***Jagmohan Singh*** (supra)]

A study of the propositions set out above, will show that, in substance, the authority of none of them has been affected by the legislative changes since the decision in ***Jagmohan*** (supra). Of course, two of them require be adjusting and attuning to the shift in the legislative policy. The first of those propositions is No. (iv) (a) which postulates, that according to the then extant Code of Criminal Procedure both the alternative sentences provided in Section 302 of the Penal Code are normal sentences and the court can, therefore, after weighing the aggravating and mitigating circumstances of the particular case, in its discretion, impose either of those sentences. This postulate has now been modified by Section 354(3) which mandates the court convicting a person for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, not to impose the sentence of death on that person unless there are "special reasons" — to be recorded — for such sentence. The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases.

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Another proposition, the application of which, to an extent, is affected by the legislative changes, is No. (v). In portion (a) of that proposition, it is said that circumstances impinging on the nature and circumstances of the crime can be brought on record before the pre-conviction stage. In portion (b), it is emphasised that while making choice of the sentence under Section 302 of the Penal Code, the court is principally concerned with the circumstances connected with the particular crime under inquiry. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which

may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration "principally*" or merely* to the circumstances connected with the particular crime*, but also give due consideration to the circumstances of the criminal* (emphasized in ***Bachan Singh's case*** (supra).

Attuned to the legislative policy delineated in Sections 354(3) and 235(2), propositions (iv) (a) and (v) (b) in ***Jagmohan*** (supra) shall have to be recast and may be stated as below:

"(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence."

The above position was again noticed in ***Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546.*** In the separate concurring opinion rendered by Brother Madan B. Lokur there is an exhaustive consideration of the judgments rendered by this Court in the recent past (last 15 years) wherein death penalty has been converted to life imprisonment and also the cases wherein death penalty has been confirmed. On the basis of the views of this Court expressed in the exhaustive list of its judgments, reasons which were considered adequate by the Court to convert death penalty into life imprisonment as well as the reasons for confirming the death penalty had been set out in the concurring judgment at paragraphs 106 and 122 of the report in ***Shankar Kisanrao Khade*** (supra) which paragraphs may be extracted herein below to notice the principles that have unfolded since ***Bachan Singh*** (supra):

"106. A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to that of imprisonment for life. However, some of the factors that have had an influence in commutation include:

(1) the young age of the accused [***Amit v. State of Maharashtra, (2003) 8 SCC 93*** aged 20 years, ***Rahul v. State of Maharashtra, (2005) 10 SCC 322*** aged 24 years***, Santosh Kumar Singh v. State, (2010) 9 SCC 747*** aged 24 years***, Rameshbhai Chandubhai Rathod (2) v. State of Gujarat, (2011) 2 SCC 764*** aged 28 years and ***Amit v. State of U.P., (2012) 4 SCC 107*** aged 28 years];

(2) the possibility of reforming and rehabilitating the accused (in ***Santosh Kumar Singh*** (supra) and ***Amit v. State of U.P.*** (supra) the accused, incidentally, were young when they committed the crime);

(3) the accused had no prior criminal record (***Nirmal Singh v. State of Haryana, (1999) 3 SCC 670, Raju v. State of Haryana, (2001) 9 SCC 50, Bantu v. State of M.P., (2001) 9 SCC 615 Amit v. State of Maharashtra,*** (supra) ***Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 SCC 127 Rahul v. State of Maharashtra, (2005) 10 SCC 322*** and ***Amit v. State of U.P.*** (supra)

(4) the accused was not likely to be a menace or threat or danger to society or the community (***Nirmal Singh*** (supra), ***Mohd. Chaman v. State (NCT of Delhi), (2001) 2 SCC 28, Raju*** (supra), ***Bantu*** (supra), ***Surendra Pal Shivbalakpal*** (supra), ***Rahul*** (supra) and ***Amit v. State of U.P.*** (supra)

(5) a few other reasons need to be mentioned such as the accused having been acquitted by one of the courts (***State of T.N. v. Suresh, (1998) 2 SCC 372 , State of Maharashtra v. Suresh, (2000) 1 SCC 471, State of Maharashtra v. Bharat Fakira Dhiwar, (2002) 1 SCC 622, State of Maharashtra v. Mansingh (2005) 3 SCC 131*** and ***Santosh Kumar Singh v. State, (2010) 9 SCC 747.***

(6) the crime was not premeditated (***Kumudi Lal v. State of U.P., (1999) 4 SCC 108, Akhtar v. State of U.P., (1999) 6 SCC 60 Raju*** (supra) and ***Amrit Singh v. State of Punjab, (2006) 12 S CC 79***);

(7) the case was one of circumstantial evidence (***Mansingh*** (supra) and ***Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467***.

In one case, commutation was ordered since there was apparently no "exceptional" feature warranting a death penalty (***Kumudi Lal*** (supra) and in another case because the trial court had awarded life sentence but the High Court enhanced it to death (***Haresh Mohandas Rajput v. State of Maharashtra, (2011) 12 SCC 56***).

122. The principal reasons for confirming the death penalty in the above cases include:

(1) the cruel, diabolic, brutal, depraved and gruesome nature of the crime (***Jumman Khan v. State of U.P., (1991) 1 SCC 752, Dhananjoy Chatterjee v. State of W.B., (1994) 2 SCC 220 Laxman Naik v. State of Orissa, (1994) 3 SCC 381, Kamta Tiwari v. State of M.P., (1996) 6 SCC 250, Nirmal Singh*** and ***Jai Kumar v. State of M.P., (1999) 5 SCC 1 , State of U.P. Satish, (2005) 3 SCC 114, Bantu v. State of U.P., (2008) 11 SCC 113, Ankush Maruti Shinde v. Staste of Maharashtra, (2009) 6 SCC 667, B.A. Umesh v. State of Karnataka, (2011) 3 SCC 85, Mohd. Mannan v. State of Bihar (2011) 5 SCC 317*** and ***Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2012) 4 SCC 37***);

(2) the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community (***Dhananjoy Chatterjee*** (supra), ***Jai Kumar*** (supra), ***Ankush Maruti Shinde*** (supra) and ***Mohd. Mannan*** (supra)

(3) the reform or rehabilitation of the convict is not likely or that he would be a menace to society (***Jai Kumar*** (Supra), ***B.A. Umesh*** (supra) and ***Mohd. Mannan*** (supra)

(4) the victims were defenceless (***Dhananjoy Chatterjee,*** (supra) ***Laxman Naik*** (supra) ***Kamta Tiwari*** (supra) ***Ankush Maruti Shinde*** (supra) ***Mohd. Mannan*** (supra) ***Rajendra Pralhadrao Wasnik*** (supra)

(5) the crime was either unprovoked or that it was premeditated (***Dhananjoy Chatterjee***(supra), ***Laxman Naik*** (supra), ***Kamta Tiwari*** (supra), ***Nirmal Singh*** (supra), ***Jai Kumar*** (supra), ***Ankush Maruti Shinde*** (supra), ***B.A. Umesh*** (supra), ***and Mohd.Mannan*** (supra), and in three cases the antecedents or the prior history of the convict was taken into consideration ***(Shiva v. High Court of Karnataka, (2007) 4 SCC 713 B.A. Umesh*** (supra), and ***Rajendra Pralhadrao Wasnik*** (supra)."

However, in paragraph 123 of the report the cases where the reasons or taking either of the views i.e. commutation or confirmation as above have been deviated from have been noticed. Consequently, the progressive march had been stultified and the sentencing exercise continues to stagnate as a highly individualized and judge centric issue.

