JOTI JOURNAL

(BI-MONTHLY)

OCTOBER 2018

MADHYA PRADESH STATE JUDICIAL ACADEMY
HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

TRAINING COMMITTEE
MADHYA PRADESH STATE JUDICIAL ACADEMY

1.	**Hon'ble Shri Justice Hemant Gupta**	Chief Justice & Patron
2.	**Hon'ble Shri Justice R.S. Jha**	Judge Incharge, Judicial Education
3.	**Hon'ble Shri Justice Rohit Arya**	Member
4.	**Hon'ble Smt. Justice Nandita Dubey**	Member
5.	**Hon'ble Shri Justice Rajeev Kumar Dubey**	Member
6.	**Hon'ble Shri Justice Subodh Abhyankar**	Member

●

FOUNDER OF THE INSTITUTE AND JOTI JOURNAL
Hon'ble Shri Justice U.L. Bhat
Former Chief Justice,
High Court of M.P., Jabalpur

●

ASSOCIATE EDITOR
Sudeep Kumar Shrivastava
Additional Director

EDITOR
Sanjeev Kalgaonkar
Director

JOTI JOURNAL OCTOBER – 2018

SUBJECT– INDEX

PART–I
(ARTICLES & MISC.)

PART–II
(NOTES ON IMPORTANT JUDGMENTS)

CIVIL PROCEDURE CODE, 1908

सिविल प्रक्रिया संहिता, 1908

Section 197 – Requirement of prior sanction – Official Act and alleged offence must be inextricably interlinked.

धारा 197 - पूर्व मंजूरी की आवश्यकता - पदीय कृत्य एवं आक्षेपित अपराध परस्पर जटिल रूप से संबद्ध होने चाहिये।

216 341

Section 300 – Scope of Section 300 – Also includes extra charges which could have been included earlier.

धारा 300 - धारा 300 की परिधि - ऐसे अतिरिक्त आरोप, जो कि पूर्व में भी सम्मिलित किये जा सकते थे, को भी सम्मिलित करता है। **217* 343**

Sections 309 and 311 – Application to recall witness – Earlier fair opportunity was given to accused – Liable to be rejected.

धाराएं 309 **एवं** 311 - **साक्षी को पुनः बुलाये जाने हेतु आवेदन** - **पूर्व में अभियुक्त को उचित अवसर प्रदान किया गया था** - **खारिज किये जाने योग्य है।** **218 344**

Section 311 – Non-effective examination by previous Advocate – No ground to recall a witness.

धारा 311 - **पूर्व अधिवक्ता द्वारा प्रभावहीन परीक्षा** - **साक्षी को पुनः आहूत किये जाने का आधार नहीं है।**

219* 346

Sections 378 and 386 – (i) Appreciation of related witness who is also an eye witness.
(ii) Duty of the Court regarding appreciation of evidence.
(iii) Scope in appeal against acquittal.

धाराएं 378 **एवं** 386 - (i) ऐसे संबंधी साक्षी की साक्ष्य का मूल्यांकन जो कि चक्षुदर्शी साक्षी भी है।

(ii) साक्ष्य का मूल्यांकन करते समय न्यायालय के कर्त्तव्य।

(iii) दोषमुक्ति के विरूद्ध अपील की परिधि। **220 347**

Sections 397 and 401 – Criminal revision – The word “other person” used in Section 401 (2) Cr.P.C. includes the complainant/informant.

धाराएं 397 **एवं** 401 - **आपराधिक पुनरीक्षण** - **धारा** 401 (2) **में प्रयुक्त पद** ''**अन्य व्यक्ति**'' **में परिवादी/सूचनाकर्ता भी सम्मिलित है।** **221* 351**

Sections 451 and 457 – See Section 52 of the Forest Act, 1927.

धाराएं 451 **एवं** 457 - **देखें वन अधिनियम**, 1927 **की धारा** 52**।** **226* 355**

CRIMINAL TRIAL :

आपराधिक विचारण:

EVIDENCE ACT, 1872

साक्ष्य अधिनियम, 1872

FAMILY COURTS ACT, 1984

परिवार न्यायालय अधिनिमय, 1984

FOREST ACT, 1927

वन अधिनियम, 1927

Section 52 – Information of confiscation of proceedings of vehicle – Magistrate ceases to have jurisdiction.

धारा 52 - वाहन के अधिहरण की कार्यवाही की सूचना - मजिस्ट्रेट को क्षेत्राधिकार समाप्त हो जाता है।

226* **355**

HINDU LAW :

हिंदू विधि:

– (i) Joint family property and coparcenary property – Distinguished.
(ii) Mode of proving Will – Law reiterated.

– (i) **संयुक्त पारिवारिक संपति तथा सहदायिक सम्पति - विभेदित।**

(ii) **वसीयत को साबित करने की रीति - विधि पुनरोद्धरित।** **224** **353**

INDIAN PENAL CODE, 1860

भारतीय दण संहिता, 1860

Sections 53, 498A and 306 – Abetment of suicide – Committal of suicide due to mental agony caused to wife due to continued illicit relation – Conviction upheld.

धाराएं 53, 498**क एवं** 306 - आत्महत्या का दुष्प्रेरण - अवैध संबंध जारी रखने के परिणाम स्वरूप पत्नी को हुये मानसिक त्रास से आत्महत्या करना - दोषसिद्धि सही ठहराई गई। **227** **356**

Sections 228A and 376 – Non-disclosure of identity of rape victim – Directions to comply with Section 228A.

धाराएं 228**क एवं** 376 - **बलात्संग की पीड़ित की पहचान का अप्रकटीकरण - धारा** 228**क का पालन करने हेतु निर्देश जारी किये गये।** **228*** **358**

Section 300, Explanation 4 and Section 304, Part II – Circumstances showing absence of intention to cause murder – Culpable homicide not amounting to murder.

धारा 300, **स्पष्टीकरण** 4 **एवं धारा** 304 **भाग** II **- परिस्थितियों से हत्या कारित करने के आशय का अभाव दर्शित - हत्या की कोटि में न आने वाला आपराधिक मानव वध।** **229** **358**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005

Sections 2(a), 2(f) and 12 – Whether Domestic Violence Act applies in relation to divorcee wives, who have been divorced prior to the enforcement of the Act ? Held, Yes.

धाराएं 2(**क**), 2(**च**) **एवं** 12 - क्या घरेलू हिंसा अधिनियम ऐसी विवाह विच्छिन्न पत्नियों के संबंध में भी लागू होता है जिनका विवाह विच्छेद अधिनियम के लागू होने के पहले हो चुका है? अभिनिर्धारित, हाँ।

245* **384**

PUBLIC TRUSTS ACT, 1951 (M.P.)

लोक न्यास अधिनियम, 1951 (**म.प्र.**)

Section 32 – Institution of suit by unregistered Public Trust – Effect.

धारा 32 - अपंजीकृत न्यास द्वारा वाद का संस्थित किया जाना - प्रभाव। **203** **327**

REGISTRATION ACT, 1908

रजिस्ट्रीकरण अधिनियम, 1908

Sections 17(1-A) and 49 – See Section 53A Transfer of Property Act, 1882.

धाराएं 17(1-क) एवं 49 - देखें संपत्ति अंतरण अधिनियम, 1882 की धारा 53क।

250 **391**

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

भू-अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013

– See Section 27 and Articles 64 and 65 of the Limitation Act, 1963.

– **देखें परिसीमा अधिनियम**, 1963 **की धारा** 27 **एवं अनुच्छेद** 64 **व** 65। **238** **371**

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

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

Sections 13, 17 and 34 – Maintainability of the suit filed by tenant for permanent injunction against bank in relation to mortgaged property.

धाराएं 13, 17 **एवं** 34 - बंधकित संपत्ति के संबंध मंे अभिधारी द्वारा बैंक के विरूद्ध स्थाई व्यादेश हेतु प्रस्तुत वाद की पोषणीयता। **246*** **387**

TRANSFER OF PROPERTY ACT, 1882

संपत्ति अंतरण अधिनियम, 1882

Section 53A – Admissibility of unregistered agreement to sell – Only for limited purpose – Explained.

धारा 53क - अपंजीकृत विक्रय के करार की ग्राह्यता - मात्र सीमित प्रयोजन के लिये - व्याख्या की गई।

250 **391**

PART–II-A

(GUIDELINES)

PART–III

(CIRCULARS/NOTIFICATIONS)

PART–IV

(IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS)

FROM EDITOR'S DESK

Sanjeev Kalgaonkar
Director

Respected Judges,

This year we are commemorating Mahatma Gandhi's 150th birth anniversary in India and abroad from 2nd October, 2018 to 30th March, 2019. Preceding this celebration, the nation has undergone a great sense of change with respect to the attitude of cleanliness revolution under the *Swachh Bharat Abhiyan*.

ISO is an independent, non-governmental international organization with a membership of 163 national standards bodies. ISO has published 21671 International Standards and related documents, covering almost every industry, from technology, to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere. Considering that ISO is such a respected, correct and unbiased benchmark for standard, it seemed like a good standard for Courts as well.

It's a matter of pride for the entire State Judiciary that Civil Court Chourai, District Chhindwara and Civil Court Khetia, District Badwani have been certified under the aforesaid ISO standards which means that these particular courts are equipped with the state of the art amenities like plantation with drip irrigation, special facility for the differently-abled people, potable water, facilitating rooms for the women and children, cleanliness, transparent file management etc.

A dream doesn't become reality through magic; it takes sweat, determination and hard work. Civil Courts Chourai and Khetia could achieve this feet only with the concerted efforts and unified intentions of Judges, Court staff and advocates.

The optimist in me assures you that, this is just the beginning. Tomorrow, with the fervent efforts of all concerned, all the Court complexes of the State will be ISO certified. The efforts of these two Courts have definitely raised hope that the brothers and sisters of District Judiciary of the State will work hard with the same determination to provide better amenities and environment to stakeholders and beneficiaries of Justice.

This issue comprises of latest judgments on various nuances of law enunciated by the Supreme Court and the High Courts. Let us have a glimpse of the latest trend of law laid down in various judgments.

In case of ***Ram Singh***, the High Court of Madhya Pradesh deprecated the practice of issuing illegible handwritten MLC reports and issued directions to all concerned Medical Officers to prepare reports of all kinds in typed form only.

In ***Kuldeep Singh Tomar***, the High Court of Madhya Pradesh while rejecting the application regarding recall of witness has held that the reason for seeking recall of a witness must be *bona fide* and the accused himself should not be responsible for creating a situation where the Court is left with no other option but to close his right to cross-examine the witness.

The Apex Court in the case of ***Khurshid Ahmed*** has laid down that there is no proposition in law that relatives are to be treated as untruthful witnesses. The Court should not adopt hyper-technical approach, but should look at the broader probabilities of the case. The Appellate court can interfere against acquittal only when appreciation of evidence is based on erroneous considerations and there is manifest illegality in the conclusion arrived by the trial court.

In ***Arvind Jain***, the High Court of Madhya Pradesh has laid down that the State Special Police Establishment has jurisdiction to investigate offences by Central Government employees under the Prevention of Corruption Act, 1988 and no provision of Madhya Pradesh Special Police Establishment Act, 1947 restricts it to deal with the offence of bribery and corruption by State Government employees only.

The Apex Court in the case of ***Smt. Saban Alias Chand Bai*** has held that Domestic Violence Act is applicable to divorcee wife, who has been divorced prior to enforcement of the Act and subsistence of marriage is not a condition precedent for filing an application u/s 12 of the Act.

The High Court of M.P. in the case of ***Punjab National Bank v. Jainam Dormitary*** has held that suit for permanent injunction against bank in relation to mortgaged property claiming to be tenant in relation to which proceedings under the SARFAESI Act has been initiated, may seek relief before Tribunal under Section 17 (4-A) after insertion of the Amendment of 2016 in the SARFAESI Act, 2002 and the jurisdiction is barred.

Similarly, in the case of ***Sree Anandhakumar Mills Ltd.***, it has been held that adequate and efficacious remedy regarding suit for partition of the property in relation to which proceedings under the SARFAESI Act has been initiated is before Tribunal under Sections 17 and 18 of the said Act.

The Academy in the month of September conducted a Specialised Educational Programme on "Recent Trends in Cyber Crimes: New Tools and Techniques for collection of evidence and issues relating thereto" for all the stakeholders of criminal justice system. The idea behind organizing this Workshop was that the modern information technology evolution has enabled human society to prosper and make tremendous progress but at the same time given rise to new problems hereto unknown to mankind and cyber criminality is one such grave area.

Although, the Academy had conducted workshops on Cyber Crimes and Electronic Evidence on general topics, still it was felt that a Workshop may be conducted for all the stakeholders of the criminal justice system i.e. Investigating Officers, Scientists of Forensic Science Laboratory involved in digital forensics, Public Prosecutors conducting trials in criminal Courts and Presiding Officers of the Criminal Courts dealing with such kind of offences. The content of this Workshop was much intricate and the objective was set as ***"the participants will be able to deal with hi-tech cyber crimes involving in-depth analysis of digital forensics"***.

Being Members of the Computerization Committee of the High Court of Madhya Pradesh, Hon'ble Shri Justice C.V. Sirpurkar and Hon'ble Shri Justice Atul Sreedharan interacted with the participants. Shri Talwant Singh, DHJS, Shri Sanjay Gautam, Sr. Faculty, CBI Academy, Ghaziabad, Shri Samir Datt, CEO, Forensics Guru, Delhi Shri Jiten Jain, CEO, India Infosec Consortium, Delhi and Shri Prashant Mali, Advocate, Mumbai; all peers in the field guided the participants.

The Academy in the past two months has also conducted Second Phase Induction Course Programme for the newly appointed Civil Judges of 2018 Batch in two batches. In the Course, a new clinical method of learning by way of simulating mock trials has been introduced for newly inducted Judges. Dealing with real time Court will help them to face various issues; legal & behavioural issues relating to adjudication. The experience has shown that it is one of the best method of learning for the newly inducted Judges.

To refresh, up-date and systematize the knowledge base, the Academy conducted a specialized Workshop on – Arrears of cases and reduction of old pending cases for the Judges of District Judiciary in the Academy. The programme encompassed within itself newer tools and techniques which, if integrated with the existing judicial process, can transform existing scenario into a promising one. The discussions and deliberations indeed have provided food for building a new paradigm which can ensure dispensation of quick, qualitative and inexpensive justice.

The Academy also conducted three Regional Workshops on Domestic Violence Act and Offences against Women for Judicial Magistrates and Motor Accident Claim Cases & Land Acquisition Laws for the Judges dealing cases under the Acts at Gwalior and Indore, respectively.

In addition to the above programmes, the Academy also conducted Specialized Educational Programmes at Medico-Legal Institute, Bhopal and Forensic Science Laboratory, Sagar for the newly appointed/promoted Judges of HJS cadre.

Apart that, the Academy also conducted Educational Programmes for other stakeholders that included workshops for Advocates, Prosecutors and Panel Lawyers and Medical Officers.

The Academy also conducted Specialised Educational Programme on – Koha Software for the Librarians of High Court and System Officers of High Court and District Courts.

I sincerely hope that the content of this issue will enlighten and guide the readers in discharge of their duties. Your valuable contributions and response are always welcome.

Keep blessing our pursuit for judicial excellence.

•

Few will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation.

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

Workshop for Panel Lawyers
(24.08.2018 & 25.08.2018)

Workshop on - Arrears of Cases and Reduction of Old Pending Cases – Tools and Techniques
(01.09.2018)

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

Workshop for Medical Officers
(14.09.2018)

Workshop on – Emerging trends in Cyber Crimes : New tools & techniques for collection of evidence and its legal perspective
(22.09.2018 & 23.09.2018)

PART–I

सिविल न्यायालय, चौरई-मध्यप्रदेश का प्रथम आई.एस.ओ. न्यायालय

न्यायाधीशगण,
सिविल न्यायालय, चौरई,
जिला छिन्दवाड़ा (म.प्र.)

संचालक टिप्पणी:-

"स्वयं वह बदलाव बनें, जो कि आप दुनिया में देखना चाहते हैं।" ऐसे समय जब हम महात्मा गांधी जी की 150वीं जन्म वर्षगांठ मना रहे हैं, उक्त वाक्य हम सभी के लिये मार्गदर्शक एवं प्रेरणादायी है। किसी भी पदस्थापना में पदस्थ न्यायाधीश का प्राथमिक कार्य उसका न्यायिक कार्य संपादन होता है। साथ ही न्यायालय में आने वाले पक्षकारों एवं अन्य व्यक्तियों को सुलभ सुविधायें उपलब्ध कराकर सकारात्मक वातावरण निर्मित करना भी न्यायाधीश का कर्तव्य है। एक पुरानी कहावत है कि, आलसी कारीगर हमेशा अपने उपकरणों को दोष देता है। अपने न्यायालय को हमें स्वयं ही कर्मचारी, अधिवक्तागण, पक्षकारों एवं अन्य व्यक्तियों के लिये उपयोक्ता मैत्रीपूर्ण (user friendly) बनाने के प्रयास करना चाहिये। ऐसा ही प्रयास सिविल न्यायालय चौरई में पदस्थ न्यायाधीशगण द्वारा किया गया है। इस न्यायालय को मध्यप्रदेश की प्रथम आई.एस.ओ. न्यायालय होने का गौरव भी प्राप्त हुआ है। प्रकाशित किये जा रहे लेख का उद्देश्य न्यायाधीशगण को सृजनात्मक कार्य की अगुवाई करने एवं स्वयं के न्यायालय से बदलाव लाने हेतु प्रेरित करना है।

विंस्टन चर्चिल का एक प्रसिद्ध वाक्य है "We Shape our buildings there after they shape us" अर्थात ''हम इमारतों को गढ़ते हैं तत्पश्चात इमारते हमें''।

सिविल न्यायालय चौरई, जिला छिंदवाड़ा को मध्यप्रदेश की प्रथम आई.एस.ओ. प्रमाणित न्यायालय होने का गौरव प्राप्त हुआ है। ऐसी दशा में हमारे मन मस्तिष्क में यह प्रश्न उत्पन्न होना स्वाभाविक है कि आई.एस.ओ. है क्या, आई.एस.ओ. प्रमाणिकरण के क्या लाभ हैं और सिविल न्यायालय चौरई में ऐसा क्या है जिसके कारण उक्त गौरव इसे प्राप्त हुआ है।

सर्वप्रथम यह जानें कि आई.एस.ओ. है क्या? I.S.O (International Standarization Organisation) एक अंतरराष्ट्रीय मानक संगठन है, जो कि गुणवत्ता प्रबंधन की उन न्यूनतम व्यवहार व्यवस्थाओं की चर्चा करता है जो किसी भी संगठन को सुचारू रूप से चलाने के लिए आवश्यक होते हैं। उक्त व्यवस्थाओं का उद्धेश्य कार्य में पारदर्शिता लाना एवं नतीजों को प्रभावी बनाना है।

इस अंतरराष्ट्रीय मानक संगठन का कार्यालय जेनेवा, स्विटजरलैं में है जिसके करीब 90 देश सदस्य हैं। I.S.O को अपनाना न तो वैधानिक रूप से अनिवार्य है ना ही इसे अपनाने का कोई शासनादेश है। फिर भी यदि उसे अपनाकर कार्य करें तो उससे आम पक्षकार को मूलभूत सुविधा, अधिक पारदर्शिता एवं सुगमता के साथ प्रभावी एवं त्वरित रूप से प्राप्त होती है। संबंधित कर्मचारी तक आम पक्षकारों की पहुंच सरल होती है। कर्मचारी एवं अधिवक्तागण की कार्य में सहभागिता बढ़ती है, सकारात्मक माहौल का निर्माण होता है तथा संस्थान की प्रतिष्ठा एवं विश्वसनीयता में वृद्धि होती है।

आधुनिकता के इस दौर में प्रत्येक व्यक्ति यह चाहता है कि उसका कार्यस्थल सर्वसुविधायुक्त हो। शासन, संबंधित विभाग, ऐसा करने हेतु निरंतर प्रयासरत भी रहते हैं किंतु आर्थिक संसाधन की सीमितता ऐसे लक्ष्य की प्राप्ति में कहीं न कहीं बाधा या विलम्ब का कारण बनती है। प्रत्येक सरकारी कार्यस्थल, सरकार द्वारा नियोजित आर्थिक संसाधन से ही उत्कृष्टता प्राप्त करे, यह आवश्यक नहीं है अपितु 'कार्यस्थल पर कार्यरत अधिकारी' एवं कर्मचारी उस कार्यालय से हितबद्ध अन्य संस्था या विभाग के सहयोग से भी उत्कृष्ट संसाधन जुटाए जा सकते हैं।

प्रायः तहसील न्यायालयों में भवन या आधारभूत संरचना से संबंधित मूलभूत सुविधाएं जिला मुख्यालय अथवा बड़े स्थानों पर उपलब्ध संसाधनों के अनुरूप नहीं होती हैं। इन परिस्थितियों में तहसील न्यायालयों में पदस्थापना होने पर मूलभूत सुविधाओं का अभाव होने पर यह सोचकर यथास्थितीवाद से समझौता कर लिया जाता है और फिर किसी तरह समय बीत जाए, जैसा विचार अपना लिया जाता है। इसके कारण न तो कार्य करने का सकारात्मक माहौल बन पाता है, न ही हम अपनी दक्षता अनुसार कार्य कर पाते हैं। अंततः साधनों का अभाव और नकारात्मक विचार हमारे कार्य, व्यवहार व स्वास्थ्य पर भी प्रतिकूल असर □ालते हैं।

महात्मा गांधी जी ने अपनी आत्मकथा **"सत्य के प्रयोग"** में स्वच्छता आंदोलन के संदर्भ में लिखा है - "मेरा व्यवसाय केवल शिकायतें करना या अधिकार मांगने का ही नहीं है, बल्कि शिकायतें करने या अधिकार मांगने में मैं जितना तत्पर हूँ, उतना ही उत्साह और दृढ़ता भीतरी सुधार के लिए भी मुझमें है।" यदि गांधी जी के इस मूल मंत्र को जीवन में अपना लिया जावे तथा यथास्थितिवाद को खारिज कर सीमित साधनों से ही मूलभूत सुविधाओं में सुधार करने का सकारात्मक दृष्टिकोण अपनाकर कार्य आरंभ किया जाए, तो निश्चित रूप से परिर्वतन की सुखद खूशबू धीरे-धीरे संस्थान के सभी क्षेत्रों में एवं वहाँ कार्यरत सभी व्यक्तियों तक पहुंचने लगती है।

सिविल न्यायालय चौरई पूर्व में किन स्थितियों में था, इसके लिए हमें वर्तमान से 2 से 3 वर्ष पूर्व जाना होगा और उस समय की व्यवस्थाओं पर नजर □ालनी होगी। उस समय न्यायालय परिसर में मुश्किल से 5 से 7 पौधे जीवित अवस्था में थे। पार्किंग की कोई व्यवस्था नहीं थी। वाहन सीधे न्यायालय भवन से लगते थे, प्रवेश द्वार नहीं था। पीने के पानी का कोई इंतजाम नहीं था। आम पक्षकार के बैठने हेतु पृथक से कोई व्यवस्था नहीं थी। कुल मिलाकर न्यायालय भवन में मूलभूत आवश्यकता की वस्तुओं, जिससे आम पक्षकार को सुविधा मिल सके, का नितांत अभाव था। कम्प्यूटराईजेशन का कार्य भी अपूर्ण था, जिससे आम पक्षकारों को अपने प्रकरणों की जानकारी नवीन तकनीक के माध्यम से प्राप्त नहीं हो पा रही थी।

आई.एस.ओ. सर्टिफिकेशन के पूर्व सिविल न्यायालय चौरई को मानकों के कई स्तर सीमित संसाधनों के साथ पूर्ण करने प□े। आई.एस.ओ. के मानक पूर्ण करने में माननीय उच्च न्यायालय जबलपुर की कार्ययोजना वर्ष 2017-18 व 2018-19 के अंतर्गत स्वच्छता एक्शन प्लान में जिन मानकों को पालन करने का निर्देश दिया गया था, वे मानक आई.एस.ओ. प्रमाणीकरण में न केवल मील के पत्थर साबित हुए अपितु उक्त दिशा निर्देशों में लगभग वे सभी तत्व मौजूद हैं, जो कि आई.एस.ओ.प्रमाणीकरण की प्राप्ति हेतु पूर्ण करना होता है।

माननीय उच्च न्यायालय के स्वच्छता एक्शन प्लान के अंतर्गत आगे उल्लेखित कार्य किया जाना अपेक्षित था। जागरूकता हेतु स्वच्छता पखवाड़ों का आयोजन पुरूष एवं महिला लॉकअप गृह में बंदियों हेतु पृथक-पृथक जन सुविधाएँ उपलब्ध कराना, पुस्तकालय का उचित संधारण एवं अभिलेखों का तथा मालखाना अनुभाग स्थित संपत्तियों का नियमित रूप से नियमानुसार विनष्टीकरण किया जाना है, गंदगी को रोकने हेतु संभावित स्थलों पर प्रेरणादायी स्लोगन लगवाना, यथास्थान कूड़ादान या

स्टबिन रखा जाना, स्वच्छता बावत् सुझाव/अभिमत हेतु प्रवेश द्वार पर सुझाव पेटी लगाना, कार्यालय भवन की समय-समय पर मरम्मत, रंगाई-पुताई कराना, विद्युत एवं जल आपूर्ति व्यवस्था को दुरूस्त रखना, पीने के पानी की टंकी को समय-समय पर साफ कराना और उक्त आशय की रिपोर्ट प्राप्त करना। फर्नीचर एवं वाहनों की समय-समय पर मरम्मत कराना एवं दैनिक रूप से साफ सफाई कराया जाना, पुरानी व अनुपयोगी सामग्री का निराकरण किया जाना, स्वच्छता कार्य संस्कृति का अंग बने ऐसी व्यवस्था का सृजन किया जाना एवं स्वच्छता संबंधी दैनिक, साप्ताहिक और मासिक रूप से किए जाने वाले कार्यों की त्रिस्तरीय पहचान कर उन्हें किया जाना, न्यायालय परिसर में बगीचे, उद्यानों का निर्माण किया जाना, पक्षकारों के बैठने हेतु बैंचों की व्यवस्था किया जाना, आर.ओ. वॉटर की व्यवस्था किया जाना एवं उपयुक्त स्थलों पर छायादार व फलदार पेड़ लगाया जाना।

सिविल न्यायालय चौरई में उपलब्ध सुविधाओं एवं सृजित व्यवस्था को निम्नांकित शीर्षों में देखा जा सकता हैः-

1. **त्रिस्तरीय पार्किंग व्यवस्थाः-**

जब भी हम सार्वजनिक स्थानों पर जाते हैं, तो हमारे सामने बड़ी समस्या वाहन पार्किंग की होती है। वहाँ पहुंचते ही हमारा सामना अस्त-व्यस्त खड़े वाहनों से होता है। गाड़ी खड़े कर देने के बाद वापस लौटने पर अन्य वाहनों से गाड़ी न फँस गयी हो, इस बात की चिंता होती है किंतु इन्हीं चिंतओं मुक्ति हेतु सिविल न्यायालय चौरई में त्रिस्तरीय पार्किंग व्यवस्था बनाई गई है जिसके अंतर्गत दुपहिया वाहन पार्किंग, चार पहिया वाहन पार्किंग एवं न्यायाधीशगण के वाहन की पार्किंग हेतु पृथक-पृथक स्थान हैं। दुपहिया वाहन पार्किंग स्थल करीब 3000 वर्गफिट में पीवर ब्लाक्स में फैला सुव्यस्थित स्थान है। इसे रेलिंग के माध्यम से संरक्षित किया गया है जिससे की उसमें कोई चार पहिया वाहन प्रवेश न कर सके। इसके अतिरिक्त न्यायालय के मुख्य प्रवेश द्वार से मुख्य सड़क तक इस प्रकार से रैलिंग की गई है कि कोई वाहन खड़े न हो सकें और पूर्णतः खुला रहे।

संपूर्ण पार्किंग स्थल में नीम, गुलमोहर, कदम के पेड़ पर्याप्त मात्रा में इस ढंग से रोपित किये गये हैं जिससे कि वर्तमान सृजित पार्किंग व्यवस्था न केवल निर्बाध बनी रहेगी अपितु चार पहिया एवं दुपहिया वाहन का संपूर्ण पार्किंग स्थल छायादार हो जाए।

2. **सुन्दर बगीचाः-**

मुख्य प्रवेश द्वार के बाहर स्थित पार्किंग के पश्चात जब आमजन या पक्षकार मुख्यद्वार से न्यायालय भवन की ओर प्रवेश करते हैं तो उनका मन सुंदर हरियाली युक्त बगीचा को देखकर प्रफुल्लित एवं सकारात्मक ऊर्जा से भर जाता है। चंद्राकार निर्मित बगीचे में दो छोटे-छोटे ग्रास लॉन हैं। पक्षकारों के बैठने हेतु छोटे-छोटे शै एवं उनमें रखी बैंच हैं।

बगीचा में पक्षकार स्वच्छता एवं मध्यस्थता के प्रति सजग हो इस हेतु सुंदर स्लोगन लगे हैं।

मुख्य प्रवेश द्वार से न्यायालय में प्रवेश होने पर पूरे मार्ग पर स्थित अनेकों गमलों एवं उसमें लगे सुंदर-सुंदर भिन्न प्रजाति के फूल मन को प्रसन्नता प्रदान करते हैं। न्यायालय परिसर की बाउंड्रीवॉल से लगकर करीब 20 आम के वृक्षों का रोपण किया गया है, जिनकी सिंचाई ड्रिप से की जाती है।

3. दिव्यांगजनों हेतु विशिष्ट व्यवस्थाः-

प्रायः समस्त कार्यालयों में दिव्यांगजन हेतु रैम्प बने हुए हैं किंतु वे उनकी सुविधा अनुरूप हैं अथवा नहीं इस ओर अक्सर हमारा ध्यान नहीं जाता है। जैसे अनेक स्थानों पर रैम्प तो हैं, किंतु सड़क से लगा नहीं है या फिर यदि वहाँ दिव्यांगजन पहुंच भी जायें और व्हील चेयर चाहिए तो उसका उसे पता नहीं, ऐसी कई समस्याऐं होती हैं। इन सभी बातों का ध्यान रखते हुए चौराई न्यायालय में निर्मित रैम्प सीधे सड़क तक जुड़ता है। दोनों ओर से रेलिंग हैं, सुंदर टाईल्स लगी हैं जिससे उसकी स्वच्छता बनी रहती है। वहीं इस आशय की जानकारी सुनिश्चित की गयी है कि व्हील चेयर किस स्थान पर रखी है और उसे कैसे बिना किसी बाधा के प्राप्त कर सकते हैं। रैम्प से लगी सीढ़ियां एवं दीवार पर भी रेलिंग बनवाई गयी है ताकि यदि कोई सहारे से चढ़ना चाहे तो उसे अन्य किसी की आवश्यकता न हो।

4. न्यायालय प्रवेश द्वार बना सूचना द्वारः-

न्यायाधीशगण, अधिवक्तागण एवं पक्षकारगण के लिए न्यायालय में प्रवेश हेतु पृथक - पृथक प्रवेश द्वार निर्मित हैं। न्यायालय भवन में प्रवेश करने हेतु जैसे ही मुख्य द्वार पर आते हैं वहीं सीढ़ियों के पास ही संपूर्ण न्यायालय भवन का विस्तृत विवरण दर्शित किया गया है अर्थात् संपूर्ण न्यायालय भवन के अंदर स्थित कक्षों को क्रमांकित किया गया है। किस कक्ष में कौन सा अनुभाग है, उसका विवरण दर्शित किया गया है जिससे कि जिस व्यक्ति को जिस न्यायालय कक्ष में, जिस अनुभाग में जाना हो उसके लिए उसे अन्य किसी से पूछना न पड़े। इसके अतिरिक्त वहीं पर अत्यावश्यक प्रकार के एवं इमरजेंसी नम्बर भी लेख किये गये हैं। प्रवेश द्वार पर ही लोक अदालत, मध्यस्थता, निःशुल्क विधिक सहायता प्राप्ति संबंधी विस्तृत जानकारी युक्त फलेक्स लगाये गये हैं। इस प्रकार न्यायालय का प्रवेश द्वार सूचना द्वार के रूप में नजर आता है।

5. शुद्ध पेय जलः-

पक्षकार एवं आमजन को पीने का शुद्ध पानी मिले, यह न केवल सुनिश्चित किया गया है अपितु इस बावत् दो वाटर कूलर त्प्ण्ण् सहित लगाये गये हैं। वॉटर कूलर में पानी शुद्ध पहुंचे इस हेतु पानी की पृथक टंकी की व्यवस्था की गयी है।