As noticed, the "net value" of the huge number of in depth exercises performed since ***Jagmohan Singh v. State of U.P., (1973) 1 SCC 20*** has been effectively and systematically culled out in ***Sangeet v. State of Haryana, (2013) 2 SCC 452*** and ***Shankar Kisanrao Khade*** (supra). The identified principles could provide a sound objective basis for sentencing thereby minimizing individualized and judge centric perspectives. Such principles bear a fair amount of affinity to the principles applied in foreign jurisdictions, a resume of which is available in the decision of this Court in ***State of Punjab v. Prem Sagar, (2008) 7 SCC 550.*** The difference is not in the identity of the principles; it lies in the realm of application thereof to individual situations. While in India application of the principles is left to the judge hearing the case, in certain foreign jurisdictions such principles are formulated under the authority of the statute and are applied on principles of categorization of offences which approach, however, has been found by the Constitution Bench in ***Bachan Singh*** (supra) to be inappropriate to our system. The principles being clearly evolved and securely entrenched, perhaps, the answer lies in consistency in approach.

To revert to the main stream of the case, we see no reason as to why the principles of sentencing evolved by this Court over the years through largely in the context of the death penalty will not be applicable to all lesser sentences so long as the sentencing judge is vested with the discretion to award a lesser or a higher sentence resembling the swing of the pendulum from the minimum to the maximum. In fact, we are reminded of the age old infallible logic that what is good to one situation would hold to be equally good to another like situation. Besides paragraph 163 of ***Bachan Singh*** (supra), reproduced earlier, bears testimony to the above fact.

Would the above principles apply to sentencing of an accused found guilty of the offence under Section 304-B inasmuch as the said offence is held to be proved against the accused on basis of a legal presumption? This is the next question that has to be dealt with. So long there is credible evidence of cruelty occasioned by demand (s) for dowry, any unnatural death of a woman within seven years of her marriage makes the husband or a relative of the husband of such woman liable for the offence of "dowry death" under Section 304-B though there may not be any direct involvement of the husband or such relative with the death in question. In a situation where commission of an offence is held to be proved by means of a legal presumption the circumstances surrounding the crime to determine the presence of aggravating circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing the direct involvement of the accused with the crime to enable

the Court to come to specific conclusions with regard to the barbarous or depraved nature of the crime committed. The necessity to combat the menace of demand for dowry or to prevent atrocities on women and like social evils as well as the necessity to maintain the purity of social conscience cannot be determinative of the quantum of sentence inasmuch as the said parameters would be common to all offences under Section 304-B of the Penal Code. The above, therefore, cannot be elevated to the status of acceptable jurisprudential principles to act as a rational basis for awarding varying degrees of punishment on a case-to-case basis. The search for principles to satisfy the crime test in an offence under Section 304-B of the Penal Code must, therefore, lie elsewhere. Perhaps, the time spent between marriage and the death of the woman; the attitude and conduct of the accused towards the victim before her death; the extent to which the demand for dowry was persisted with and the manner and circumstances of commission of the cruelty would be a surer basis for determination of the crime test. Coupled with the above, the fact whether the accused was also charged with the offence under Section 302 of the Penal Code and the basis of his acquittal of the said charge would be another very relevant circumstance. As against this the extenuating/mitigating circumstances which would determine the "criminal test" must be allowed to have a full play. The aforesaid two sets of circumstances being mutually irreconcilable cannot be arranged in the form of a balance sheet as observed in ***Sangeet*** (supra) but it is the cumulative effect of the two sets of different circumstances that has to be kept in mind while rendering the sentencing decision. This, according to us, would be the correct approach while dealing with the question of sentence so far as the offence under Section 304-B of the Penal Code is concerned.

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152. INDIAN PENAL CODE, 1860 – Sections 304-B, 306 and 498-A
EVIDENCE ACT, 1872 – Section 113-B

(i) Dowry death – Suicide by burning – Cruelty and harassment for dowry established – Conviction of husband under sections 304-B and 498-A confirmed.

(ii) Presumption of dowry death requires to show harassment and cruelty soon before the death of the victim – "Soon before" depends on facts and circumstances of each case – Cruelty and harassment differ from case to case and depends on mindset of people – Cruelty can be physical or mental – Mental cruelty can be verbal, emotional; like insulting, ridiculing, humiliating a woman, depriving of economic resources and essential amenities of life – There must be nexus between demand of dowry and cruelty and harassment – Test of proximity must be applied.

(iii) Dowry must have nexus with marriage.

(iv) Section 113-B is a beneficial provision aimed to provide relief to women subjected to cruelty in respect of dowry.

(v) Examination of independent witnesses is difficult because harassment and cruelty are committed within the four walls of matrimonial home.

Surinder Singh v. State of Haryana

Judgment dated 13.11.2013 passed by the Supreme Court in Criminal Appeal No. 1791 of 2008, reported in (2014) 4 SCC 129

Extracts from the judgment:

It is further argued that neither PW 7 Ashok Kumar nor PW 6 Satish Kumar have stated the exact date on which they went to the house of the accused when the demand for Rs.60,000/- was made and, therefore, it is not possible to locate the date on which demand for Rs.60,000/- was made. Resultantly, it is not possible to say whether the demand was made soon before the death of Anita. We have no hesitation in rejecting this submission.

> Section 113-B of the Indian Evidence Act, 1872 states that:
>
> **"113-B. Presumption as to dowry death.-** when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.
>
> Section 304-B of the IPC states that:
>
> **"304-B. Dowry death-** (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death

Thus, the words 'soon before' appear in Section 113B of the Indian Evidence Act, 1872 and also in Section 304B of the IPC. For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental

or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining each case of dowry death.

In this connection we may refer to judgment of this Court in ***Kans Raj v. State of Punjab, (2000) 5 SCC 207*** where this Court considered the term 'soon before'. The relevant observations are as under:

> "... ... ... "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be "soon before death" if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of

dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough."

Thus, there must be a nexus between the demand of dowry, cruelty or harassment, based upon such demand and the date of death. The test of proximity will have to be applied. But, it is not a rigid test. It depends on facts and circumstances of each case and calls for a pragmatic and sensitive approach of the court within the confines of law.

It is true that penal provisions have to be construed strictly. However, we may mention that in ***Murlidhar Meghraj Loya v. State of Maharashtra, (2007) 9 SCC 721*** this Court was dealing with the Prevention of Food Adulteration Act, 1954. Speaking for this Court, Krishna Iyer, J. held that any narrow and pedantic, literal and lexical construction of food laws is likely to leave loopholes for the offender to sneak out of the meshes of law and should be discouraged and criminal jurisprudence must depart from old canons defeating criminal statutes calculated to protect the public health and the nation's wealth. Similar view was taken in ***Kisan Trimbak Kothula v. State of Maharashtra, (1977) 1 SCC 300. In State of Maharashtra v. Natwarlal Damodardas Soni, (1980) 4 SCC 669,*** while dealing with Section 135 of the Customs Act and Rule 126-H (2) (d) of the Defence of India Rules, a narrow construction given by the High Court was rejected on the ground that that will emasculate these provisions and render them ineffective as a weapon for combating gold smuggling. It was further held that the provisions have to be specially construed in a manner which will suppress the mischief and advance the object which the legislature had in view.

While we reiterate what this Court has said in ***Appasaheb v. State of Maharashtra (2007) 9 SCC 721*** that a penal statute has to be construed strictly, in light of ***Kisan Trimbak Kothula*** (supra) and ***Natwarlal Damodardas Soni,*** (supra) we are of the opinion that penal statute, even if it has to be strictly construed, must be so construed as not to defeat its purport. Harassment of a married woman in an Indian household is a peculiar phenomenon. In most cases it is seen that the husband or the members of his family are never satisfied with what they get as dowry. The wife's family is expected to keep fulfilling this insatiable demand in some form or the other for some period of time after marriage. Such demands are also fulfilled by parents of the wife for fear of their daughter being ill- treated. The courts of law cannot lose sight of these realities. The presumption under Section 113B of the Indian Evidence Act, 1872 and the presumption under Section 304B of the IPC have a purpose. These are beneficent provisions aimed at giving relief to a woman subjected to cruelty routinely in an Indian household. The meaning to be applied to each word of these provisions has to be in accord with the legislative intent. Even while construing these provisions strictly care will have to be taken to see that their object is not frustrated.

Before closing, the most commonplace argument must be dealt with. In all cases of bride burning it is submitted that independent witnesses have not been examined. When harassment and cruelty is meted out to a woman within the four walls of the matrimonial home, it is difficult to get independent witnesses to depose about it. Only the inmates of the house and the relatives of the husband, who cause the cruelty, witness it. Their servants, being under their obligation, would never depose against them. Proverbially, neighbors are slippery witnesses. Moreover, witnesses have a tendency to stay away from courts. This is more so with neighbours. In bride burning cases, who else will, therefore, depose about the misery of the deceased bride except her parents or her relatives? It is time we accept this reality. We, therefore, reject this submission.

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***153. INDIAN PENAL CODE, 1860 – Section 306**

Offence for abetment of suicide – Constitution of.

Facts of the case:

The accused persons assaulted the deceased person on the pretext that his daughter would be taken away by the accused 'G' and he would keep the daughter of the victim – After 4-5 days of the incident, deceased committed suicide leaving a suicide note narrating the entire story and prayed that the accused persons be punished – Held, it is settled law that if a person is left in such a situation that he has no option except to commit suicide, then section 306 of IPC would be made out – Further held, the accused person did not leave the deceased in such a position – The deceased committed suicide after 4-5 days of the incident – He could have lodged an FIR against the accused persons – There is possibility that he did so due to his sentiments or he felt insulted by the conduct of the accused persons – Therefore, it cannot be said that the accused persons abetted the deceased to commit suicide and hence, cannot be convicted for offence punishable under section 306 IPC.

Gopal Kaurav and others v. State of M. P.

Judgment dated 18.02.2013 passed by the High Court of M.P. in Criminal Revision No. 2310 of 2013, reported in 2014 (2) MPHT 343

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***154. INDIAN PENAL CODE, 1860 – Section 306**

Offence for abetment to commit suicide under section 306 IPC, consideration of.

Facts of the case:

The deceased and the accused, both labourers, were living together. The deceased deposited Rs. 50,000 with the accused out of his income – On demand, the accused did not return the money to the deceased for which he committed suicide – Held, the deceased had

committed suicide due to non-return of money by accused persons – There is no evidence on record to establish that the deceased was ever provoked or encouraged or persuaded or compelled by the accused persons to commit suicide – For an alleged act of non-returning the money, the proper legal course could have been taken by the deceased against the accused persons – The act of commission of suicide by the deceased is not the consequence of any of the case allegedly committed by the accused persons – Therefore, offence under section 306 is not made out.

Shrikrishna Jatav and others v. State of M.P.

Judgment dated 19.03.2013 passed by the High Court of M.P. in Criminal Appeal No. 414 of 2010, reported in 2014 (2) MPHT 322

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155. INDIAN PENAL CODE, 1860 – Section 314

MEDICAL TERMINATION OF PREGNANCY ACT, 1971 – Section 3

(i) Special provision *vis-à-vis* general provision, exclusion of – A special provision excludes general provision.

(ii) Termination of pregnancy by RMP – In case of termination of pregnancy by a registered medical practioner in accordance with the provision contained in section 3 of MTP Act, general provision of section 314 IPC would not apply – Hence, offence under section 314 IPC would not be made out.

Dr. Swati Jain v. State of M.P.

Judgment dated 24.09.2013 passed by the High Court of M.P. in Criminal Revision No. 1416 of 2011, reported in 2014 (1) MPHT 485

Extracts from the judgment:

Indeed, the Act of 1971 is special enactment having the overriding effect over the Indian Penal Code since it is a well-settled principle of interpretation of statute. In these facts and circumstances, the legal maxims ***Generalia specialibus non derogant and generalibus specialia derogant*** shall be applicable and because the aforesaid special enactment (the Act of 1971) would prevail over Section 314, IPC and further the applicant is protected under Section 3 (1) of the Act of 1971, hence, the charge framed under Section 314 of the IPC against her cannot be allowed to remain stand and is liable to be quashed.

That apart, on bare perusal of Section 314 of the IPC, this Court finds that if an accused is to be prosecuted under this provision, the following ingredients should co-exist to bring the offence within the purview of the Section 314, IPC and I quote :-

(i) The woman was with child;

(ii) the accused committed an act to cause miscarriage;

(iii) he did so with such intention; and

(iv) such act caused the death of the woman.

In the present case, the death has been caused on account of the act of the applicant even at the remote, as per the prosecution's own case does not ***prima facie*** appear to be true for the reasons to follow:-

(a) admittedly the applicant is a major married;

(b) admittedly she gave her consent along with her husband to terminate the pregnancy;

(c) admittedly she was having the case of incomplete abortion, which already took place before her admission in Baba Madhav Shah Hospital;

(d) admittedly before admission in aforesaid hospital where she was treated by the petitioner (who is a well-qualified Gynaecologist having Gold Medal and is having M.S. in Surgery) on 22-5-2008 she already took some medication for treatment 15 days earlier to her admission in the said hospital;

(e) admittedly there was some intervention done two days before the deceased was admitted in the said hospital and was treated by the petitioner;

(f) admittedly before the treatment was provided by the petitioner the deceased already had an incomplete abortion;

(g) admittedly in case of incomplete abortion the uterus remains open;

(h) admittedly by adopting the method of LAMA on 25-5-2008 the husband of the deceased left the said Baba Madhav Shah Hospital against the medical advice by carrying the deceased with him; and

(i) admittedly one day thereafter on 26-5-2008 the deceased was admitted on Government Hospital at Katni where she had died.

In these facts and circumstances, it cannot be said that prima facie any of the ingredient of Section 314, IPC is made out against the present applicant so as to face the criminal trial and therefore, even to remote extent prima facie, it cannot be said that the applicant was negligent. Not even a single document of the Government Hospital where the deceased had died is on record and therefore, still it is a mystery as to whether the deceased had died on account of negligence of the Government Doctor or not. However, I do not have any scintilla of doubt in my mind in holding that the Act of 1971 is completely protecting the applicant as a strong shell and therefore, Section 314, IPC has no applicability.

156. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Sections 14 and 15

(i) Differences between juvenile justice system and criminal justice system – Explained.

(ii) All persons below the age of 18 years are juveniles in the light of the Act of 2000, irrespective of their intellectual maturity.

(iii) Interpretation of Statues – Doctrine of "Reading down" – Explained.

Dr. Subramanian Swamy and others v. Raju Thr. Member, Juvenile Justice Board and another

Judgment dated 28.03.2014 passed by the Supreme Court in Criminal Appeal No. 695 of 2014, reported in AIR 2014 SC 1649 (3 Judge Bench)

Extracts from the judgment:

The next significant aspect of the case that would require to be highlighted is the differences in the juvenile justice system and the criminal justice system working in India. This would have relevance to the arguments made in W.P. No.204 of 2013. It may be convenient to notice the differences by means of the narration set out herein under:

Pre-trial Processes

Filing of FIR:

Criminal Justice System: The system swings into action upon receipt of information (oral or written) by the officer in charge of a police station with regard to the commission of a cognizable offence.

JJ System: Rule 11(11) of the JJ Rules, 2007 states that the Police are not required to file an FIR or a charge-sheet while dealing with cases of juveniles in conflict with the law. Instead, they must only record the information of the offence in the general daily diary, followed by a report containing the social background of the juvenile, circumstances of the apprehension and the alleged offence.

An FIR is necessary only if the juvenile has (i) allegedly committed a serious offence like rape or murder, or (ii) has allegedly committed the offence with an adult.