6. आंचल कक्षः-

सामान्यतः न्यायालयों में बड़ी संख्या में महिला पक्षकारों में से बहुत सी ऐसी महिलाए भी आती हैंजिनके साथ नवजात शिशु होते हैं। महिलाओं को परिसर में सुरक्षित, शांत एवं बच्चों की फीिंग बाबत्

एक पृथक से कक्ष बनाया गया है। छोटे बच्चों के लिए झूला तो वहीं बड़े बच्चों की पढ़ाई हेतु हिन्दी वर्णमाला, इंग्लिश वर्णमाला, गिनती आदि के चार्ट आदि भी लगाये गये हैं। बिना पढ़ी लिखी महिला भी इस कक्ष में पहुंच सके इस हेतु कक्ष के बाहर माँ की आंचल में बैठे बच्चे का बड़ा सा पोस्टर लगाया गया है।

7. सहज दृश्य स्थल पर कियोस्क मशीनः-

न्यायालय भवन में प्रवेश करते ही सामने दो कियोस्क मशीन लगी हैं। उन्हें कैसे चलाया जा सकता है, इस संबंध में हिन्दी में दिशा निर्देश लगाये गये हैं जिससे कि आम पक्षकार उन्हें पढ़कर स्वयं मशीन संचालित कर सके।

8. संपूर्ण न्यायालय भवन में स्वच्छता का विशेष ध्यानः-

संपूर्ण न्यायालय भवन के कॉरि□ार में जगह-जगह गमले रखे हैं जिनमें विभिन्न प्रजाति के पौधे लगे हैं एवं जगह-जगह □स्टबिन रखे गये हैं। आम पक्षकार थूक कर न्यायालय परिसर को गंदा न करें इस बावत् जगह-जगह स्टेप□ सहित पीकदान लगाये गये हैं। न्यायालय कक्ष एवं प्रत्येक अनुभाग में बैठने वाले प्रत्येक कर्मचारी के टेबिल के पास □स्टबिन रखवाये गये हैं। समान्यजन हेतु महिला एवं पुरूषों के लिए पृथक-पृथक शौचालय उपलब्ध हैं जिसकी स्वच्छता का विशेष ध्यान रखा जाता है। इसके अतिरिक्त स्वच्छता बनाये रखने हेतु स्वच्छता में सहभागिता एवं सक्रियता का मूल-मंत्र अपनाया गया है अर्थात न्यायालय में पदस्थ समस्त कर्मचारी, अधिकारी एवं अधिवक्तागण स्वच्छता बनाये रखने में सहभागी हैं। वहीं आम पक्षकार गंदगी न करंे ऐसा करने से उन्हें रोकंे इस हेतु भी सभी अंग विनम्रतापूर्वक सक्रियता से स्वच्छता बनाये रखने में सहयोग करते हैं। इसका सकारात्मक परिणाम यह है कि बाहर से आने वाले आम पक्षकार यहाँ की स्वच्छता से न केवल प्रभावित होता है अपितु उसे बनाये रखने में स्वस्फूर्त योगदान भी दे रहे हैं।

9. आंतरिक कार्य प्रबंधन में सकारात्मक परिवर्तनः-

न्यायालयों में न्यायाधीश एवं कर्मचारियों के कर्तव्य सुस्पष्ट रूप से नियमों द्वारा परिभाषित हैं। फिर दैनिक कार्यों के सुगमता से संचालन हेतु प्रत्येक न्यायाधीश को स्वयं की भी प्रबंधन प्रणाली विकसित करनी होती है और इस कार्य में आई.एस.ओ. के बहुत से मापदण□ सहायक हैं। जैसे किसी अलमारी में क्या है इसका वर्णन अलमारी के बाहर ही हो। प्रत्येक अलमारी पर यह विवरण चस्पा किया

गया है कि उसमें किस प्रकृति की फाईल है अर्थात सिविल, दाण्ि◌क, विविध, ि◌स्पोजल, परिवाद आदि किस अलमारी में किस दिनांक से किस दिनांक की फाईल है। अलमारी के अंदर बने ब्लाकों में दिनांक और रखी गयी सामग्री की प्रकृति वर्णन युक्त पर्ची चस्पा की गयी है। प्रत्येक कर्मचारी के टेबिल पर उनके पदनामयुक्त प्लेट रखी गयी है एवं कर्मचारीगण को आई का◌ लगाना सुनिश्चित किया गया।

सामान्यतः न्यायालयों में कुल कितनी सामग्री है इसकी जानकारी नजारत द्वारा रखी जाती है जो कि एकजाई होती है। इस उपरोक्त के अतिरिक्त कक्षवार उपलब्ध सामग्री का रजिस्टर संधारित किया गया है अर्थात किस कक्ष में कितना फर्नीचर है कितनी अलमारी, फैन, कम्प्यूटर, पर्दे, लाईट हैं इसका विवरण एक झलक में ही देखा जा सकता है।

नजारत एवं पुलिसिमि विभाग का रजिस्टर

क्रमांक	विवरण	पृष्ठ क्रमांक
1	नजारत अनुभाग में संधारित की जा रही पंजियो का विवरण	1
2	धनराशि केश एकाउंट रजिस्टर	11
3	बंडलिंग केश एकाउंट पंजी	13
4	वसीयका रजिस्टर	15
5	डाक टिकिट पंजी	17
6	C.C.D रिसिव्ड रजिस्टर व अन्य विवरण	19
7	विविध रजिस्टर	21
8	विविध अभिलेख नस्तियां	23
	पुलिसिमि	
1	पुलिसिमि अनुभाग में संधारित पंजिया	61
2	डिटेक्ट बुक एवं जेरक शीट	63
3	विविध नस्तियां	64
4	रजिस्टर	65

न्यायालय परिसर में मालखाना, नजारत व कॉपिंग अनुभाग हेतु पृथक कक्ष हैं, जहाँ पर उचित रूप से नस्तियों का संधारण किया गया है। ग्रंथालय भी उचित रूप से संधारित है, जिसमें प्रत्येक पुस्तक पर क्रम अंकित है व उसी अनुसार रजिस्टर संधारित हैं। नजारत व कॉपिंग विभाग की स्टेशनरी

व नस्ती हेतु पृथक - पृथक आलमारियां उपलब्ध हैं तथा अलमारियों के बाहर ही यह विवरण उपलब्ध है कि उक्त अलमारी में कौन-कौन सी नस्तियाँ संधारित हैं व उनका क्रमांक क्या है। आई.एस.ओ. प्रमाणिकरण के पूर्व न केवल बाहरी व्यवस्था बल्कि स्थापना में संधारित समस्त नस्तियों को सुव्यवस्थित किया गया है। इस व्यवस्था से न केवल न्यायालय के कर्मचारीगण को अत्यंत लाभ हुआ है बल्कि अनुभाग के प्रभारी अधिकारी को भी समस्त जानकारी अत्यंत कम समय में सुव्यवस्थित रूप से प्राप्त हो जाती है।

न्यायालय में उपलब्ध प्रत्येक फाईल का पंजीकरण सी.आई.एस. में किया जाता है। इसे आगामी नियत दिनांक पर भी फॉरवर्ड किया जाता है। न्यायालय परिसर में फाईलिंग काउंटर, तलवाना काउंटर एवं सर्वर रूम की भी पृथक-पृथक व्यवस्था है जहाँ से फाईलिंग, तलवाना का कार्य नियमित रूप से संपादित किया जाता है।

गुणवत्ता के मानक को कैसे प्राप्त किया:-

सिविल न्यायालय चौरई द्वारा गुणवत्ता के मानक स्तर को कैसे प्राप्त किया गया और इस हेतु संसाधनों की व्यवस्था कैसे की गयी यह भी एक महत्वपूर्ण तथ्य है क्योंकि प्रत्येक कार्य के लिए बजट उपलब्ध होना संभव नहीं है। साथ ही न्यायालय परिसर में होने वाले प्रत्येक कार्य में साधनों की शुद्धता के उच्च मापदण्ड का पालन किया जाना भी अत्यंत आवश्यक है। यदि कार्य करने का सपना देखंे, उस सपने को साकार करने हेतु सकारात्मक दृष्टिकोण हो, धैर्य हो एवं संकल्पित दृढ़ इच्छाशक्ति हो तो कोई भी कार्य कठिन नहीं है।

हम और हमारे द्वारा के भाव से आरंभ किये गये कार्य में सर्वप्रथम न्यायाधीशगण, न्यायालयीन कर्मचारी एवं अधिवक्तागण द्वारा यथा संभव आर्थिक सहयोग किया गया। सर्वप्रथम समय-समय पर माननीय उच्च न्यायालय को आवश्यकतानुसार प्राक्कलन प्रेषित किये गये। वॉटर कूलर, पार्किंग, बाहरी विद्युत व्यवस्था हेतु नगरपालिका द्वारा सहयोग प्रदान किया गया। मुख्य द्वार एवं अभिभाषकगण हेतु कक्ष निर्माण का कार्य लोक निर्माण विभाग द्वारा स्थानीय जनप्रतिनिधि की निधि से प्राप्त राशि से कराया गया। वहीं पौधारोप रेलिंग, जल आपूर्ति की गई जिनकी सुचारू व्यवस्था हेतु वन विभाग, हॉर्टिकल्चर विभाग एवं पी.एच.ई. विभाग का भी सहयोग प्राप्त हुआ है। सबसे अधिक महत्वपूर्ण रूप से समय-समय पर जिला न्यायाधीश महोदय ने न केवल कुशल मार्गदर्शन प्रदान किया अपितु सुव्यवस्था हेतु किये जाने वाले कार्य में आने वाली प्रत्येक बाधाओं को स्वयं के निरीक्षण में लेकर दूर भी कराया गया।

आई.एस.ओ. से क्या लाभ प्राप्त हुआ:-

जब हम इस संदर्भ में देखते हैं तो हम पाते हैं कि न्यायालय परिसर में एक सकारात्मक माहौल का निर्माण हुआ है। न्यायाधीशगण, कर्मचारी एवं अधिवक्तगण में न केवल सौहार्द्रपूर्ण संबंध बने अपितु दैनिक कार्य में सहयोगात्मक भावना का सृजन हुआ। कार्य में पारदर्शिता, गति तथा कार्य क्षमता में वृद्धि हुई। आम पक्षकारगण को जहाँ मूलभूत सुविधाएं प्राप्त हुईं वहीं परिसर की स्वच्छता, सुंदरता एवं हरियाली ने उन्हें सुकून प्रदान किया। इस सबसे बढ़कर आम जन एवं पक्षकारगण में संस्थान की प्रतिष्ठा एवं विश्वसनीयता में और अधिक वृद्धि हुई तथा वह अन्य संस्थानों के लिए प्रेरक बना।

अंत में इतना कहा जा सकता है कि गुणवत्ता के उच्च मानक को प्राप्त करना, कोई एक घटना नहीं होती अपितु निरंतर किये गये प्रयासों से ही सफलता प्राप्त होती है, जैसा कि भारत के पूर्व राष्ट्रपति श्री ए.पी.जे. अब्दुल कलाम साहब ने कहा है:-

"Excellence is a continuous process and not an accident".

विनिर्दिष्ट अनुतोष (संशोधन) अधिनियम, 2018: प्रक्रिया एवं प्रभाव

यशपाल सिंह
विशेष कर्तव्यस्थ अधिकारी,
म.प्र. राज्य न्यायिक अकादमी

संक्षिप्तिका:-

1. भूमिका
2. महत्वपूर्ण संशोधन एवं उनका प्रभाव
3. लंबित मामलों पर प्रभाव
4. संविदा के विनिर्दिष्ट अनुपालन के वाद में विवाद्य-विषय
5. प्रमाण-भार (Burden of proof)

भूमिका .-

संविदाओं का प्रवर्तन कराने और व्यापार करने की सुविधा (ease of doing business) की वरीयता में भारत की खराब स्थिति को देखते हुए केन्द्र सरकार ने एक 6 सदस्यीय विशेषज्ञ समिति का गठन किया था। समिति ने जून 2016 में अपना प्रतिवेदन सरकार को सौंपा था और वर्तमान विनिर्दिष्ट अनुतोष अधिनियम, 1963 एवं विधिक ढांचे को दृष्टिगत रखते हुए अन्य सुझावों के साथ-साथ यह सुझाव भी दिए कि न्यायालयों को अपना दृष्टिकोण बदलने की आवश्यकता है। समिति ने प्रस्ताव किया कि संविदाओं के विनिर्दिष्ट अनुपालन के दावों में ''क्षतिपूर्ति नियम एवं विनिर्दिष्ट अनुपालन अपवाद'' के स्थान पर ''विनिर्दिष्ट अनुपालन नियम एवं क्षतिपूर्ति वैकल्पिक अनुतोष'' के सिद्धांत को आत्मसात किया जाना भारतीय न्याय व्यवस्था पर लोगों का विश्वास बनाए रखने के लिए आज्ञापक हो चुका है।

इस समिति के सुझावों को स्वीकार करते हुए केन्द्र सरकार द्वारा दिसम्बर, 2017 में विनिर्दिष्ट अनुतोष (संशोधन) विधेयक, 2018 लोक सभा में प्रस्तुत किया था जो 15 मार्च, 2018 को ध्वनि मत से पारित हुआ। राज्य सभा द्वारा इसे 23 जून, 2018 को पारित किया गया और महामहिम राष्ट्रपति महोदय की स्वीकृति दिनांक 01 अगस्त, 2018 को प्राप्त होने पर इसे राजपत्र में प्रकाशित किया गया है। संशोधन अधिनियम की धारा 1 की उपधारा (2) केन्द्र सरकार को सशक्त करती है कि वह अधिसूचना द्वारा इसके प्रावधानों को प्रवृत्त करने की तिथि नियत कर सकती है। विधि एवं न्याय मंत्रालय (विधायी विभाग), भारत सरकार की अधिसूचना क्रमांक का. आ. 4888 (अ) प्रकाशन दिनांक 19 सितम्बर, 2018 के द्वारा दिनांक 01 अक्टूबर, 2018 से इस संशोधन अधिनियम के समस्त प्रावधान प्रवृत्त किए जा चुके हैं।

संशोधन अधिनियम की महत्वपूर्ण विशेषताएं निम्नानुसार हैं:-

1. क्षतिपूर्ति के अनुतोष से विनिर्दिष्ट अनुपालन का आदर्श परिवर्तन (paradigm shift);
2. संविदा के प्रतिस्थापित अनुपालन के अनुतोष का प्रावधान;

3. तकनीकि विशेषज्ञों की नियुक्ति का प्रावधान;
4. अधोसंरचना परियोजना से संबंधित मामलों में व्यादेश जारी करने पर रोक;
5. अधोसंरचना परियोजना से संबंधित मामलों के विचारण के लिए विशेष न्यायालयों का गठन एवं 12 माह की अवधि में ऐसे मामलों का निराकरण किया जाना।

महत्वपूर्ण संशोधन एवं उनका प्रभाव .-

1. **धारा** 6

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
6	(1) यदि कोई व्यक्ति अपनी सम्मति के बिना स्थावर सम्पत्ति से विधि के सम्यक अनुक्रम से अन्यथा बेकब्जा कर दिया जाए, तो वह अथवा उसके व्युत्पन्न अधिकार द्वारा दावा करने वाला कोई भी व्यक्ति, किसी अन्य ऐसे हक के होते हुए भी जो ऐसे वाद में खड़ा किया जा सके, उसका कब्जा वाद द्वारा प्रत्युद्धृत कर सकेगा।	यदि कोई व्यक्ति अपनी सम्मति के बिना स्थावर सम्पत्ति से विधि के सम्यक अनुक्रम से अन्यथा बेकब्जा कर दिया जाए, तो वह अथवा कोई ऐसा व्यक्ति जिसके माध्यम से उसका कब्जा रहा है अथवा उसके व्युत्पन्न अधिकार द्वारा दावा करने वाला कोई भी व्यक्ति, किसी अन्य ऐसे हक के होते हुए भी जो ऐसे वाद में खड़ा किया जा सके, उसका कब्जा वाद द्वारा प्रत्युद्धृत कर सकेगा।