Investigation and Inquiry:

Criminal Justice System: Ss. 156 and 157, CrPC deals with the power and procedure of police to investigate cognizable offences. The police may examine witnesses and record their statements. On completion of the investigation, the police officer is required to submit a Final Report to the Magistrate u/s 173(2).

JJ System: The system contemplates the immediate production of the apprehended juvenile before the JJ Board, with little scope for police investigation. Before the first hearing, the police is only required to submit a report of the juvenile's social background, the circumstances of apprehension and the alleged

offence to the Board (Rule 11(11)). In cases of a non-serious nature, or where apprehension of the juvenile is not in the interests of the child, the police are required to intimate his parents/guardian that the details of his alleged offence and his social background have been submitted to the Board (Rule 11(9)).

Arrest

Criminal Justice System: Arrest of accused persons is regulated under Chapter V of the CrPC. The police are empowered to arrest a person who has been accused of a cognizable offence if the crime was committed in an officer's presence or the police officer possesses a reasonable suspicion that the crime was committed by the accused. Further, arrest may be necessary to prevent such person from committing a further crime; from causing disappearance or tampering with evidence and for proper investigation (S.41). Persons accused of a non-cognizable offence may be arrested only with a warrant from a Magistrate (S.41 (2)).

JJ System: The JJ Rules provide that a juvenile in conflict with the law need not be apprehended except in serious offences entailing adult punishment of over 7 years (Rule 11(7)). As soon as a juvenile in conflict with the law is apprehended, the police must inform the designated Child/Juvenile Welfare Officer, the parents/guardian of the juvenile, and the concerned Probation Officer (for the purpose of the social background report) (S.13 & R.11(1)). The juvenile so apprehended is placed in the charge of the Welfare Officer. It is the Welfare Officer's duty to produce the juvenile before the Board within 24 hours (S. 10 & Rule 11(2)). In no case can the police send the juvenile to lock up or jail, or delay the transfer of his charge to the Welfare Officer (proviso to S.10 & R.11 (3)).

Bail

Criminal Justice System: Chapter XXXIII of the CrPC provides for bails and bonds. Bail may be granted in cases of bailable and non-bailable offences in accordance with Ss. 436 and 437 of the CrPC. Bail in non- bailable offences may be refused if there are reasonable grounds for believing that the person is guilty of an offence punishable with death or imprisonment for life, or if he has a criminal history (S.437(1)).

JJ System**:** A juvenile who is accused of a bailable or non-bailable offence "shall" be released on bail or placed under the care of a suitable person/institution. This is subject to three exceptions: (i) where his release would bring him into association with a known criminal, (ii) where his release would expose him to moral, physical or psychological danger, or (iii) where his release would defeat the ends of justice. Even where bail is refused, the juvenile is to be kept in an observation home or a place of safety (and not jail).

Trial and Adjudication

The trial of an accused under the criminal justice system is governed by a well laid down procedure the essence of which is clarity of the charge brought

against the accused; the duty of the prosecution to prove the charge by reliable and legal evidence and the presumption of innocence of the accused. Culpability is to be determined on the touchstone of proof beyond reasonable doubt but if convicted, punishment as provided for is required to be inflicted with little or no exception. The accused is entitled to seek exoneration from the charge(s) levelled i.e. Discharge (amounting to an acquittal) mid course.

JJ System: Under S.14, whenever a juvenile charged with an offence is brought before the JJ Board, the latter must conduct an 'inquiry' under the JJ Act. A juvenile cannot be tried with an adult (S.18)

Determination of the age of the juvenile is required to be made on the basis of documentary evidence (such as birth certificate, matriculation certificate, or Medical Board examination).

The Board is expected to conclude the inquiry as soon as possible under R.13. Further, the Board is required to satisfy itself that the juvenile has not been tortured by the police or any other person and to take steps if ill-treatment has occurred. Proceedings must be conducted in the simplest manner and a child-friendly atmosphere must be maintained (R.13(2)(b)), and the juvenile must be given a right to be heard (clause (c)). The inquiry is not to be conducted in the spirit of adversarial proceedings, a fact that the Board is expected to keep in mind even in the examination of witnesses (R.13(3)). R.13(4) provides that the Board must try to put the juvenile at ease while examining him and recording his statement; the Board must encourage him to speak without fear not only of the circumstances of the alleged offence but also his home and social surroundings. Since the ultimate object of the Act is the rehabilitation of the juvenile, the Board is not merely concerned with the allegations of the crime but also the underlying social causes for the same in order to effectively deal with such causes.

The Board may dispense with the attendance of the juvenile during the inquiry, if thought fit (S. 47). Before the Board concludes on the juvenile's involvement, it must consider the social investigation report prepared by the Welfare Officer (R.15 (2)).

The inquiry must not prolong beyond four months unless the Board extends the period for special reasons due to the circumstances of the case. In all non-serious crimes, delay of more than 6 months will terminate the trial (R.13 (7)).

Sentencing: The Board is empowered to pass one of the seven dispositional orders u/s 15 of the JJ Act: advice/admonition, group counseling, community service, payment of fine, release on probation of good conduct and placing the juvenile under the care of parent or guardian or a suitable institution, or sent to a Special home for 3 years or less. Where a juvenile commits a serious offence, the Board must report the matter to the State Govt. who may keep the juvenile in a place of Safety for not more than 3 years. A juvenile cannot be sentenced to death or life imprisonment.

Post-trial Processes

JJ System: No disqualification attaches to a juvenile who is found to have committed an offence. The records of his case are removed after the expiry of period of appeal or a reasonable period.

S. 40 of the JJ Act provides that the rehabilitation and social reintegration of the juvenile begins during his stay in a children's home or special home. "After-care organizations" recognized by the State Govt. conduct programmes for taking care of juveniles who have left special homes to enable them to lead honest, industrious and useful lives.

Differences between JJ System and Criminal Justice System

1. FIR and charge-sheet in respect of juvenile offenders is filed only in 'serious cases', where adult punishment exceeds 7 years.

2. A juvenile in conflict with the law is not "arrested", but "apprehended", and only in case of allegations of a serious crime.

3. Once apprehended, the police must immediately place such juvenile under the care of a Welfare Officer, whose duty is to produce the juvenile before the Board. Thus, the police do not retain pre-trial custody over the juvenile

4. Under no circumstances is the juvenile to be detained in a jail or police lock-up, whether before, during or after the Board inquiry.

5. Grant of Bail to juveniles in conflict with the law is the Rule.

6. The JJ board conducts a child-friendly "inquiry" and not an adversarial trial. This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour.

7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of juvenile 'inquiry' is to find the guilt/innocence of the juvenile and to investigate the underlying social or familial causes of the alleged crime. Thus, the aim of juvenile sentencing is to reform and rehabilitate the errant juvenile.

8. The adult criminal system does not regulate the activities of the offender once she/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the juvenile, it establishes post- trial avenues for the juvenile to make an honest living.

Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission.

If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in ***Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others, AIR 1991 SC 101*** which succinctly sums up the position is, therefore, extracted below.

> "255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

Classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner,

differences inter se and within the under 18 category may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical accuracy will not exist in any categorization. But such precision and accuracy is not what Article 14 contemplates. The above principles have been laid down by this Court in a plethora of judgments and an illustrative reference to some may be made by recalling the decisions in ***Murthy Match Works and others v. The Asstt. Collector of Central Excise and another, AIR 1974 SC 497, Roop Chand Adlakha and others v. Delhi Development Authority and others, AIR 1989 SC 307, Kartar Singh v. State of Punjab, (1994) 3 SCC 569, Basheer alias N.P. Basheer v. State of Kerala, AIR 2004 SC 2757, B. Manmad Reddy and others v. Chandra Prakash Reddy and others, AIR 2010 SC 1001, Transport and Dock Workers Union and others v. Mumbai Port Trust and another, 2011 AIR SCW 220***.