धारा 6 किसी अचल संपत्ति से विधि की सम्यक प्रक्रिया से अन्यथा आधिपत्यच्युत किए गए व्यक्ति को संक्षिप्त प्रक्रिया द्वारा आधिपत्य वापस प्राप्त करने का अनुतोष प्रदान करती है। संशोधन द्वारा उस व्यक्ति को भी वाद लाने की अधिकारिता दी गई है जिसके माध्यम से आधिपत्यच्युत किया गया व्यक्ति विवादित संपत्ति पर आधिपत्य रखता था। इस संशोधन द्वारा प्रावधान में स्पष्टता आई है और जहां आधिपत्यविहीन व्यक्ति अपने अधिकारों के प्रति सजग न हो अथवा कोई कार्यवाही करने का इच्छुक न हो, वहां मूल स्वामी अथवा पूर्वाधिकारी को भी वाद लाने का अधिकार होगा।

2. **धारा** 10

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
	दशाएं जिनमें संविदा का विनिर्दिष्ट पालन प्रवर्तनीय है .- इस अध्याय में अन्यथा उपबन्धित के सिवाय, किसी भी संविदा का विनिर्दिष्ट पालन न्यायालय के विवेकानुसार प्रवर्तित कराया जा सकेगा - (क) जबकि उस कार्य का, जिसके करने का करार हुआ है, अपालन द्वारा कारित वास्तविक नुकसान का अभिनिश्चय करने के लिए कोई मानक विद्यमान न हो; अथवा (ख) जबकि वह कार्य, जिसके करने का करार हुआ है ऐसा हो कि उसके अपालन के लिए धन के रूप में प्रतिकर यथायोग्य अनुतोष न पहुंचाता हो।	संविदाओं के बाबत् विनिर्दिष्ट अनुपालन .- न्यायालय द्वारा किसी संविदा का विनिर्दिष्ट पालन धारा 11 की उपधारा (2), धारा 14 और धारा 16 में अंतर्विष्ट उपबंधों के अधीन रहते हुए कराया जाएगा।

पूर्ववत एवं संशोधित धारा 10 की तुलना करने से यह स्पष्ट हो जाता है कि संविदा के विनिर्दिष्ट अनुपालन की न्यायालय की लगभग दो सदी पुरानी साम्या द्वारा शासित वैवेकीय शक्ति को समाप्त कर अब संविदा का विनिर्दिष्ट अनुपालन आज्ञापक कर दिया गया है अर्थात अब सामान्य नियम यह है कि यदि धारा 11(2), 14 एवं 16 के किसी प्रावधान की बाधा न हो, तो संविदा का विनिर्दिष्ट अनुपालन आदेशित किया जाएगा।

कॉमन लॉ में संविदा के भंग के लिए प्रमुखतः तीन अनुतोष उपलब्ध थे - क्षतिपूर्ति, विनिर्दिष्ट अनुपालन एवं संविदा का विखण्डन। इनमें से क्षतिपूर्ति समय के साथ प्राथमिक उपचार बन गई। साम्य विधि में संविदा के विनिर्दिष्ट अनुपालन का अनुतोष तब प्राप्त होता था जब क्षतिपूर्ति को मापने के निश्चित मानक नहीं हों अथवा क्षतिपूर्ति पर्याप्त नहीं पाई जाती थी परन्तु सिविल लॉ में कॉमन लॉ के विपरीत संविदा भंग के लिए विनिर्दिष्ट अनुपालन को सामान्य एवं प्राथमिक अनुतोष माना जाता है। सिविल लॉ में इसका आधार यह है कि जब कोई व्यक्ति किसी कार्य को करने का वचन देता है तो यह न केवल उसका विधिक अपितु नैतिक कर्तव्य भी है कि वह अपने वचन पर कायम रहे। यदि वह ऐसा नहीं करता है तो विधि द्वारा उसे अपने वचन का पालन करने के लिए विवश किया जाता है।

भारत में विनिर्दिष्ट अनुतोष अधिनियम, 1877 एवं 1963 के द्वारा कॉमन लॉ की प्रक्रिया को अपनाया गया था और उसमें इंग्लैंड में प्रचलित साम्या विधि के सिद्धांतों को सम्मिलित करते हुए संहिताबद्ध किया गया था। अधिनियम के वर्तमान स्वरूप में संविदा भंग के मामले में वादी संविदा के विनिर्दिष्ट अनुपालन का दावा अधिकार स्वरूप नहीं कर सकता है और अनुतोष न्यायालय के विवेकाधिकार पर निर्भर करेगा। न्याय निर्णयन के द्वारा जो विधि विकसित हुई है उसके अनुसार अपने विवेकाधिकार का उपयोग करने में न्यायालयों द्वारा कई कारकों पर विचार किया जाता है - जैसे पक्षकारों को असम्यक कष्ट, संविदा का पालन न्यायसंगत होना, क्षतिपूर्ति की पर्याप्तता, वादी एवं प्रतिवादी का पूर्व एवं पश्चातवर्ती आचरण एवं संविदा का पालन कराने की असंभाव्यता आदि। इन कारकों के कारण किसी भी पक्षकार के लिए संविदा का विनिर्दिष्ट अनुपालन करा पाना निश्चित नहीं होता है।

भारतीय न्याय व्यवस्था की यही अनिश्चितता प्रस्तावित संशोधन द्वारा दूर की गई है और संशोधन अधिनियम लागू होने के पश्चात् कुछ आपवादिक मामलों को छोड़कर संविदा का विनिर्दिष्ट अनुपालन आज्ञापक होगा। अब संविदा विधि में विनिर्दिष्ट अनुपालन अधिमानित ;चतममितमकद्ध अनुतोष होगा और संविदा का पालन न करने की पद्धति को हतोत्साहित करेगा। वर्तमान परिदृश्य में कई बार संविदा भंग के लिए दी जाने वाली क्षतिपूर्ति संविदा का पालन करने से बचने के लाभ की तुलना में कम होती है। इस संशोधन द्वारा ऐसी परिस्थितियों से भी निपटा जा सकेगा। निश्चित रूप से प्रस्तावित संशोधन संविदाओं का अनुपालन सुनिश्चित कर राष्ट्रीय एवं अंतर्राष्ट्रीय स्तर पर भारतीय न्याय व्यवस्था की साख को मजबूत करेगा।

3. **धारा** 11

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
11	(1) इस अधिनियम में अन्यथा उपबन्धित के सिवाय, किसी संविदा का विनिर्दिष्ट पालन, न्यायालय के विवेकानुसार प्रवर्तित कराया जा सकेगा जबकि वह कार्य, जिसके करने का करार हुआ है, किसी न्यास के पूर्णतः या भागतः पालन में हो।	(1) इस अधिनियम में अन्यथा उपबन्धित के सिवाय, किसी संविदा का विनिर्दिष्ट पालन कराया जाएगा जबकि वह कार्य, जिसके करने का करार हुआ है, किसी न्यास के पूर्णतः या भागतः पालन में हो।

इस संशोधन द्वारा भी न्यायालय के संविदा का विनिर्दिष्ट अनुपालन आदेशित करने के विवेकाधिकार को समाप्त कर इसे आज्ञापक बनाया गया है।

4. **धारा** 14

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
14	**संविदाएं जो विनिर्दिष्टतः प्रवर्तनीय नहीं हैं** .- निम्नलिखित संविदा विनिर्दिष्टतः प्रवर्तित नहीं कराई जा सकतीं, अर्थात:- (क) वह संविदा जिसके अपालन के लिए धन के रूप में प्रतिकर यथायोग्य अनुतोष हो; (ख) वह संविदा जिसमें सूक्ष्म या बहुत से ब्यौरे हों अथवा जो पक्षकारों की वैयक्तिक अर्हताओं या स्वेच्छा पर इतनी आश्रित हो अथवा अन्यथा अपनी प्रकृति के कारण ऐसी हो कि न्यायालय उसके तात्विक निबन्धनों के विनिर्दिष्ट पालन का प्रवर्तन न करा सकता हो; (ग) वह संविदा जो अपनी प्रकृति से ही पर्यवसेय हो; (घ) वह संविदा जिसके पालन में ऐसा सतत्-कर्तव्य का पालन अन्तर्वलित है जिसका न्यायालय पर्यवेक्षण न कर सके।	**संविदाएं जो विनिर्दिष्टतः प्रवर्तनीय नहीं हैं** .- निम्नलिखित संविदाओं को विनिर्दिष्टतया प्रवर्तित नहीं कराया जा सकता, अर्थात - (क) जहां संविदा के किसी पक्षकार ने संविदा का प्रतिस्थापित पालन धारा 20 के उपबंधों के अनुसार अभिप्राप्त कर लिया है; (ख) कोई ऐसी संविदा, जिसके पालन में ऐसे किसी निरंतर कर्तव्य का पालन अंतर्वलित है, जिसका न्यायालय पर्यवेक्षण नहीं कर सकता; (ग) कोई ऐसी संविदा, जो पक्षकारों की व्यक्तिगत अर्हताओं पर इतनी निर्भर है कि न्यायालय उसके तात्विक निबंधनों का विनिर्दिष्ट पालन नहीं करा सकता; (घ) वह संविदा जो अपनी प्रकृति से ही पर्यवसेय हो।

धारा 14 उन संविदाओं को स्पष्ट करती है जिनका विनिर्दिष्ट अनुपालन नहीं कराया जा सकता है। संशोधित धारा 14 में पूर्ववर्ती प्रावधान के दो खण (स) एवं (द) उसी स्वरूप में रखे गए हैं। सबसे महत्वपूर्ण परिवर्तन यह किया गया है कि भले ही धन के रूप में प्रतिकर संविदा के अपालन के लिए यथोचित अनुतोष हो सकता हो, अब ऐसी संविदा का भी विनिर्दिष्ट अनुपालन आदेशित किया जाएगा। अतः अब क्षतिपूर्ति प्राथमिक अनुतोष न होकर विनिर्दिष्ट अनुपालन संविदा भंग का प्राथमिक अनुतोष होगा।

इसके साथ-साथ अब ऐसी संविदाओं का भी विनिर्दिष्ट अनुपालन कराया जाएगा जिसमें सूक्ष्म या बहुत से विवरण हों अथवा जो पक्षकारों की स्वेच्छया पर निर्भर हों।

संशोधन के द्वारा प्रतिस्थापित धारा 20 के अनुसार संविदा के किसी भी पक्षकार को संविदा का प्रतिस्थापित पालन कराने का अधिकार है। ऐसा पक्षकार जो संविदा का प्रतिस्थापित पालन कराने के अधिकार का उपयोग करता है, वह संविदा का विनिर्दिष्ट अनुपालन नहीं करा सकता है।

इसके साथ-साथ धारा 14 की उपधारा (2) व (3) को विलोपित कर दिया गया है जो बंधक, भागीदारी एवं संनिर्माण से संबंधित विशिष्ट प्रकृति की संविदाओं के कतिपय शर्तों के पूरा होने पर विनिर्दिष्ट अनुपालन कराने का प्रावधान करती थीं। अब तो संविदा का विनिर्दिष्ट अनुपालन सामान्य नियम है।

5. **धारा 14ए**

धारा	**संशोधित प्रावधान**
14ए	**न्यायालय की विशेषज्ञों को नियुक्त करने की शक्ति** .- (1) सिविल प्रक्रिया संहिता, 1908 में अंतर्विष्ट उपबंधों की व्यापकता पर प्रतिकूल प्रभाव ाले बिना, इस अधिनियम के अधीन किसी भी वाद में, जहां न्यायालय, वाद में अंतर्वलित किसी विनिर्दिष्ट विवाद्यक पर अपनी सहायता के लिए विशेषज्ञ की राय प्राप्त करना आवश्यक समझता है, वहां वह एक या अधिक विशेषज्ञ नियुक्त कर सकेगा और उन्हें ऐसे विवाद्यक पर उसको रिपोर्ट करने का निदेश दे सकेगा तथा साक्ष्य उपलब्ध कराने के लिए, जिसके अंर्तगत उक्त विवाद्यक पर दस्तावेजों का पेश किया जाना भी है, विशेषज्ञ की उपस्थिति सुनिश्चित कर सकेगा। (2) न्यायालय किसी व्यक्ति को विशेषज्ञ को सुसंगत सूचना देने या कोई सुसंगत दस्तावेज, माल या अन्य संपत्ति को उसके निरीक्षण के लिए पेश करने या उस तक पहुंच उपलब्ध कराने की अपेक्षा कर सकेगा या उसे निदेश दे सकेगा। (3) विशेषज्ञ द्वारा दी गई राय या रिपोर्ट, वाद के अभिलेख का भाग होगा और न्यायालय या न्यायालय की अनुज्ञा से वाद का कोई भी पक्षकार वैयक्तिक रूप से विशेषज्ञ को खुले न्यायालय में उसको निर्दिष्ट या उसकी राय या रिपोर्ट में उल्लिखित किसी भी विषय पर या उसकी राय या रिपोर्ट के बारे में या उस रीति के बारे में, जिसमें उसने निरीक्षण किया है, परीक्षा कर सकेगा।

	(4) विशेषज्ञ ऐसी फीस, खर्च या व्यय का हकदार होगा, जो न्यायालय नियत करे, जो पक्षकारों द्वारा ऐसे अनुपात में और ऐसे समय पर संदेय होंगे, जो न्यायालय निदेश करे।

धारा 14ए संशोधन के द्वारा अधिनियम में जोड़ी गई है जो न्यायालय को विशेषज्ञों को नियुक्त करने की शक्ति प्रदान करती है। चूंकि न्यायालय की संविदा के विनिर्दिष्ट अनुपालन का आदेश करने की वैवेकीय शक्ति अब समाप्त कर दी गई है तथा अब सूक्ष्म विवरण एवं जटिल संविदाओं का विनिर्दिष्ट अनुपालन भी कराया जाना अपेक्षित है, पक्षकारों के मध्य उत्पन्न जटिल विवाद्य-विषयों को सुलझाने के लिए न्यायालयों को विशेषज्ञ की सहायता लेने का अधिकार दिया गया है। न्यायालय स्वविवेक से अथवा पक्षकारों अथवा उनमें से किसी एक के आवेदन पर वाद में अंतर्वलित किसी विवाद्य-विषय पर विशेषज्ञ को नियुक्त कर उसकी राय प्राप्त कर सकता है।

न्यायालय द्वारा नियुक्त ऐसे विशेषज्ञ की सहायता के लिए न्यायालय चाहे तो पक्षकारों अथवा किसी अन्य व्यक्ति को भी आवश्यक व उचित निर्देश दे सकता है। विशेषज्ञ का अभिमत एवं प्रतिवेदन अभिलेख का भाग होगा और पक्षकारों को ऐसे विशेषज्ञ का परीक्षण करने का अधिकार भी होगा। विशेषज्ञ का व्यय न्यायालय के आदेशाधीन होगा जो पक्षकारों द्वारा ही वहन किया जाएगा।

6. धारा 15 एवं 19

धारा	**संशोधित प्रावधान**
15	**कौन विनिर्दिष्ट अनुपालन अभिप्राप्त कर सकेगा .-** (खण (एफ) के पश्चात (एफ ए) अंतःस्थापित किया गया है) (एफ ए) जब किसी सीमित दायित्व भागीदारी ने कोई करार किया है और तत्पश्चात् अन्य सीमित दायित्व भागीदारी में समामेलित हो जाती है, वहां उस नई सीमित दायित्व भागीदारी द्वारा, जो समामेलन से उत्पन्न होती है।
19	**कौन विनिर्दिष्ट अनुपालन अभिप्राप्त कर सकेगा .-** (खण (सी) के पश्चात (सी ए) अंतःस्थापित किया गया है) (सी ए) जब किसी सीमित दायित्व भागीदारी ने कोई करार किया है और तत्पश्चात् अन्य सीमित दायित्व भागीदारी में समामेलित हो जाती है वहां वह नई सीमित दायित्व भागीदारी, जो समामेलन से उत्पन्न होती है।

अधिनियम की धारा 15 उन व्यक्तियों के संबंध में प्रावधान करती है जो संविदा के विनिर्दिष्ट अनुपालन का अनुतोष प्राप्त करने के अधिकारी होते हैं और धारा 19 उन व्यक्तियों के संबंध में प्रावधान करती है जिनके विरूद्ध संविदा के विनिर्दिष्ट अनुपालन का आदेश दिया जा सकता है। दोनों ही प्रावधानों में संशोधन द्वारा सीमित दायित्व की भागीदारी फर्म को भी एक कम्पनी के समान जोड़ा गया है। इस संशोधन के अनुसार जहां किसी सीमित दायित्व भागीदारी ने कोई करार किया था और तत्पश्चात किसी अन्य सीमित दायित्व भागीदारी में समामेलित हो जाए, वहां ऐसी नई समिति दायित्व भागीदारी संविदा का विनिर्दिष्ट अनुपालन करा सकती है अथवा उसके विरूद्ध संविदा का विनिर्दिष्ट अनुपालन कराया जा सकता है।

यह प्रावधान सीमित दायित्व भागीदारी अधिनियम, 2008 के द्वारा अस्तित्व में आई नवीन कॉर्पोरेट निकाय के द्वारा निष्पादित संविदाओं को भी अधिनियम की परिधि में लाता है।

6. **धारा** 16

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
16	**अनुतोष का वैयक्तिक वर्जन .-** संविदा का विनिर्दिष्ट अनुपालन किसी ऐसे व्यक्ति के पक्ष में नहीं कराया जा सकता - (ए) जो उसके भंग के लिए प्रतिकर वसूल करने का हकदार न हो ; अथवा (बी) ..... (सी) जो यह प्रकथन करने और साबित करने में असफल रहे कि उसके संविदा के उन निबंधनों से भिन्न जिनका पालन प्रतिवादी द्वारा निवारित अथवा अधित्यक्त किया गया है, ऐसे मर्मभूत निबन्धनों का, जो उसके द्वारा पालन किए जाने हैं, उसने पालन कर दिया है अथवा पालन करने के लिए वह सदा तैयार और इच्छुक रहा है। **स्पष्टीकरण** -खण्ड (सी) के प्रयोजन के लिए - (i) ..... (ii) वादी को यह प्रकथन करना होगा कि वह संविदा का उसके शुद्ध अर्थान्वयन के अनुसार पालन कर चुका है, अथवा पालन करने को तैयार और रजामन्द है।	**अनुतोष का वैयक्तिक वर्जन .-** संविदा का विनिर्दिष्ट अनुपालन किसी ऐसे व्यक्ति के पक्ष में नहीं कराया जा सकता - (ए) जिसने धारा 20 के अधीन संविदा का प्रतिस्थापित पालन अभिप्राप्त कर लिया है ; अथवा (बी) ..... (सी) जो यह साबित करने में असफल रहे कि उसके संविदा के उन निबंधनों से भिन्न जिनका पालन प्रतिवादी द्वारा निवारित अथवा अधित्यक्त किया गया है, ऐसे मर्मभूत निबन्धनों का, जो उसके द्वारा पालन किए जाने हैं, उसने पालन कर दिया है अथवा पालन करने के लिए वह सदा तैयार और इच्छुक रहा है। **स्पष्टीकरण** -खण्ड (सी) के प्रयोजन के लिए - (i) ..... (ii) वादी को यह साबित करना होगा कि वह संविदा का उसके शुद्ध अर्थान्वयन के अनुसार पालन कर चुका है, अथवा पालन करने को तैयार और रजामन्द है।

अधिनियम की धारा 16 उन परिस्थितियों को इंगित करती है जिनमें संविदा का कोई पक्षकार उसके विनिर्दिष्ट अनुपालन के अनुतोष से वर्जित हो जाता है।

संशोधन द्वारा पूर्ववत खण्ड (ए) को प्रतिस्थापित कर दिया गया है अर्थात भले ही कोई पक्षकार संविदा भंग के लिए प्रतिकर वसूल करने का अधिकारी न हो, अब वह संविदा का विनिर्दिष्ट अनुपालन कराने का अधिकारी है। प्रतिस्थापित खण्ड (ए) के अनुसार ऐसा पक्षकार जिसने संशोधित धारा 20 के अनुसार संविदा का प्रतिस्थापित अनुपालन अभिप्राप्त कर लिया है, वह संविदा का भंग करने वाले पक्षकार के विरूद्ध विनिर्दिष्ट अनुपालन का अनुतोष प्राप्त नहीं कर सकता है।

अधिनियम की धारा 16 का खण (सी) संविदा के विनिर्दिष्ट अनुपालन की विधि का सबसे महत्वपूर्ण प्रावधान रहा है जो संविदा का विनिर्दिष्ट अनुपालन कराने के अनुतोष की वांछा करने वाले पक्षकार से यह अपेक्षा करता था कि वह यह प्रकथन करे एवं उसे प्रमाणित करे कि वह संविदा के अपने भाग का अनुपालन करने के लिए सदैव इच्छुक एवं तत्पर रहा है। धारा 16 का स्पष्टीकरण (पप) आगे यह प्रावधान करता है कि उपरोक्त प्रकथन वादी को संविदा के शुद्ध अर्थान्वयन के अनुसार पालन करने के संबंध में करना होगा।

धारा 16 (सी) का यह प्रावधान नकारात्मक स्वरूप का था और भारतीय न्यायालयों ने इस अपेक्षा का कठोर निर्वचन किया है और भले ही वादी साक्ष्य द्वारा सदैव संविदा के विनिर्दिष्ट अनुपालन के लिए इच्छुक एवं तत्पर होना प्रमाणित कर दे, यदि इस बिन्दु पर अभिवचन का अभाव है तो न्यायालय वाद आज्ञप्त नहीं करते थे। अनेकों वाद इस अभिवचन के अभाव में असफल रहे हैं।

संशोधन द्वारा धारा 16 (सी) की इस कठोर शर्त को समाप्त करते हुए मात्र वादी द्वारा यह प्रमाणित करने की अपेक्षा की गई है कि वह संविदा के अपने भाग का पालन करने के लिए सदैव तत्पर एवं इच्छुक रहा है।

8. धारा 20 से 24 का उपशीर्ष

धारा	पूर्ववत शीर्ष	संशोधित शीर्ष
20 से 24	न्यायालय का विवेकाधिकार और शक्तियां	संविदाओं का प्रतिस्थापित पालन, आदि

अधिनियम की धारा 20 से 24 संविदा का विनिर्दिष्ट अनुपालन कराने के न्यायालय के विवेकाधिकार एवं शक्तियों का प्रावधान करती थीं। संशोधन द्वारा इन प्रावधानों के उपशीर्ष ''न्यायालय का विवेकाधिकार एवं शक्तियां'' को परिवर्तित कर ''संविदाओं का प्रतिस्थापित पालन, आदि'' कर दिया गया है। इनमें से धारा 20 को पूर्णतः प्रतिस्थापित कर दिया गया है और नवीन प्रावधान संविदाओं के प्रतिस्थापित अनुपालन से संबंधित हैं। नवीन धारा 20ए जोड़ी गई है जो अधोसंरचना परियोजना से संबंधित संविदाओं के वाद में न्यायालय की व्यादेश जारी करने की शक्ति को सीमित करती है। इसके साथ-साथ अधोसंरचना परियोजनाओं से संबंधित संविदाओं से उत्पन्न विवादों की सुनवाई हेतु विशेष न्यायालय के गठन का प्रावधान धारा 20बी में बनाया गया है और धारा 20सी ऐसे वादों के निपटारे के लिए समंस के निर्वहन से 12 माह की अवधि का प्रावधान करती है।

9. धारा 20

धारा	पूर्ववत प्रावधान	संशोधित प्रावधान
20	**विनिर्दिष्ट पालन की आज्ञप्ति करने के बारे में विवेकाधिकार .-** (1) विनिर्दिष्ट पालन की आज्ञप्ति करने की अधिकारिता वैवेकीय है और न्यायालय ऐसा अनुतोष अनुदत्त करने के लिए आबद्ध नहीं है	**संविदा का प्रतिस्थापित अनुपालन:** (1) भारतीय संविदा अधिनियम, 1872 में अंतर्विष्ट उपबंधों की व्यापकता पर प्रतिकूल प्रभाव ाले बिना और उसके सिवाय, जिस

	केवल इस कारण से कि ऐसा करना विधिपूर्ण है किन्तु न्यायालय का यह विवेकाधिकार मनमाना नहीं है वरन् स्वस्थ और युक्तियुक्त, न्यायिक सिद्धान्तों द्वारा मार्गदर्शित तथा अपील न्यायालय द्वारा शुद्धिशक्य है। (2) निम्नलिखित दशाएं ऐसी हैं जिनमें न्यायालय विनिर्दिष्ट पालन की आज्ञप्ति न करने के लिए विवेकाधिकार का उचिततया प्रयोग कर सकेगा - (क) जहां कि संविदा के निबन्धन या संविदा करने के समय पक्षकारों का आचरण या अन्य परिस्थितियां, जिनके अधीन संविदा की गई थी, ऐसी हों कि संविदा यद्यपि शून्यकरणीय नहीं है, तथापि वादी को प्रतिवादी के ऊपर अऋजु फायदा देती है; अथवा (ख) जहां कि संविदा का पालन प्रतिवादी को कुछ ऐसे कष्ट में □ाल देगा जिसे वह पहले से कल्पना नहीं कर सकता था, और उसका अपालन वादी को वैसे किसी कष्ट में नहीं □ालेगा; (ग) जहां कि प्रतिवादी ने संविदा ऐसी परिस्थितियों के अधीन की हो जिनसे यद्यपि संविदा शून्यकरणीय तो नहीं हो जाती किन्तु उसके विनिर्दिष्ट पालन का प्रवर्तन असाम्यिक हो जाता है। **स्पष्टीकरण** 1 - प्रतिफल की अपर्याप्तता मात्र या यह तथ्य मात्र कि संविदा प्रतिवादी के लिए दुर्भर या अपनी प्रकृति से ही अदूरदर्शी है, खण□ (क) के अर्थ के भीतर अऋजु फायदा अथवा खण□ (ख) के अर्थ के भीतर कष्ट न समझा जाएगा। **स्पष्टीकरण** 2 - यह प्रश्न कि संविदा का पालन खण□ (ख) के अर्थ के भीतर प्रतिवादी को कष्ट में □ाल देगा या नहीं संविदा के समय विद्यमान परिस्थितियों के प्रति निर्देशन से	पर पक्षकार सहमत हैं, जहां संविदा किसी पक्षकार के वचन का पालन नहीं करने के कारण टूट जाती है, वहां वह पक्षकार, जो ऐसे भंग से पीड़ित होता है, किसी तीसरे पक्षकार के माध्यम से या अपने स्वयं के अभिकरण द्वारा प्रतिस्थापित पालन का और ऐसा भंग करने वाले पक्षकार से उसके द्वारा वास्तविक रूप से उपगत, व्ययनित या भुगते गए व्ययों और अन्य खर्चों को वसूल करने का, विकल्प रखेगा। (2) उपधारा (1) के अधीन संविदा का कोई भी प्रतिस्थापित पालन तब तक नहीं किया जाएगा, जब तक ऐसे पक्षकार ने, जो ऐसे भंग से पीड़ित है, भंग करने वाले पक्षकार को तीस दिन से अन्यून का लिखित में एक नोटिस, उससे ऐसे समय के भीतर संविदा का पालन करने के लिए कहते हुए, जो उस नोटिस में विनिर्दिष्ट हो, नहीं दे देता हो और उसका ऐसा करने से इंकार करने या ऐसा करने में असफल रहने पर वह उसका पालन किसी तीसरे पक्षकार द्वारा या अपने स्वयं के अभिकरण द्वारा कराएगा: परन्तु वह पक्षकार, जो ऐसे भंग से पीड़ित है, उपधारा (1) के अधीन व्ययों और खर्चों को वसूल करने का हकदार तब तक नहीं होगा, जब तक उसने किसी तीसरे पक्षकार के माध्यम से या अपने स्वयं के अभिकरण द्वारा संविदा का पालन न करा लिया हो। (3) जहां संविदा के भंग से पीड़ित पक्षकार ने उपधारा (1) के अधीन नोटिस देने के पश्चात् किसी तीसरे पक्षकार के माध्यम से या अपने स्वयं के अभिकरण द्वारा संविदा का पालन करा लिया है, वहां वह भंग करने वाले पक्षकार के विरूद्ध विनिर्दिष्ट पालन

	अवधारित किया जाएगा सिवाए उन दशाओं के जिनमें कि कष्ट संविदा के पश्चात् वादी द्वारा किए गए ऐसे किसी कार्य के परिणामस्वरूप हुआ हो। (3) किसी ऐसी दशा में जहां कि वादी ने विनिर्दिष्टतः पालनीय संविदा के परिणामस्वरूप सारवान् कार्य किए हैं या हानियां उठाई हैं वहां न्यायालय विनिर्दिष्ट पालन की ि◌क्री करने के विवेकाधिकार का उचिततया प्रयोग कर सकेगा। (4) न्यायालय किसी पक्षकार को संविदा का विनिर्दिष्ट पालन करने से इंकार केवल इस आधार पर नहीं करेगा कि संविदा दूसरे पक्षकार की प्रेरणा पर प्रवर्तनीय नहीं है।	के अनुतोष का दावा करने का हकदार नहीं होगा। (4) इस धारा की कोई बात उस पक्षकार को, जो संविदा के भंग से पीड़ित है, भंग करने वाले पक्षकार से प्रतिकर का दावा करने से निवारित नहीं करेगी।

अधिनियम की धारा 20 संविदा का विनिर्दिष्ट अनुपालन करने की आज्ञप्ति जारी करने के संबंध में न्यायालय के विवेकाधिकार का प्रावधान करती थी। संशोधन द्वारा धारा 10 के साथ-साथ इस प्रावधान को भी प्रतिस्थापित कर दिया गया है और अब न्यायालय के लिए यह आज्ञापक है कि यदि संविदा का निष्पादन किया जाना प्रमाणित होता हो तो न्यायालय उसके विनिर्दिष्ट अनुपालन का दावा सामान्यतया आज्ञप्त करे।

संशोधन द्वारा प्रतिस्थापित की गई नवीन धारा 20 "प्रतिस्थापित अनुपालन" का प्रावधान करती है। इसके अनुसार किसी संविदा का भंग होने पर उससे व्यथित पक्षकार के पास यह विकल्प होगा कि वह संविदा का विनिर्दिष्ट अनुपालन कराने के स्थान पर किसी तृतीय पक्ष से अथवा स्वयं के अभिकरण द्वारा उक्त संविदा का अनुपालन करा ले और इस हेतु उपगत व्ययों को संविदा का भंग करने वाले पक्षकार से वसूल ले।

संविदा के प्रतिस्थापित अनुपालन का विकल्प चुनने वाले पक्षकार को इसके पूर्व कुछ औपचारिकताओं की पूर्ति करना आवश्यक होगा:-

(1) उसे संविदा का भंग करने वाले पक्षकार को कम से कम 30 दिवस का अग्रिम सूचनापत्र देकर संविदा का प्रतिस्थापित अनुपालन कराने के विकल्प का प्रकटीकरण करना होगा;

(2) उसे सूचनापत्र में ऐसी अवधि का उल्लेख करना होगा जिसके भीतर संविदा भंग करने वाले पक्षकार से संविदा का अनुपालन करने की अपेक्षा हो;

(3) उसे उस अवधि के अवसान का अथवा संविदा भंग करने वाले पक्षकार की इंकारी की प्रतीक्षा करनी होगी।

इसके साथ-साथ प्रतिस्थापित अनुपालन कराया जाना ऐसे अनुपालन के व्ययों एवं खर्चों की वसूली की पुरोभाव्य शर्त है। इस धारा में यह प्रावधान भी है कि भले ही संविदा भंग से व्यथित पक्षकार ने प्रतिस्थापित अनुपालन करा लिया है एवं उसके व्यय एवं खर्च भी वसूल लिए हैं, तथापि वह संविदा भंग करने वाले पक्षकार से प्रतिकर वसूल करने का दावा ला सकता है।

प्रतिस्थापित अनुपालन का सिद्धांत भारतीय संविदा विधि के लिए नवीन है परन्तु इसका प्रभाव संविदा भंग की दशा में संविदा का विनिर्दिष्ट अनुपालन सुनिश्चित कराने का है। यह प्रावधान भारतीय न्याय व्यवस्था में संविदा का अनुपालन आज्ञापक होना सुनिश्चित करता है और निश्चित रूप से अंतर्राष्ट्रीय स्तर पर इससे हमारी साख प्रबल होगी।

प्रतिस्थापित अनुपालन का सिद्धांत विनिर्माण, अधोसंरचना एवं ऐसी ही बड़ी परियोजनाओं के क्रियान्वयन में सहायक होगा जहां धनीय अनुतोष परियोजनाओं को समय पर पूरा करने में सहयोगी नहीं होते हैं।