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157. N.D.P.S. ACT, 1985 – Section 50

(i) Chance recovery – Compliance of section 50 is not required.

(ii) Chance recovery – A recovery made by chance or by accident or unexpectedly is called 'chance recovery'.

State of Himachal Pradesh v. Sunil Kumar

Judgment dated 05.03.2014 passed by the Supreme Court in Criminal Appeal No. 1101 of 2005, reported in (2014) 4 SCC 780

Extracts from the judgment:

As far as the applicability of Section 50 of the Act in a chance recovery is concerned, the issue is no longer ***res integra*** in view of the decision of the Constitution Bench in ***State of Punjab v. Baldev Singh, (1999) 6 SCC 172.***

It is true that Sunil Kumar behaved in a suspicious manner which resulted in his personal search being conducted after he disembarked from the bus. However, there is no evidence to suggest that before he was asked to alight from the bus, the police officers were aware that he was carrying a narcotic drug, even though the Chamba area may be one where such drugs are easily available. At best, it could be said that the police officers suspected Sunil Kumar of carrying drugs and nothing more. Mere suspicion, even if it is "positive suspicion" or grave suspicion cannot be equated with "reason to believe" ***[Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497*** and ***Sheo Nath Singh v. CIT, (1972) 3 SCC 234***]. These are two completely different concepts. It is this positive suspicion, and not any reason to believe, that led to the chance recovery of charas from the person of Sunil Kumar.

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158. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138

Criminal liability for cheque issued as an advance payment – If cheque is issued as advance payment for purchase of goods and purchase order is not carried to its logical conclusion either because of its

cancellation or otherwise and goods are not supplied by the supplier, the cheque cannot be said to have been drawn for an existing debt or liability – Dishonour of such cheque do not constitute offence under section 138 N.I. Act – It may create civil liability.

M/s Indus Airways Pvt. Ltd. & others v. M/s Magnum Aviation Pvt. Ltd. & another

Judgment dated 07.04.2014 passed by the Supreme Court in Criminal Appeal No. 830 of 2014, reported in 2014 (2) Crimes 105 (SC)

Extracts from the judgment:

The reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the N.I. Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability of be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability and dishonour of such cheque amounts to an offence under Section 138 of the N.I. Act. The Delhi High Court has traveled beyond the scope of Section 138 of the N.I. Act by holding that the purpose of enacting Section 138 of the N.I. Act would stand defeated if after placing orders and giving advance payments the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability.

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159. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 140

CRIMINAL PROCEDURE CODE, 1973 – Section 460

(i) General power of attorney to file complaint on behalf of company – Not produced as the same had already been produced in another case – Complaint dismissed for want of authorization to file complaint.

Held, it is a curable defect – An opportunity ought to have been granted to the complainant to produce and prove the same in accordance with law.

(ii) Procedural defects and irregularities which are curable, should not be allowed to defeat substantive rights or to cause injustice – Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use.

Haryana State Cooperative Supply and Marketing Federation Limited v. Jayam Textiles and another

Judgment dated 07.04.2014 passed by the Supreme Court in Criminal Appeal No. 833 of 2014, reported in (2014) 4 SCC 704 (3 Judge Bench).

Extracts from the judgment:

After perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant Federation was not placed before the courts below. But, we may notice that a specific averment was made by the appellant Federation before the learned Judicial Magistrate that the said general power of attorney had been filed in connected case being CC No. 1409 of 1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the courts below were not satisfied, an opportunity ought to have been granted to the appellant Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. [See- ***Uday Shankar Triyar v. Ram Kalewar Prasad Singh, (2006) 1 SCC 75***]

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160. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138
CRIMINAL PROCEDURE CODE, 1973 – Section 245
Section 245 of Cr.P.C., applicability of – Held, since the offence under section 138 of Negotiable Instruments Act is triable summarily or as summons case, section 245 is not applicable.

Dharmendra Singh Bhadouriya and others v. Rohit Goyal

Judgment dated 06.02.2014 passed by the High Court of M.P. in Misc. Criminal Case No. 632 of 2014, reported in 2014 (2) MPHT 160

Extracts from the judgment:

Trial under Section 138 of Negotiable Instruments Act is a summons trial and procedure for trial of summons cases has been provided under Chapter XX as Section 251 to Section 255 of the Code. Provision of Section 245 of Code, under which application for discharging was made by petitioners before Trial Court, has been made for the trial of warrant cases. Section 245 of Code is not applicable in the trial of summons cases.

As per the provision of Section 251 of the Code, in a summons case when accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him meaning thereby there is no provision to record the evidence of both the parties in respect of their case before stating the particulars of offence, as in warrant trial case.

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161. PRECEDENTS:

Decision is an authority to the point it decides – The text of decision cannot be read as if it were a statute.

Dr. Ankur Gupta v. State of M.P. and others

Judgment dated 30.10.2013 passed by the High Court of M.P. in Writ Petition No. 3244 of 2013, reported in 2014 (2) MPHT 236 (DB)

Extracts from the judgment:

It is well-settled principle of law that a decision is an authority to the point it decides. It is equally well-settled that the text of decision cannot be read as if it were a Statute ***[Heinz India (p) Ltd. v. State of U.P., (2012) 5 SCC 443]***.

It ***State (NCT of Delhi) v. Ajay Kumar Tyagi, (2012) 9 SCC 685,*** Hon'ble Supreme Court has held that it is well-settled that the decision is an authority for what it actually decides and not what flows from it.

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162. PREVENTION OF CORRUPTION ACT, 1988 – Section 19

Whether a criminal prosecution ought to be interfered with by the High Court at the instance of an accused who wants mid-course relief from the criminal charges levelled against him on the ground of defects/omissions or errors or want of jurisdiction in the order, granting sanction to prosecute? Held, No unless failure of justice has been occasioned.

Sanction to prosecute has been granted by Law Department of State and not by the parent Department of accused – High Court interdicted the criminal proceeding – Apex Court set aside the order of High Court.

State of Bihar and others v. Rajmangal Ram

Judgment dated 31.03.2014 passed by the Supreme Court in Criminal Appeal No. 708 of 2014, reported in AIR 2014 SC 1674

Extracts from the judgment:

In ***Prakash Singh Badal and another v. State of Punjab and others, AIR 2007 SC 1274*** it was, ***inter alia***, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In ***Prakash Singh Badal*** (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in ***R. Venkatkrishnan v. Central Bureau of Investigation,***

AIR 2010 SC 1812. In fact, a three Judge Bench in ***State of Madhya Pradesh v. Virender Kumar Tripathi, (2009) 15 SCC 533*** while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led.

There is a contrary view of this Court in ***State of Goa v. Babu Thomas, AIR 2005 SC 3606*** holding that an error in grant of sanction goes to the root of the prosecution. But the decision in ***Babu Thomas*** (supra) has to be necessarily understood in the facts thereof, namely, that the authority itself had admitted the invalidity of the initial sanction by issuing a second sanction with retrospective effect to validate the cognizance already taken on the basis of the initial sanction order. Even otherwise, the position has been clarified by the larger Bench in ***Virender Kumar Tripathi*** (supra).

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. Such a finding is conspicuously absent rendering it difficult to sustain the impugned orders of the High Court.

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***163. SERVICE LAW:**

Whether sexual harassment at work place amounts to misconduct within the meaning of provisions contained in the Civil Services (Classification, Control and Appeal) Rules, 1965? Held, Yes – Further held, sexual harassment was brought within the ambit of misconduct and the methodology to punish the employee is also introduced by way of amendment in Rule 14 (2) of the CCA Rules – Hence, it is a service matter and remedy available to such erring employee is under service rules.