10. धारा 20ए एवं 20बी

धारा	**संशोधित प्रावधान**
20ए	अधोसंरचना परियोजना से संबंधित संविदा के लिए विशेष उपबंध .-
(1)	इस अधिनियम के अधीन किसी वाद में अनुसूची में विनिर्दिष्ट अधोसंरचना परियोजना से संबंधित संविदा में न्यायालय द्वारा कोई भी व्यादेश वहां मंजूर नहीं किया जाएगा, जहां व्यादेश की मंजूरी से ऐसी अधोसंरचना परियोजना की प्रगति या पूरा होने में कोई अड़चन आती हो या विलंब होता हो। **स्पष्टीकरण** - इस धारा, धारा 20ख और धारा 41 के खं (एच ए) के प्रयोजनों के लिए, ''अधोसंरचना परियोजना ' ' पद से अनुसूची में विनिर्दिष्ट परियोजनाओं और अधोसंरचना उप सेक्टरों के प्रवर्ग अभिप्रेत हैं।
(2)	केन्द्रीय सरकार अधोसंरचना परियोजनाओं की उभरती धारणा की अत्यावश्यकता पर निर्भर करते हुए और यदि ऐसा करना आवश्यक और समीचीन समझती है, तो राजपत्र में अधिसूचना द्वारा परियोजनाओं और अधोसंरचना उप सेक्टरों के प्रवर्ग से संबंधित अनुसूची को संशोधित कर सकेगी।
(3)	इस अधिनियम के अधीन जारी की गई प्रत्येक अधिसूचना को केन्द्रीय सरकार द्वारा, यथाशीघ्र, संसद के प्रत्येक सदन के समक्ष, जब वह सत्र में हो, तीस दिन की कुल अवधि के लिए रखे जाएंगे, जो एक सत्र या दो या अधिक उत्तरवर्ती सत्रों में पूरी हो सकेगी और यदि पूर्वोक्त सत्र या उत्तरवर्ती सत्र के ठीक पश्चात् वाले सत्र के अवसान के पूर्व दोनों सदन, अधिसूचना में कोइ उपांतरण करने के लिए सहमत होते हैं या दोनों सदन इस बात के लिए सहमत होते हैं कि ऐसी अधिसूचना जारी नहीं की जानी चाहिए, तो तत्पश्चात् अधिसूचना, यथास्थिति, ऐसे उपांतरित रूप में ही प्रभावी होगी या निष्प्रभाव हो जाएगी; तथापि अधिसूचना के ऐसे उपांतरित या निष्प्रभाव होने से उस अधिसूचना के अधीन पहले से की गई किसी बात की विधिमान्यता पर प्रतिकूल प्रभाव नहीं पड़ेगा।

20बी	**विशेष न्यायालय** .- राज्य सरकार, उच्च न्यायालय के मुख्य न्यायमूर्ति के परामर्श से राजपत्र में प्रकाशित अधिसूचना द्वारा एक या अधिक सिविल न्यायालयों को अधोसंरचना परियोजनाओं से संबंधित संविदाओं की बाबत् अधिकारिता के प्रयोग के क्षेत्र की स्थानीय सीमाओं के भीतर और इस अधिनियम के अधीन वाद का विचारण करने के लिए विशेष न्यायालयों के रूप में अभिहित करेगी।

अधिनियम में संशोधन के द्वारा जोड़ी गई धारा 20ए एवं 20बी अधोसंरचना परियोजनाओं से संबंधित संविदा के लिए विशेष उपबंध का प्रावधान करती है। सर्वप्रथम अनुसूची जोड़कर अधोसंरचना परियोजना एवं उनके प्रवर्गों- उपप्रवर्गों को चिन्हित किया गया है। धारा 20ए सिविल न्यायालय की ऐसा व्यादेश जारी करने की शक्ति को सीमित करता है जिससे किसी अधोसंरचना परियोजना की प्रगति प्रभावित होती हो अथवा उसके पूरा होने में विलंब होता हो। अतः अब न्यायालय के अस्थाई अथवा स्थाई व्यादेश द्वारा किसी भी अधोसंरचना परियोजना का कार्य न तो रोका जाएगा और ही विलंबित होगा।

केन्द्र सरकार "अधोसंरचना परियोजना" की अनुसूची को अधिसूचना द्वारा संशोधित भी कर सकती है।

धारा 20बी यथा आवश्यक संख्या में अधोसंरचना परियोजनाओं की संविदाओं से संबंधित उत्पन्न वाद के विचारण हेतु विशेष न्यायालय के गठन का प्रावधान करती है। निश्चित रूप से विशेष न्यायालयों के गठन से ऐसे दावों का निराकरण त्वरित गति से किया जा सकेगा।

11. धारा 20सी

धारा	**संशोधित प्रावधान**
20सी	**वाद का शीघ्र निपटारा** .- सिविल प्रक्रिया संहिता, 1908 में अंतर्विष्ट किसी बात के होते हुए भी इस अधिनियम के उपबंधों के अधीन फाइल किए गए किसी वाद का निपटारा न्यायालय द्वारा प्रतिवादी को समन की तामील से बारह मास की अवधि के भीतर किया जाएगा: परन्तु उक्त अवधि को न्यायालय द्वारा ऐसी अवधि को बढ़ाने के लिए कारण लेखबद्ध करने के पश्चात् कुल मिलाकर छः मास से अनधिक की और अवधि के लिए बढ़ाया जा सकेगा।

यह धारा विनिर्दिष्ट अनुतोष अधिनियम, 1963 के प्रावधानों के अंतर्गत संस्थित प्रत्येक वाद, चाहे वाद अधिपत्य वापसी का हो अथवा संविदा के विनिर्दिष्ट अनुपालन का अथवा शाश्वत या आज्ञापक व्यादेश के लिए हो, का निराकरण प्रतिवादी पर वाद के समंस के निर्वहन उपरांत 12 माह के भीतर किया जाना आज्ञापक बनाती है। इस 12 माह की अवधि को 6 माह तक विशेष कारणों को लेखबद्ध कर न्यायालय द्वारा बढ़ाया जा सकता है।

स्पष्ट है कि विधि की मंशा संविदाओं का पालन सुनिश्चित कराने की है और संविदाओं का अनुपालन तभी किसी पक्षकार के लिए समुचित अनुतोष होगा जब अनुपालन युक्तियुक्त समय के भीतर

सुनिश्चित कराया जाए। अधिकतम समय-सीमा का प्रावधान यद्यपि आज्ञापक नहीं है परन्तु इसका पालन न करने की दशा में न्यायालय को विशेष आधार अभिलिखित करने होंगे। अतः अधिकांश मामलों में समय-सीमा का पालन सुनिश्चित होगा। यह प्रावधान भी हमारी साख को मजबूत करेगा।

12. **धारा** 21(1)

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
21(1)	**कतिपय मामलों में प्रतिकर दिलाने की शक्ति**.- किसी संविदा के विनिर्दिष्ट अनुपालन के वाद में वादी, ऐसे पालन के या तो अतिरिक्त या स्थान पर उसके भंग के लिए प्रतिकर का भी दावा कर सकेगा।	**कतिपय मामलों में प्रतिकर दिलाने की शक्ति** .- किसी संविदा के विनिर्दिष्ट अनुपालन के वाद में वादी, ऐसे पालन के साथ-साथ उसके भंग के लिए प्रतिकर का भी दावा कर सकेगा।

अधिनियम के पूर्ववत स्वरूप में संविदा भंग का प्राथमिक अनुतोष क्षतिपूर्ति/प्रतिकर था इसलिए धारा 21 संविदा के विनिर्दिष्ट अनुपालन के वाद में वादी को विकल्प दिया गया था कि वह ऐसे पालन के या तो अतिरिक्त या स्थान पर उसके भंग के लिए प्रतिकर का दावा कर सकेगा।

संशोधन द्वारा ''या तो अतिरिक्त या स्थान पर" वाक्यांश को संशोधित कर ''के अतिरिक्त" कर दिया गया है अर्थात संविदा का विनिर्दिष्ट अनुपालन नियम होगा और संविदा भंग से व्यथित पक्षकार विनिर्दिष्ट अनुपालन के साथ-साथ प्रतिकर के अनुतोष की भी वांछा कर सकता है।

13. **धारा** 25

धारा	**पूर्ववत प्रावधान**	**संशोधित प्रावधान**
25	**कतिपय पंचाटों को और व्यवस्थापनों को निष्पादित करने की वसीयती निदेशों को पूर्ववर्ती धाराओं का लागू होना** .- इस अध्याय के संविदा विषयक उपबंध उन पंचाटों को जिन्हें माध्यस्थम अधिनियम, 1940, लागू नहीं होता, और वसीयत या को□पत्र के ऐसे निदेशों को, जो किसी विशिष्ट व्यवस्थापन को निष्पादित करने के बारे में हों, लागू होंगे।	**कतिपय पंचाटों को और व्यवस्थापनों को निष्पादित करने की वसीयती निदेशों को पूर्ववर्ती धाराओं का लागू होना** .- इस अध्याय के संविदा विषयक उपबंध उन पंचाटों को जिन्हें माध्यस्थम् और सुलह अधिनियम, 1996 लागू नहीं होता, और वसीयत या को□पत्र के ऐसे निदेशों को, जो किसी विशिष्ट व्यवस्थापन को निष्पादित करने के बारे में हों, लागू होंगे।

मूल अधिनियम, 1963 में लाया गया था, तब माध्यस्थम अधिनियम, 1940 प्रभावशील था। सन् 1996 में उक्त अधिनियम को माध्यस्थम एवं सुलह अधिनियम, 1996 द्वारा निरसित कर दिया गया था परन्तु इस धारा में पारिणामिक संशोधन नहीं किया गया था। प्रस्तावित संशोधन इसी आशय का है और औपचारिक प्रकृति का है।

14. **धारा** 41

धारा	**संशोधित प्रावधान**
41	(एच ए) यदि उससे किसी अधोसंरचना परियोजना की प्रगति या पूरा होने में अड़चन आती है या विलंब होता है अथवा उससे संबंधित सुसंगत संविदा की सतत् व्यवस्था में या ऐसी परियोजना की विषय वस्तु होने के कारण सेवाओं में हस्तक्षेप होता है।

अधिनियम की धारा 41 उन परिस्थितियों का उल्लेख करती है जिनमें व्यादेश नामंजूर किया जा सकता है। इसमें खण (एच) के बाद (एच ए) जोड़कर अधोसंरचना परियोजनाओं के क्रियान्वयन में न्यायालय के व्यादेश द्वारा कोई रुकावट न होना सुनिश्चित करने का प्रयास किया गया है। यह प्रावधान धारा 20ए का अनुपूरक है।

न्यायालय ऐसे किसी भी ऐसे मामले में अस्थाई अथवा स्थाई व्यादेश जारी नहीं कर सकता है जिससे किसी अधोसंरचना परियोजना की प्रगति प्रभावित होती हो अथवा उसके पूरा होने में कोई विलम्ब होता हो अथवा कोई रुकावट आती हो अथवा ऐसी संविदा से संबंधित सेवाएं परियोजना की विषयवस्तु होने के कारण प्रभावित होती हों।

संशोधन का लंबित मामलों पर प्रभाव:-

विनिर्दिष्ट अनुतोष अधिनियम, 1963 एक प्रक्रियात्मक विधि है और सिविल प्रक्रिया संहिता, 1908 का पूरक विधान है। संशोधन अधिनियम की धारा 1 की उपधारा (2) यह प्रावधान करती है कि इस संशोधन के प्रावधान उस तिथि को प्रवृत्त होंगे जब केन्द्र सरकार राजपत्र में अधिसूचना द्वारा नियत करे तथा भिन्न उपबंधों के लिए भिन्न तिथियां नियत की जा सकेंगी। विधि एवं न्याय मंत्रालय, भारत सरकार के विधायी विभाग द्वारा जारी अधिसूचना क्रमांक का.आ. 4888(अ) दिनांक 19 सितम्बर 2018 के द्वारा संशोधन अधिनियम के प्रावधानों के प्रवृत्त होने की तिथि दिनांक 01 अक्टूबर, 2018 नियत की गई है।

प्रक्रियात्मक विधि का सामान्य नियम यह है कि इसके प्रावधान भूतलक्षी प्रभाव रखते हैं। संशोधन अधिनियम में कोई भी निरसन एवं व्यावृत्ति खण (Repeal and Saving clause) नहीं है। निरसन एवं व्यावृत्ति खण न होने के कारण इस संशोधन अधिनियम पर साधारण खण अधिनियम, 1897 की धारा 6 के प्रावधान लागू नहीं होंगे। साधारण खण अधिनियम, 1897 की धारा 6 लागू होने का प्रभाव यह होता है कि संशोधन के पूर्व के अधिनियम के अधीन उद्भूत अधिकार एवं दायित्व प्रभावित नहीं होंगे।

संशोधन का प्रभाव भी निरसन का ही है। माननीय सर्वोच्च न्यायालय द्वारा भी न्याय दृष्टांत ***भगत रामशर्मा विरुद्ध भारत संघ, ए.आई.आर. 1988 एस.सी. 740*** में यह मत प्रतिपादित किया गया है कि –

> "It is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substitued. Such deletion has the effect of repeal of the existing provision. Such a law may also

provide for the introduction of a new provision. There is no real distinction between 'repeal' and an 'amendment'."

व्यावृत्ति खण्ड का अभाव दर्शाता है कि संशोधन के पूर्व अधिनियम के प्रावधानों के अधीन संस्थित किसी वाद में संशोधित प्रावधानों के लागू होने पर कोई रोक नहीं है अर्थात विधायिका का आशय संशोधन को लंबित मामलों पर भी लागू करने का है।

ऐसी स्थिति में जबकि संशोधन अधिनियम पर साधारण खण्ड अधिनियम, 1897 की धारा 6 के प्रावधान लागू नहीं होंगे और संशोधन अधिनियम में कोई व्यावृत्ति खण्ड भी नहीं है, तब यह प्रश्न ही उत्पन्न नहीं होता है कि संशोधन के प्रावधान भूतलक्षी प्रभाव रखेंगे अथवा भविष्यलक्षी। स्पष्ट शब्दों में कहा जाए तो संशोधन अधिनियम लागू होने पर यह प्रभाव रखेगा कि दिनांक 01 मार्च 1964 को विनिर्दिष्ट अनुतोष अधिनियम, 1963 इसी स्वरूप में लागू किया गया था।

अतः लंबित मामले संशोधित प्रावधानों के आलोक में निर्णीत किए जाने चाहिए। संशोधन का उद्देश्य संविदाओं का अनुपालन सुनिश्चित कराना है। यदि विधायिका का आशय लंबित मामलों को संशोधन के प्रभाव से पृथक रखना होता तो निश्चित रूप से संशोधन अधिनियम में व्यावृत्ति खण्ड अधिनियमित किया जाता। वस्तुतः संशोधन अपने वास्तविक उद्देश्य में तभी सफल होगा जबकि संविदा भंग एवं अधोसंरचना परियोजनाओं से संबंधित लंबित मामलों में भी संशोधित प्रावधानों का लाभ संविदा भंग से पीड़ित पक्षकार को मिल सके।

इतना ही नहीं, जो मामले अभी अपील में लंबित हैं और जिनमें अंतिमता प्राप्त नहीं हुई है, उन पर भी संशोधित प्रावधान लागू होंगे और उन्हें संशोधन के आलोक में निराकृत किया जाना अपेक्षित है।

संविदा के विनिर्दिष्ट अनुपालन के वाद में विवाद्य-विषय .-

विनिर्दिष्ट अनुतोष अधिनियम, 1963 के संशोधन पूर्व स्वरूप में संविदा के विनिर्दिष्ट अनुपालन का अनुतोष न्यायिक विवेक के अधीन था। संविदा भंग के मामले में प्राथमिक अनुतोष क्षतिपूर्ति थी और संविदा का विनिर्दिष्ट अनुपालन कतिपय विशिष्ट मामलों में ही कराया जा सकता था। संशोधन पूर्व की धारा 20 की उपधारा (2) उन दशाओं का वर्णन करती थी जिनमें न्यायालय विनिर्दिष्ट अनुपालन स्वीकार न करने के लिए विवेकाधिकार का प्रयोग कर सकता है इसलिए संविदा के विनिर्दिष्ट अनुपालन के वाद सामान्यतया न्यायालय द्वारा एक विवाद्यक इस आशय का भी विरचित किया जाता था कि - ''क्या हस्तगत मामले में संविदा का विनिर्दिष्ट अनुपालन कराया जा सकता है?''