Ramesh Pal v. Union of India and others

Judgment dated 14.02.2014 passed by the High Court of M.P. in Writ Petition No. 9086 of 2013, reported in 2014 (2) MPHT 137

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164. SPECIFIC RELIEF ACT, 1963 – Section 16 (c)

Readiness and willingness of plaintiff to perform his part of agreement, when proved? A sale deed and agreement of re-conveyance was executed on the same day – The plaintiff sent a notice to defendant informing that as per the terms of the agreement, he tendered an amount of Rs. 3,000/- and requested them to execute the sale deed – The defendant deferred, date and time on one pretext or another – Plaintiff filed the suit and also deposited the money as per directions of trial Court – It can be safely inferred that the plaintiff was always ready and willing to perform his part of the agreement – Suit decreed for specific performance.

Biswanath Ghosh (Dead) by L.Rs. and ors. v. Gobinda Ghosh alias Gobindha Chandra Ghosh & ors.

Judgment dated 14.03.2014 passed by the Supreme Court in Civil Appeal No. 3672 of 2007, reported in AIR 2014 SC 1582

Extracts from the judgment:

The readiness and willingness of person seeking performance means that the person claiming performance has kept the contract subsisting with preparedness to fulfill his obligation and accept the performance when the time for performance arrive.

It can be safely inferred that the plaintiffs-appellants were always ready and willing to discharge their obligation and perform their part of the agreement. In our considered opinion, the undisputed facts and events referred to hereinabove shall amount to sufficient compliance of the requirements of Section 16(c) of the Specific Relief Act.

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165. TRANSFER OF PROPERTY ACT, 1882 – Sections 126, 54, 5, 7 and 105
CONTRACT ACT, 1872 – Section 25 (i)
NOTARIES ACT, 1952 – Section 8

(i) Transaction between parties having fiduciary relationship without reciprocal consideration – Parameters for examining validity of transaction is different from the one applicable in ordinary transaction for consideration.

(ii) When parties have fiduciary relationship, burden of proving genuineness is on party having dominating position.

(iii) Transfer without consideration on account of close relationship – Love and affection for niece does not necessarily extend to a gesture of transferring immovable property of substantial value without consideration in favour of mother-in-law of niece – On facts, transfer is suspicious and not valid.

(iv) Co-operative society – Co-operative housing society – Transfer of flat – Withdrawal of offer of transfer can be considered by Co-operative society before finality of transfer.

(v) Approval granted to transfer flat without considering the withdrawal letter is not valid.

(vi) Statement of notary has no additional credit because he is an advocate.

(vii) Non-issuance of certificate will make the notarization of alleged document suspicious.

(viii) Estoppel, acquiescence and waiver – Principle of estoppel is based on fairness.

Pratima Chowdhury v. Kalpana Mukherjee and another

Judgment dated 10.02.2014 passed by the Supreme Court in Civil Appeal No. 1938 of 2014, reported in (2014) 4 SCC 196

Extracts from the judgment:

As already noticed hereinabove, none of the ingredients of estoppels can be culled out from the facts and circumstances of the present case. In view of the above, we hereby set aside the determination by the Cooperative Tribunal, as also the High Court, in having relied on the principle of estoppels, and thereby, excluding the pleas/defences raised by Pratima Chowdhury to support her claim.

It is not a matter of dispute, that for a long time Pratima Chowdhury had been residing at Bombay. She was residing at Bombay in the house of H.P. Roy and Bani Roy. Bani Roy, as stated above, is the sister of Pratima Chowdhury. H.P. Roy is a wealthy person. Partha Mukherjee son of Kalpana Mukherje, is anengineering graduate from IIT, Kharagpur. He also possesses the ualification of MBA, which he acquired from Ahmedabad. Originally Partha Mukherjee was employed as Sales Manager/Regional Manager with Colgate Palmolive (India) Limited, at Bombay. Partha Mukherjee married Sova Mukherjee (the daughter of H.P. Roy), whilst he was posted at Bombay in 1987. Soon after his marriage, Partha Mukherjee and Sova Mukherjee also started to live in the house of H.P. Roy (father-in-law of Partha Mukherjee). The evidence available on the record of the case reveals, that Pratima Chowdhury treated Sova Mukherjee as her daughter, and Partha Mukherjee as her son. In 1992, Partha Mukherjee was transferred from Bombay to Calcutta. Immediately on his transfer, Pratima Chowdhury accommodated him in flat no. 5D. Subsequently, Colgate Palmolive (India) Limited entered into a lease and licence agreement, in respect of flat no. 5D with Pratima Chowdhury, so as to provide residential accommodation to Partha Mukherjee (as per the terms and conditions of his employment). Obviously, Partha Mukherjee was instrumental in the execution of the above lease and licence agreement. In order to deposit monthly rent payable to Pratima Chowdhury (by Colgate Palmolive (India) Limited), Partha Mukherjee opened a bank account in the name of Pratima Chowdhury, jointly with himself. He

exclusively operated the above account, for deposits as well as for withdrawals. Not only that, the findings recorded by the Arbitrator indicate that the letter dated 11.11.1992 written by Pratima Chowdhury was drafted by Partha Mukherjee. The aforesaid conclusion was drawn from the fact that the manuscript of the original was in the handwriting of Partha Mukherjee. All the above facts demonstrate, a relationship of absolute trust and faith between Pratima Chowdhury and Partha Mukherjee. The aforesaid relationship emerged, not only on account of the fact that Partha Mukherjee was married to Sova Mukherjee (the niece of Pratima Chowdhury), but also on account of the fact, that Partha Mukherjee and his wife Sova Mukherjee soon after their marriage lived in the house of H.P. Roy (husband of the sister of Pratima Chowdhury). They resided together with Pratima Chowdhury till 1992, i.e., for a period of more than a decade, before Partha Mukherjee was transferred to Calcutta. In our considered view the relationship between Partha Mukherjee and Pratima Chowdhury would constitute a fiduciary relationship. Even though all the above aspects of the relationship between the parties were taken into consideration, none of the adjudicating authorities dealt with the controversy, by taking into account the fiduciary relationship between the parties. When parties are in fiduciary relationship, the manner of examining the validity of a transaction, specifically when there is no reciprocal consideration, has to be based on parameters which are different from the ones applicable to an ordinary case. Reference in this behalf, may be made to the decision rendered by this Court in ***Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib, AIR 1967 SC 878,*** wherein this Court examined the twin concepts of "fiduciary relationship" and "undue influence" and observed as under:

> "3. We may now proceed to consider what are the essential ingredients of undue influence and how a plaintiff who seeks relief on this ground should proceed to prove his case and when the defendant is called upon to show that the contract or gift was not induced by undue influence. The instant case is one of gift but it is well settled that the law as to undue influence is the same in the case of a gift inter- vivos as in the case of a contract.
>
> 4. *Under s 16 (1) of the Indian Contract Act a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This shows that the court trying a case of undue influence must consider two things to start with, namely, (1) are the relations between the donor and the donee such that the donee is in a position to dominate the will of the donor and (2) has the donee used* that position to obtain an unfair advantage over the donor'?

5. Sub-section (2) of the section is illustrative as to when a person is to considered to be in a position to dominate the will of another. These are inter alia (a) where the donee holds a real or apparent authority over the donor or where he stands in a fiduciary relation to the donor or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

6. *Sub-section (3) of the section throws the burden of proving that a contract was not induced by undue influence on the person benefiting by it when two factors are found against him, namely that he is in a position to dominate the will of another and the transaction appears on the face of it or on the evidence adduced to be unconscionable.*

The three stages for consideration of a case of undue influence were expounded in the case of ***Ragunath Prasad v. Sarju Prasad and others, AIR 1924 PC 60*** in the following words :-

> "In the first place the relations between the parties to each other must be such that one is in a position to dominate the will of the other. Once that position is substantiated the second stage has been reached-namely, the issue whether the contract has been induced by undue influence. Upon the determination of this issue a third point emerges, which is that of the onus probandi. If the transaction appears to be unconscionable, then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other."