संशोधन के द्वारा संविदा के विनिर्दिष्ट अनुपालन का न्यायिक विवेकाधीन से हटाकर आज्ञापक करते हुए और अधिनियम की धारा 20 को प्रतिस्थापित कर दिया गया है। अतः अब संविदा के विनिर्दिष्ट अनुपालन के वाद में न्यायालय के समक्ष मात्र तीन ही विवाद्यक उत्पन्न होंगे -

1. क्या वादी व प्रतिवादी के मध्य अनुबंध निष्पादित हुआ था ?
2. क्या प्रतिवादी अनुबंध का पालन करने से इंकार कर रहा है ?
3. क्या वादी अनुबंध का अपने भाग का अनुपालन करने में सदैव तत्पर एवं इच्छुक रहा है ?

प्रमाण-भार (Burden of Proof).-

संशोधन के पूर्व, चूंकि संविदा के विनिर्दिष्ट अनुपालन का अनुतोष न्यायिक विवेकाधीन था, इसलिए वादी को यह भी प्रमाणित करना होता था कि संविदा भंग के लिए क्षतिपूर्ति पर्याप्त नहीं होगी और संविदा का विनिर्दिष्ट अनुपालन न तो वादी को कोई अऋजु लाभ देता है, न ही प्रतिवादी को किसी असम्यक कष्ट में □ालता और न ही साम्या के विपरीत है। यह तथ्य प्रमाणित करना पूर्णतः व्यक्तिनिष्ठ है, इसलिए संविदा का विनिर्दिष्ट अनुपालन अपेक्षित करने वाले पक्षकार पर इसे साबित करने का अतिरिक्त भार होता था।

संशोधन के द्वारा संविदा का विनिर्दिष्ट अनुपालन आज्ञापक कर दिया गया है और धारा 20 को प्रतिस्थापित कर दिया गया है इसलिए वादी के लिए मात्र संविदा का निष्पादन एवं संविदा के अपने भाग का अनुपालन करने के लिए सदैव तत्पर एवं इच्छुक रहना प्रमाणित करना आवश्यक रह गया है। संविदा भंग तो मात्र प्रतिवादी के आचरण से ही स्थापित किया जा सकता है। अतः वादी द्वारा प्रारंभिक भार उन्मोचित करने पर यह प्रमाणित करने का सिद्धिभार कि प्रतिवादी ने संविदा भंग नहीं किया है और वादी ही संविदा का अनुपालन करने के लिए तत्पर एवं इच्छुक नहीं था, स्वयं प्रतिवादी पर रहेगा। यह भार तुलनात्मक रूप से अधिक होगा क्योंकि अनुबंध, उसका भंग और वादी की तत्परता संविदा का विनिर्दिष्ट अनुपालन आदेशित करने के लिए पर्याप्त होगी।

अतः यह कहा जा सकता है कि संविदा के विनिर्दिष्ट अनुपालन के वाद में संशोधन उपरांत प्रतिवादी पर अपना बचाव सिद्ध करने का भार वादी की तुलना में कहीं अधिक होगा। इसके साथ-साथ न्यायालयों को भी इसी दृष्टिकोण से निष्कर्ष निकालने होंगे।

•

Judicial Service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of integrity doubtful or who have lost their utility.

– J.M. Panchal, J. in
Rajendra Singh Verma v. Lt. Governor (NCT of Delhi),
(2011) 10 SCC 1, Para 81

PART – II

NOTES ON IMPORTANT JUDGMENTS

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

EVIDENCE ACT, 1872 – Section 116

(i) Ownership – Degree of proof in eviction suit – It is not necessary to prove ownership in same manner which is required to be proved in declaratory suit – Law reiterated.

(ii) Estoppel – Landlord-tenant relationship – Once tenant has admitted tenancy – Tenant is estopped from challenging title of landlord by virtue of Section 116 of the Evidence Act.

(iii) Alternative accommodation – *Bonafide* requirement of landlord – Landlord is the best judge of his requirements – Open for the landlord to choose how to utilise his property – Choice of landlord cannot be dictated by the Court.

(iv) *Bonafide* requirement, proof of – Real and genuine need of accommodation by landlord is to be proved – Relief to landlord may bedenied, if accommodation is required for collateral purpose unconnected with *bonafide* requirement.

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

साक्ष्य अधिनियम, 1872 - **धारा** 116

(i) स्वामित्व - बेदखली के वाद में स्वामित्व के सबूत का स्तर - स्वामित्व को उसी रीति से साबित करना आवश्यक नहीं है जैसा घोषणात्मक वाद में साबित करना अपेक्षित है - विधि पुनरोद्धरित।

(ii) विबंध - अभिधारी भू-स्वामी संबंध - जब अभिधारी एक बार अभिधृति को स्वीकार कर लेता है - तो वह धारा 116 साक्ष्य अधिनियम के अधीन भू-स्वामी के स्वत्व को चुनौती देने से विबंधित हो जाता है।

(iii) वैकल्पिक स्थान - भू-स्वामी की सद्भावी आवश्यकता - भू-स्वामी उसकी आवश्यकता का सर्वोत्तम निर्णायक है - भू-स्वामी स्वतंत्र है कि वह अपनी संपत्ति का किस प्रकार प्रयोग करे - भू-स्वामी के चयन को न्यायालय द्वारा निदेशित नहीं किया जा सकता।

(iv) सद्भावी आवश्यकता का सबूत - भू-स्वामी द्वारा स्थान की वास्तविक एवं सही आवश्यकता को साबित किया जाना आवश्यक है - यदि स्थान की आवश्यकता सद्भावी आवश्यकता से असंबद्ध आनुषंगिक प्रयोजन हेतु हो, तो भू-स्वामी को अनुतोष प्रदान करने से इंकार किया जा सकता है।

Prakash Pahuja v. Devendra Kumar Jain

Order dated 15.02.2018 passed by the High Court of Madhya Pradesh in First Appeal No. 92 of 2009, reported in 2018 (3) MPLJ 68

•

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

RENT CONTROL AND EVICTION :

(i) Eviction suit – Issue of title – Landlord is not expected to prove his title like that of a title suit.

(ii) Derivative title; Challenge to – Tenant is entitled to challenge the derivative title of assignee of original landlord in eviction suit.

(iii) Doctrine of attornment – Explained – Acceptance of assignee's title over tenanted property results in creation of attornment – Attornment deprives the tenant to challenge the derivative title of landlord – Attornment can be proved by circumstances and conduct of tenant *qua* landlord.

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

भाड़ा नियंत्रण एवं निष्कासन:

(i) निष्कासन का वाद - स्वत्व का प्रश्न - भवन स्वामी से अपना स्वत्व उस रीति से साबित करना अपेक्षित नहीं है जैसा कि स्वत्व संबंधी वाद में होता है।

(ii) व्युत्पन्न स्वत्व को चुनौती - निष्कासन के वाद में अभिधारी मूल भवन स्वामी के समनुदेशिती के व्युत्पन्न स्वत्व को चुनौती देने का अधिकारी होता है।

(iii) अभिधृति की स्वीकृति का सिद्धांत - व्याख्या की गई - अभिधृत परिसर में समनुदेशिती के स्वत्व को स्वीकार कर लेने से अभिधृति की स्वीकृति अस्तित्व में आ जाती है - अभिधृति की स्वीकृति अभिधारी को भवन स्वामी के व्युत्पन्न स्वत्व को चुनौती देने से वंचित कर देती है - अभिधृति की स्वीकृति मामले की परिस्थितियों एवं भवन स्वामी के प्रति अभिधारी के आचरण से साबित की जा सकती है।

Apollo Zipper India Limited v. W. Newman and Company Limited

Judgment dated 20.04.2018 passed by the Supreme Court in Civil Appeal No. 4249 of 2018, reported in (2018) 6 SCC 744

Relevant extracts from the judgment:

It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the Rent Laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See ***Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375,*** Para 10 at page 383 and also ***Boorugu Mahadev & Sons & anr. v. Sirigiri Narasing Rao & ors, (2016) 3 SCC 343,*** Para 18 at page 349).

x x x

Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised

property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the Rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. [See ***Bismillah Be (dead) by Legal Representatives v. Majeed Shah, (2017) 2 SCC 274,*** Para 24]

It is equally well-settled law with regard to attornment that it does not create any new tenancy but once the factum of attornment is proved then by virtue of such attornment, the old tenancy continues.

x x x

As mentioned above, the title of the landlord over the tenanted premises in a suit for eviction cannot be examined like a title suit. Similarly, the attornment can be proved by several circumstances including taking into consideration the conduct of the tenant *qua* landlord.

•

203. CIVIL PROCEDURE CODE, 1908 – Section 9 and Order 39 Rules 1 and 2
PUBLIC TRUSTS ACT, 1951 (M.P.) – Section 32
Jurisdiction of Civil Court – Registration of trust – Suit by public trust – Held, institution of suit is not barred by Section 32 – Section 32 provides that any suit instituted by trust shall not proceed unless the trust is registered – Section 32, does not bar jurisdiction of Court to grant interim relief – Further held, any dispute regarding registration of trust may be decided as a preliminary issue – Civil Court may also direct the trust to get it registered – Rejection of plaint for want of registration of trust is not proper.

सिविल प्रक्रिया संहिता, 1908 - **धारा** 9 **एवं आदेश** 39 **नियम** 1 **एवं** 2

लोक न्यास अधिनियम, 1951 (**म.प्र.**) - **धारा** 32

सिविल न्यायालय की अधिकारिता - न्यास का पंजीबद्ध होना - लोक न्यास द्वारा वाद - अभिनिर्धारित, धारा 32 द्वारा वाद का संस्थापन बाधित नहीं है - धारा 32 यह प्रावधान करती है कि न्यास के द्वारा संस्थित किसी वाद पर कार्यवाही नहीं हो सकती जब तक कि न्यास पंजीबद्ध हो - धारा 32, न्यायालय की अंतरिम अनुतोष देने की अधिकारिता को बाधित नहीं करती है - आगे अभिनिर्धारित, न्यास के पंजीकरण से संबंधित कोई भी विवाद प्रारंभिक विवाद्यक के रूप में निराकृत किया जा सकता है - सिविल न्यायालय न्यास को पंजीयन कराने का निर्देश भी दे सकती है - न्यास का पंजीयन न होने के कारण वादपत्र नामंजूर किया जाना उचित नहीं है।

Shri Vaishnav Sahayak Trust v. Kailash Chandra and ors.

Judgment dated 06.04.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 57 of 2017, reported in 2018 (3) MPLJ 386

Relevant extracts from the judgment:

Under the M.P. Public Trusts Act, any person or trust can approach the Civil Court u/S. 8 or 26 or 27 of the Act. The present suit was not filed under the aforesaid three provisions. The suit was filed claiming title and for permanent injunction. Therefore, such a suit is maintainable u/S. 9 of the Act unless there is a specific bar in the statute barring jurisdiction of the Civil Court. There is no specific bar in the Act that the suit for declaration and permanent injunction cannot be filed. U/S. 32 of the Act, there is a provision that the suit shall not proceed without registration of the trust. The M.P. Act came into force in the year 1951, in which, the registration of the trust has been made mandatory. In India, trusts were in existence much prior to the coming in force of the Act. Therefore, by virtue of Section 32 of the Act, it has been made mandatory that any suit shall proceed unless the trust is registered.

x x x

That any trust in order to protect its properties being alienated, transferred or demolished, can approach the Civil Court for obtaining the temporary injunction because u/S. 26 of the Act, the Registrar, Public Trust is not having any jurisdiction to grant the interim protection. That under Section 26 of the Act, the Registrar of Public Trust can only direct the working trustees to approach the Civil Court to obtain the relief, that too after notice to the non-applicants. Therefore, in order to get the interim protection in urgency, the civil suit seeking permanent injunction as well as temporary injunction in a suit is certainly maintainable. If there is any dispute about the registration of the trust, the Civil Court can direct the trust to get it registered or the preliminary issue can be framed on this controversy as to whether the trust is a registered trust or not, but the entire suit cannot be thrown out for want of registration.

Likewise, in the present case, according to the plaintiff, the trust is “Shri Vaishnav Sahayak Trust” which is a registered public trust, but as per the defendants, it is registered as “Shri Vaishnav Sahayak Trust Committee”. The said controversy can be resolved by way of evidence after framing the issues. The said issue can be decided as a preliminary issue by virtue of Section 32 of the Act as it bars only proceeding and deciding the suit finally, but it does not bar to decide the preliminary issue or grant of relief of temporary injunction.

•

***204. CIVIL PROCEDURE CODE, 1908 – Section 144**

LIMITATION ACT, 1963 – Article 136

(i) Restitution – Party seeking restitution is not required to satisfy the Court regarding its title or right to property – Showing its deprivation under a decree and reversal or variation of decree is sufficient.

(ii) Award of *mesne* profit – When a decree under which possession has been taken is reversed, *mesne* profit should be awarded in restitution from date of dispossession and not merely from the date of decree of reversal.

सिविल प्रक्रिया संहिता, 1908 - **धारा** 144

परिसीमा अधिनियम, 1963 - **अनुच्छेद** 136

(i) प्रत्यास्थापन - प्रत्यास्थापन चाहने वाले पक्षकार को न्यायालय को अपने स्वत्व अथवा संपत्ति के अधिकार के बारे में तुष्ट करना आवश्यक नहीं - आज्ञप्ति के अंतर्गत इसके अभाव एवं आज्ञप्ति का उलटा जाना अथवा उसमें फेरफार दर्शित करना पर्याप्त है।

(ii) अंतःकालीन लाभ का अधिनिर्णय - जब कोई आज्ञप्ति जिसके अधीन आधिपत्य प्राप्त किया गया है, उलट दी जाती है, तो प्रत्यास्थापन में अंतःकालीन लाभ आधिपत्यच्युत किये जाने की दिनांक से अधिनिर्णीत किया जाना चाहिए न कि आज्ञप्ति को उलट दिये जाने की दिनांक से।

Mana @ Ashok & ors. v. Budabai & ors.

Order dated 14.12.2017 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 95 of 2017, reported in ILR (2018) MP 598

•

205. CIVIL PROCEDURE CODE, 1908 – Order 6 Rule 17

Amendment of plaint – After commencement of trial – Considerations explained – Record of Civil Suit in which *ex parte* decree was passed not traceable – In such circumstances, there could possibly be some inability in obtaining correct particulars well in time on the part of the appellants – At the time when the application for amendment was preferred, only two official witnesses were examined – The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground – In any case it could not have caused any prejudice to the defendants – Held, in these circumstances, amendment ought to have been allowed.

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

वादपत्र में संशोधन - विचारण प्रारंभ होने के पश्चात् - विचारणीय बिन्दु समझाए गए - जिस व्यवहार वाद में एकपक्षीय डिक्री पारित की गई, वह मिल नहीं रहा था - इन

परिस्थितियों में, समय पर सही विवरण प्राप्त करने में अपीलार्थीगण की संभवतः कुछ अक्षमता रही होगी - जिस समय संशोधन आवेदन प्रस्तावित किया गया, केवल दो आधिकारिक साक्षियों का परीक्षण हुआ था - प्रस्तावित संशोधन की प्रकृति से न तो दावे का स्वरूप अथवा प्रकृति परिवर्तित हो रही है और न ही वह कोई नया आधार पेश कर रहा है - किसी भी परिस्थिति में उससे प्रतिवादीगण को कोई पूर्वाग्रह कारित नहीं हो सकता - अभिनिर्धारित, इन परिस्थितियों में, संशोधन स्वीकार किया जाना चाहिए था।

Gurbakhsh Singh and others v. Buta Singh and another

Judgment dated 27.04.2018 passed by the Supreme Court in Civil Appeal No. 4568 of 2018, reported in (2018) 6 SCC 567

Relevant extracts from the judgment:

In the present case the record of Civil Suit No.195 of 1968 in which *ex parte* decree was passed on 30.06.1969 is not traceable. In the circumstances, there could possibly be some inability in obtaining correct particulars well in time on part of the appellants. At the time when the application for amendment was preferred, only two official witnesses were examined. The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground. The High Court itself was conscious that the amendment would not change the nature of the suit. In the given circumstances, in our view, the amendment ought to have been allowed. In any case it could not have caused any prejudice to the defendants.