The subject of fiduciary relationship was also examined by this Court in, ***Krishna Mohan Kul alias Nani Charan Kul v. Pratima Maity, (2004) 9 SCC 468,*** wherein it was held as under:

> *".....When fraud, mis-representation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But, when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position and he has to prove that there was fair play in the transaction and that the apparent is the real, in other words that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is*

to say, the party who is in a position of active confidence. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the Court watches with jealously all transactions between such persons so that the protector may not use his influence or the confidence to his advantage. When the party complaining shows such relation the law presumes everything against the transaction and the onus is cast against the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. This principle has been engrained in Section 111 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). The rule here laid down is in accordance with a principle long acknowledged and administered in Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence. The transaction is not necessarily void ipso facto, nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The Section requires that the party on whom the burden of proof is laid should have been in a position of active confidence. where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however, improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open. Where an active confidential, or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest.

In judging of the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donor/beneficiary under a document to prove due execution of the document in accordance with law, even de hors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before Court.

It is now well established that a Court of Equity, when a person obtains any benefit from another imposes upon the grantee the burden, if he wishes to maintain the contract or gift, of proving that in fact he exerted no influence for the purpose of obtaining it. The proposition is very clearly started in Ashburner's Principles of Equity, 2nd Ed., p.229, thus:

> *"When the relation between the donor and donee at or shortly before the execution of the gift has been such as to raise a presumption that the donee had influence over the donor, the court sets aside the gift unless the donee can prove that the gift was the result of a free exercise of the donor's will.""*
>
> (emphasis supplied)

The above conclusions recorded by this Court, came to be reiterated recently in ***Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558***.

While deciding the proposition in hand, we must keep in mind the law declared by this Court on the subject of fiduciary relationship. We will also proceed by keeping in mind, what we have already concluded in the preceding paragraph, i.e., that relationship between Partha Mukherjee and Pratima Chowdhury was a relationship of faith, trust and confidence.

Partha Mukherjee was in a domineering position. He was married to Sova Mukherjee. Sova Mukherjee is the daughter of H.P. Roy. Pratima Chowdhury has lived for a very long time in the house of H.P. Roy. During that period (after his marriage) Partha Mukherjee also shared the residential accommodation in the same house with Pratima Chowdhury, for over a decade. In Indian society the relationship between Partha Mukherjee and Pratima Chowdhury, is a very delicate and sensitive one. It is therefore, that Pratima Chowdhury extended all help and support to him, at all times. She gave him her flat when he was transferred to Calcutta. She also extended loans to him, when he wanted to set up an independent business at Bombay. These are illustrative instances of his authority, command and influence. Instances of his enjoying the trust and confidence of Pratima Chowdhury include, amongst others, the joint account of Pratima Chowdhury with Partha Mukherjee, which the latter operated exclusively, and the drafting of the letters on behalf of Pratima Chowdhury.

In such fact situation, we are of the view, that the onus of substantiating the validity and genuineness of the transfer of flat no. 5D, by Pratima Chowdhury, through the letter dated 11.11.1992 and the document dated 13.11.1992, rested squarely on the shoulders of Kalpana Mukherjee. Because it was only the relationship between Partha Mukherjee and Pratima Chowdhury, which came to be extended to Kalpana Mukherjee.

The document dated 13.11.1992 clearly expressed, that the above transfer was without consideration. Kalpana Mukherjee in her written reply before the Arbitrator asserted, that the above transfer was on a consideration of

Rs.4,29,000/-. The Arbitrator in his order dated. 5.2.1999 concluded, that Kalpana Mukherjee could not establish the passing of the above consideration to Pratima Chowdhury. The Cooperative Tribunal, as well as, the High Court, despite the factual assertion of Kalpana Mukherjee were of the view, that passing of consideration was not essential in determination of the genuineness of the transaction. We are of the view, that the Cooperative Tribunal, as well as, the High Court seriously erred in their approach, to the determination of the controversy.

Even though the onus of proof rested on Kalpana Mukherjee, the matter was examined by requiring Pratima Chowdhury to establish all the alleged facts. We are of the view, that Kalpana Mukherjee miserably failed to discharge the burden of proof, which essentially rested on her. Pratima Chowdhury led evidence to show, that she was at Bombay on 11.11.1992 and 13.11.1992. In view of the above, the letter dated 11.11.1992 and the document dated 13.11.1992, shown to have been executed at Calcutta could not be readily accepted as genuine, for the said documents fell in the zone of suspicion, more so, because the manuscript of the letter dated 11.11.1992 was in the hand-writing of Partha Mukherjee. Leading to the inference, that Partha Mukherjee was the author of the above letter. It is therefore not incorrect to infer, that there seems to be a ring of truth, in the assertion made by Pratima Chowdhury, that Partha Mukherjee had obtained her signatures for executing the letter and document referred to above. We find no justification whatsoever for Pratima Chowdhury, to have transferred flat no. 5D to Kalpana Mukherjee, free of cost, even though she had purchased the same for a consideration of Rs. 4 lakhs in the year 1987. Especially so, when she had no direct intimate relationship with Kalpana Mukherjee. By the time the flat was transferred, more than a decade had passed by, during which period, the price of above flat, must have escalated manifold.

Numerous other factual aspects have been examined by us above, which also clearly negate the assertions made by Kalpana Mukherjee. The same need not be repeated here, for reasons of brevity. Keeping in mind the above noted aspects, we are of the considered view that invocation of the principle of justice and equity, and the doctrine of fairness, would in fact result in returning a finding in favour of Pratima Chowdhury, and not Kalpana Mukherjee.

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NOTE : (*) Asterisk denotes short notes

PART - III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 30.08.2013 OF PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, BHOPAL REGARDING ESTABLISHMENT OF FOOD SAFETY APPELLATE TRIBUNAL IN EVERY DISTRICT

No. F-10-6-2013-XVII-M-2. – In exercise of the powers conferred by sub-section (1) of Section 70 of the Food Safety and Standards Act, 2006 (34 of 2006), the State Government hereby establishes the Food Safety Appellate Tribunal in every District of the State to hear appeals from the decisions of the Adjudicating Officer working in the District under Section 68 of the said Act.

BY THE NAME & ORDER OF GOVERNOR OF MADHYA PRADESH
Arun Kumar Tomar, Dy. Secretary]

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NOTIFICATION DATED 25.10.2013 OF PUBLIC HEALTH AND FAMILY WELFARE DEPARTMENT, BHOPAL REGARDING APPOINTMENT OF DISTRICT & SESSIONS JUDGE AS PRESIDING OFFICER OF FOOD SAFETY APPELLATE TRIBUNAL ESTBALISHED IN HIS DISTRICT

No. F-10-6-2013-XVII-Medi-2. – WHEREAS, in exercise of the powers conferred by sub-section (1) of Section 70 of the Food Safety and Standards Act, 2006 (34 of 2006), the State Government has established the Food Safety Appellate Tribunal, vide its notification no. F-10-6-2013-XVII-M-2, dated 30th August 2013, in every district of the State to hear appeals from the decisions of the Adjudicating Officer working in the District under Section 68 of the said Act;

Now THEREFORE, in exercise of the powers conferred by sub-section (3) of section 70 of the Food Safety and Standards Act, 2006 (34 of 2006), the State Government hereby appoints District and Session Judge as Presiding Officer of the Food Safety Appellate Tribunal established in the district of his civil jurisdiction. The term of the Presiding Officer shall be limited till the date he holds the office of the District and Session Judge of that district.

BY THE NAME & ORDER OF GOVERNOR OF MADHYA PRADESH
Arun Kumar Tomar, Dy. Secretary]

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NOTIFICATION DATED 30.04.2014 OF MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NEW DELHI REGARDING THE DATE OF ENFORCEMENT OF THE PROVISIONS OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 2014

S.O. 1183(E).- In exercise of the powers conferred by sub-section (2) of Section 1 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014 (16 of 2014), the Central Government hereby appoints the 1st day of May, 2014, as the date on which the provisions of the said Act shall come into force.

[F. No. N. 11011/8/2011-NC-II]
TAPAN KUMAR SATPATHY, Under Secy.

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When we tackle obstacles, we find hidden reserves of courage and resilience we did not know we had. And it is only when we are faced with failure do we realise that these resources were always there within us. We only need to find them and move on with our lives.

A. P. J. Abdul Kalam

PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 2014

ACT No. 16 OF 2014

The following Act of parliament received the assent of the President on 7th March, 2014, and was published in the Gazette of India, Extraordinary, Part II Section 1, No. 17 dated 10th March, 2014.

An Act further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2.- In Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) (hereinafter referred to as the principal Act),-

(a) after clause (iv), the following clause shall be inserted, namely-

(iv-a) "Central Government factories" means factories owned by the Central Government or factories owned by any company in which the Central Government holds at least fifty-one per cent. of the paid-up share capital;';

(b) clause (viii-a) shall be re-lettered as clause (viii-b) and before, clause (viii-b) as so re-lettered, the following clause shall be inserted, namely-

(viii-a) "essential narcotic drug" means a narcotic drug notified by the Central Government for medical and scientific use;'.

3. Amendment of Section 4.- In Section 4 of the principal Act,-

(a) in sub-section (1), after the words "the illicit traffic therein", the words " and for ensuring their medical and scientific use" shall be inserted;

(b) in sub-section (2), after clause (d), the following clause shall be inserted, namely-

“(da) availability of narcotic drugs and psychotropic substances for medical and scientific use;”.

4. Amendment of Section 9. In Section 9 of the Principal Act,- (a) in sub-section (1), in clause (a),-

(i) after sub-clause (iii), the following sub-clause shall be inserted, namely-
“(iii-a) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing,”.

(ii) after sub-clause (v), the following shall be inserted, namely-

(v-a) the manufacture, possession, transport, import inter-State, export inter- State, sale, purchase, consumption and use of essential narcotic drugs:

Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of Section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier.”;

(b) in sub-section (2), after clause (h), the following clause shall be inserted, namely-

“(ha) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefor;”

5. Amendment of Section 10.- In Section 10 of the principal Act, in sub-section (1), in clause (a),-

(a) in sub-clause (i), after the words “poppy straw”, the words “except poppy straw produced from plants from which no juice has been extracted through lancing” shall be inserted;

(b) in sub-clause (v), for the words “manufactured drugs other than prepared opium”, the words and brackets “manufactured drugs (other than prepared opium and essential narcotic drugs) “shall be inserted.

6. Amendment of Section 15.- In Section 15 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

7. Amendment of Section 17.- In Section 17 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

8. Amendment of Section 18.- In Section 18 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

9. Amendment of Section 20.- In Section 20 of the principal Act, in clause (b), in sub – clause (ii), in item (A) for the words “six months”, the words “one year” shall be substituted.

10. Amendment of Section 21.- In Section 21 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

11. Amendment of Section 22.- In Section 22 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

12. Amendment of Section 23.- In Section 23 of the principal Act, in clause

(a), for the words “six months”, the words “one year” shall be substituted.

13. Insertion of new Section 27-B .- After Section 27-A of the principal Act, the following section shall be inserted, namely-

> “27-B. Punishment for contravention of Section 8-A.- Whoever contravenes the provision of Section 8-A shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine.”.

14. Amendment of Section 31.- In Section 31 of the principal Act, (a), in sub-section (1),-

(i) for the words “one – half of the maximum term”, the words “one and one-halftimes of the maximum term” shall be substituted;

(ii) for the words “one – half of the minimum amount”, the words “one and one-half-times of the maximum amount” shall be substituted;

(b) in sub-section (2),-

(i) for the words “one –half of the minimum term”, the words “one and one-halftimes of the minimum term” shall be substituted;

(ii) for the words “one –half of the minimum amount”, the words “one and one-halftimes of the minimum amount” shall be substituted;

15. Amendment of Section 31-A .- In Section 31-A of the principal Act, in sub-section (1), for the words “shall be punishable with death”, the words and figures “shall be punished with punishment which shall not be less than the punishment specified in Section 31 or with death” shall be substituted.

16. Amendment of Section 42 .- In Section 42 of the principal Act, in sub-section (1), in the proviso, for the words “provided that”, the following shall be substituted, namely-

"Provided that in respect of holder of a licence for manufacture of manufactured drugs of psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector: Provided further that".

17. Amendment of Section 52-A .- In Section 52-A of the principal Act, (a) for sub-section (1), the following sub-section shall be substituted, namely-.

"(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.";

(b) in sub-section (2),-

(i) for the words "narcotic drug or psychotropic substance" and "narcotic drugs or psychotropic substances", wherever they occur, the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted;

(ii) in clause (b), for the words "such drugs or substances", the words "such drugs, substances or conveyances" shall be substituted;

(c) in sub-section (4), for the words "narcotic drugs or psychotropic substances" the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted.

18. Insertion of new Section 57-A.- After Section 57 of the principal Act, the following section shall be inserted, namely-

"57-A. Report of seizure of property of the person arrested by the notified officer.- whenever any officer notified under Section 53 makes an arrest or seizure under this Act, and the provisions of Chapter V-A apply to any person involved in the case of such arrest or seizure, the officer shall make

a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure".

19. Substitution of new heading for heading of Chapter V-A. – In Chapter V-A of the principal Act, for the heading "FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC", the heading "FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY" shall be substituted.

20. Amendment of Section 68-B.- In Section 68-B of the principal Act,- (a) in clause (g),-

(i) in sub-clause (i), for the words "of this Act; or", the words "of this Act or the equivalent value of such property; or" shall be substituted;

(ii) in sub-clause (ii), for the words "such property", the words "such property or the equivalent value of such property; or" shall be substituted;

(iii) after sub-clause (ii), the following sub-clause shall be inserted, namely- "(iii) any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved, or the equivalent value of such property;";

(b) for clause (h), the following clause shall be substituted, namely-

'(h) "property" means any property or assets of every description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, wherever located and includes deeds and instruments evidencing title to, or interest in, such property or assets;'.

21. Amendment of Section 68-D.- In Section 68-D of the principal Act,- in sub-section (1), for the words "any Collector of Customs or Collector of Central

Excise", the words "any Commissioner of Customs or Commissioner of Central Excise" shall be substituted.

22. Amendment of Section 68-H.- In Section 68-H of the principal Act,- the following Explanation shall be inserted at the end, namely-

"***Explanation.-*** For the removal of doubts, it is hereby declared that in a case where the provisions of Section 68-J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.".

23. Amendment of Section 68-O.- In Section 68-O of the principal Act, in sub-section (4), after the proviso, the following proviso shall be inserted, namely-

"Provided further that if the office of the Chairman is vacant by reason of his death, resignation or otherwise, or if the Chairman is unable to discharge his duties owing to absence, illness or any other cause, the Central Government may, by order, nominate any member to act as the Chairman until a new Chairman is appointed and assumes charge or, as the case may be, resumes his duties.".

24. Amendment of Section 71.- In Section 71 of the principal Act, in sub- section (1), for the words "The Government may, in its discretion, establish, as many centres as it thinks fit for identification, treatment", the words "The Government may establish, recognize or approve as many centres as it thinks fit for identification, treatment, management" shall be substituted.

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Nothing can stop the man with the right mental attitude from achieving his goal; nothing on earth can help the man with the wrong mental attitude.

-Thomas Jefferson