While allowing amendment of plaint, after amendment of 2002, this Court in circumstances similar to the present case, in ***Abdul Rehman and anr. v. Mohd. Ruldu, (2012) 11 SCC 341,*** had observed:

> "The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has

held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in ***J. Samuel v. Gattu Mahesh, (2012) 2 SCC 300,*** and ***Rameshkumar Agarwal v. Rajmala Exports (P) Ltd, (2012) 5 SCC 337***."

We, therefore, allow this appeal and accept the application for amendment preferred by the appellants.

•

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

(i) Amendment of written statement – Grant of – Amendment sought to elaborate upon an existing defence – Amendment can be allowed.

(ii) Grant of Amendment – It is not dependent on whether the case which is proposed to be set up will eventually succeed at trial.

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

(i) लिखित कथन में संशोधन - अनुदत्त किया जाना - संशोधन विद्यमान प्रतिरक्षा की व्याख्या हेतु चाहा गया - संशोधन अनुमत किया जा सकता है।

(ii) संशोधन अनुदत्त किया जाना - यह इस बात पर निर्भर नहीं है कि जिस मामले को स्थापित करने की प्रस्थापना की गयी है वह अंततः विचारण में सफल होगा।

Raj Kumar Bhatia v. Subhash Chander Bhatia

Judgment dated 15.12.2017 passed by the Supreme Court in Civil Appeal No. 19400 of 2017, reported in 2018 (3) MPLJ 01

•

207. CIVIL PROCEDURE CODE, 1908 – Order 8 Rule 1

Written statement – Limitation to file – Condonation of delay – Principles reiterated – Filing of written statement beyond 30 days – Can be permitted only when the defendant satisfactorily demonstrates a valid reason – The onus upon the defendant is of higher degree – Abnormal delay of five years in filing written statement – No proper and satisfactory explanation offered by defendant – Held, time cannot be extended to file written statement. [*Salem Advocates Bar Assn. (2) v. Union of India, (2005) 6 SCC 344* relied on]

सिविल प्रक्रिया संहिता, 1908 - **आदेश** 8 **नियम** 1

लिखित कथन - प्रस्तुति हेतु परिसीमा - विलम्ब माफ किया जाना - सिद्धांत पुनरोद्धरित किए गए - 30 दिवस पश्चात लिखित कथन की प्रस्तुति - तभी अनुमत की जा सकती है जब प्रतिवादी वैध कारण संतुष्टिप्रद रूप से दर्शित करे - प्रतिवादी

पर इसे दर्शित करने का भार उच्च श्रेणी का होता है - लिखित कथन प्रस्तुति में पांच वर्ष का असामान्य विलंब - प्रतिवादी द्वारा कोई युक्तियुक्त व संतुष्टिप्रद स्पष्टीकरण प्रस्तुत नहीं - अभिनिर्धारित, लिखित कथन प्रस्तुत करने का समय नहीं बढ़ाया जा सकता है। (***सलेम एडवोकेट्स बार एसोसिएशन (2) विरूद्ध भारत संघ, (2005) 6 एस.सी.सी. 344*** अनुसरित)

Atcom Technologies Limited v. Y.A. Chunawala and Company and ors.

Judgment dated 07.05.2018 passed by the Supreme Court in Civil Appeal No. 4266 of 2018, reported in (2018) 6 SCC 639

Relevant extracts from the judgment :

It has to be borne in mind that as per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908, the defendant is obligated to present a written statement of his defence within thirty days from the date of service of summons. Proviso thereto enables the Court to extend the period upto ninety days from the date of service of summons for sufficient reasons.

This provision has come up for interpretation before this Court in number of cases. No doubt, the words 'shall not be later than ninety days' do not take away the power of the Court to accept written statement beyond that time and it is also held that the nature of the provision is procedural and it is not a part of substantive law. At the same time, this Court has also mandated that time can be extended only in exceptionally hard cases. We would like to reproduce the following discussion from the case of ***Salem Advocate Bar Association, (Tamil Nadu) v. Union of India, (2005) 6 SCC 344***:

> "There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to "make such order in relation to the suit as it thinks fit". Clearly, therefore, the provision of Order 8 Rule 1 providing for the upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time-limit of 90 days. The discretion of the court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

In such a situation, onus upon the defendant is of a higher degree to plead and satisfactorily demonstrate a valid reason for not filing the written statement within thirty days. When that is a requirement, could it be a ground to condone delay of more than 5 years even when it is calculated from the year 2009, only because of the reason that Writ of Summons was not served till 2009?

We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. This reason of the High Court that delay was condoned 'by balancing the rights and equities' is far-fetched and, in the process, abnormal delay in filing the written statement is condoned without addressing the relevant factor, viz. whether the respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, handmaid of justice. However, that would not mean that the defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically.

•

208. CIVIL PROCEDURE CODE, 1908 – Order 21 Rules 90 and 92

Auction sale – Setting aside – Material irregularity and substantial injury must be established – Dismissal of application challenging the auction sale – No appeal preferred – Separate suit for declaration, possession and setting aside sale is not maintainable – Auction purchase shall attain finality.

सिविल प्रक्रिया संहिताए 1908 – **आदेश** 21 **नियम** 90 **एवं** 92

नीलामी विक्रय . अपास्त किया जाना – तात्विक अनियमितता और सारवान क्षति स्थापित की जानी चाहिए – नीलामी विक्रय को आक्षेपित करने वाला आवेदन खारिज – कोई अपील नहीं की गई – घोषणाए आधिपत्य एवं विक्रय को अपास्त किये जाने हेतु पृथक वाद पोषणीय नहीं है – नीलामी क्रय को अंतिमता प्राप्त होगी।

Siddagangaiah (D) Thr. LRs. v. N.K. Giriraja Shetty (D) Thr. LRs.

Judgment dated 11.05.2018 passed by the Supreme Court in Civil Appeal No. 5007 of 2018, reported in AIR 2018 SC 3080

Relevant extracts from the judgment:

Sub-Rule (1) of Order XXI Rule 90 makes it clear that when any immovable property has been sold in execution of a decree, the decree-holder or the purchaser or any other person entitled to share in a ratable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. As provided in sub-rule (2) of Rule 90 of Order XXI merely on the ground of irregularity or fraud, the sale shall not be set aside unless the substantial injury has been caused to the objector by reason of such irregularity or fraud and such an objection should be the one which could not have been raised before the date on which the proclamation of sale was drawn up as provided in Order XXI Rule 90 sub-rule (3) and mere defect or absence of attachment of the property shall not be a ground for setting aside a sale. It is

necessary to prove the substantial injury where fraud or material irregularity has taken place whereby injustice had been suffered. It was held by this Court in ***Rajender Singh v. Ramdhar Singh & ors., AIR 2001 SC 2220*** that mere inadequacy of price is not a ground for setting aside Court sale. In the present case, the application under Order XXI Rule 90 was filed by original plaintiff which was dismissed for default in appearance. It was nonetheless dismissal of the application so filed. It was not a case set up that the decree passed in maintenance case was obtained by fraud and substantial injury thereby has been caused.

Where an application has been filed under Rule 90 Order XXI CPC to set aside a sale on the ground of material irregularity, and the sale is confirmed under Rule 92(1) of Order XXI, the objector is precluded by virtue of the provisions under Order XXI Rule 92(3) from bringing a suit to set aside the sale on the same grounds as held in ***Brahayya v. Appayya, AIR 1921 Mad. 121, Ma Saw v. Maung Kyaw, AIR 1928 Rang 18*** and ***Nand Kishore v. Sultan, AIR 1926 Lah 165***.

When the auction purchaser is the decree-holder himself and when an application is made to set aside the sale on a ground other than that covered by Rule 90 and no application has been made under Rule 89, the case would fall under Section 47 as has been laid down in ***Superior Bank Ltd. v. Budh Singh, (1924) 22 All LJ 413*** and ***Akshia v. Govindarajulu, (1924) 47 MLJ 549.*** Thus, it would depend upon the grounds which are urged in the application. It is permissible to join a claim to set aside a sale on the ground of material irregularity under Order XXI, Rule 90 with a claim under section 47 for a declaration that the sale is a nullity as the decree was passed after the death of the judgment-debtor. Objection by legal representatives of deceased judgment-debtor that suit land was ancestral property and sale was not binding on them can be raised under Section 47 read with Order XXI Rule 90. However, it would depend upon the nature of the objection whether it was covered under Rule 90 of Order XXI CPC or not. There can be restoration of the petition dismissed for default filed under Order XXI Rule 90 and thereafter if sale has been confirmed; it is provided under Order XXI Rule 92(3) that no suit to set aside an order made under Rule 92(1) shall be brought by any person against whom such an order is made. Order XXI Rule 92(1) provides that where an application has been filed under Order XXI Rules 89, 90 or 91, same has been disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute, and no suit shall lie as per the mandate of sub-rule (3) of Rule 92 of Order XXI CPC against whom such an order is made. The order confirming the sale may be made either where no application is made at all to set aside the sale or where an application is made and disallowed may be that it is dismissed for default. No suit shall lie in either case to set aside the order confirming the sale. The refusal to set aside a sale is an order appealable. In case the Court has set aside or refused to set aside a sale that would include a case where an application under Order XXI Rule 89, 90 or 91 has been dismissed for default.

•

209. CIVIL PROCEDURE CODE, 1908 – Order 32 Rules 4 and 15

(i) Who can be appointed as "next friend"? Law reiterated (*Nagaiah and another v. Chowdamma (Dead) by Legal Representatives and another, (2018) 2 SCC 504* relied on).

(ii) Appointment of "next friend", at the time of institution of suit without an application, whether permissible? Held, Yes.

(iii) Enquiry of unsoundness of mind by Court, when necessary? Where during pendency of suit, Court is of opinion that the person is of unsound mind and has not been adjudged as unsound mind, enquiry by Court is necessary – But where a person is already been adjudged as unsound mind before or during the suit, enquiry regarding unsoundness of mind is not necessary.

सिविल प्रक्रिया संहिता, 1908 - **आदेश** 32 **नियम** 4 **एवं** 15

(i) ''**वादमित्र**'' के रूप में किसे नियुक्त किया जा सकता है? विधि पुनरोद्धरित (***नागईयाह और अन्य वि. चौदम्मा (मृत) द्वारा विधिक प्रतिनिधि एवं अन्य,*** *(2018) 2* ***एससीसी*** *504,* अवलंबित)

(ii) क्या वाद संस्थित किये जाते समय बिना आवेदन के ''वादमित्र'' नियुक्त किया जाना अनुज्ञेय है? अभिनिर्धारित, हाँ।

(ii) न्यायालय द्वारा विकृतचित्तता की जांच, कब आवश्यक है? - जब वाद के लंबित रहने के दौरान न्यायालय का यह मत है कि व्यक्ति विकृतचित्त है और विकृतचित्त के रूप में न्यायनिर्णीत नहीं किया गया है, तो न्यायालय द्वारा जांच आवश्यक है - परन्तु जहाँ एक व्यक्ति वाद के पहले अथवा उसके लंबित रहने के दौरान या पहले से चित्तविकृत न्यायनिर्णीत किया जा चुका है तो उसकी विकृतचितता के संबंध में जाँच आवश्यक नहीं है।

Meharunnisa (Smt.) v. Smt. Kamrunnisa Through Next Friend daughter Ku. Rukhsar Begum

Order dated 10.01.2018 passed by the High Court of Madhya Pradesh in Writ Petition No. 5178 of 2011, reported inILR (2018) MP 501

Relevant extracts from the order:

Order 32 prescribes the procedure in a suit by or against minors and persons of unsound mind. Rule 1 thereof contemplates that such suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. The intention of the legislature is clear that the suit itself is required to be instituted by the person who shall be called as next friend of the minor. In case, the institution of the suit has not been made by the next friend, under Rule 2, the defendant may apply that the plaint may be taken off the file, and the cost may be payable by the pleader or by the person by whom the suit was presented. On such objection, the Court may pass an order noticing that person

in accordance with law. As per Rule 15, it is apparent that Rule 1 to 14 except Rule 2-A shall apply to the person of unsound mind adjudged before or during pendency of the suit and it shall also apply to the persons who, though not so adjudged are found by the Court on enquiry to be incapable by reason of any mental infirmity to protect the interest of such person. As per Rule 3, guardian may be appointed in case of the minor defendant, by the Court, while Rule 4 prescribes the specifications and qualifications of any person who can be appointed as next friend or the guardian in the suit either of the plaintiff or defendant.

On perusal the qualification prescribed is that the person must have attained the age of majority to act as next friend of a minor or his guardian provided that the interest of such person is not adverse to that of the minor and the next friend should not be the defendant of a suit. In case a minor has a guardian appointed or declared by the competent authority then such guardian may proceed in a suit and he shall be the next friend of the minor or of a person of unsound mind unless the Court considers to change the same recording the reason for appointing another person.

In the said context, looking to the reasoning assigned by the Court that Ms. Rukhsar is the daughter of plaintiff Kamrunnisa and as per the certificate of the Medical Board, she is found to be of unsound mind to the extent of 55%, the daughter is not having adverse interest in the property of the mother and being major, has been declared as next friend to institute the suit and to proceed in the matter, appears just. The objection raised by learned counsel for the petitioner is that such appointment must be on an application prior to institution of the suit, do not appear to be justifiable looking to the intention of the legislature reflected by the language of Order 32 Rule 1 of the CPC.

x x x

On perusal of Rule 15 of Order 32, it is apparent that Rule 1 to 14 except Rule 2A as applicable to the case of minor shall also apply to the person of unsound mind. However, it is made clear in the Rule that Rule 1 to 14 except Rule 2-A shall, so far as may be apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind, therefore, the first part of the said Rule apply in a case where suit is instituted by next friend or sought to be instituted during pendency of the suit and the Court on such application, declare a person as next friend on behalf of the plaintiff being of unsound mind. The later part of the Rule 15 shall apply in case the plaintiff, though not so adjudged, found by the Court on enquiry to be incapable, on account of any mental infirmity, however, to protect their interest, a next friend may be appointed. Therefore, the contemplation of the enquiry as specified in Rule 15 is in a case where the court during pendency of the suit is of the opinion that the person is of unsound mind while in the previous part of Rule 15 following the procedure as contemplated under Rule 1 to 14 except Rule 2-A of Order 32, the person may

be adjudged as next friend before or during suit. Therefore, it is not incumbent on the Court to hold an enquiry as required by the later part of Rule 15, but it would apply when the power is required to be exercised by the Court.

•

***210. CIVIL PROCEDURE CODE, 1908 – Order 41 Rules 23 and 23A**

Power of remand – Appellate Court is firstly required to record justified reason for reversing the finding of Trial Court – Before remanding the case to Trial Court, Appellate Court should ascertain requirement for remand.

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

प्रतिप्रेषण की शक्ति - अपीलीय न्यायालय के लिए प्रथमतः आवश्यक यह है कि वह विचारण न्यायालय के निष्कर्ष को उलटने का न्यायोचित कारण अभिलिखित करे - विचारण न्यायालय को प्रकरण प्रतिप्रेषित करने से पहले, अपीलीय न्यायालय को प्रतिप्रेषण हेतु अपेक्षा अभिनिश्चित करना चाहिए।

Jagnnath Rathod and another v. Karuna @ Chetna and others

Order dated 25.01.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in M.A. No. 1090 of 2017, reported in2018 (3) MPLJ 98

•

211. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 27

Appeal – Additional evidence – Application filed for sending the relevant agreement to handwriting expert in Appeal – Ground of lapse on the part of the previous Advocate – Allowing on the ground of mistake of Advocate may adversely affect the other party – Absence of correct legal advice cannot be a ground to accept the application – Application rejected.

सिविल प्रक्रिया संहिता, 1908 - **आदेश** 41 **नियम** 27

अपील - अतिरिक्त साक्ष्य - अपील में संबंधित करार को हस्तलेख विशेषज्ञ को भेजने के लिए आवेदन प्रस्तुत - पूर्व अधिवक्ता की ओर से चूक होने का आधार - अधिवक्ता की त्रुटि के आधार पर अनुमत किया जाना अन्य पक्षकार को प्रतिकूलतः प्रभावित कर सकता है - सही विधिक सलाह का अभाव आवेदन स्वीकार किये जाने का आधार नहीं हो सकता - आवेदन नामंजूर किया गया।

Kalyan Singh and ors. v. Sanjeev Singh

Judgment dated 19.04.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 211 of 2002, reported in 2018 Law Suit (MP) 715

Relevant extracts from the judgment:

I.A. No. 5579/2003 has been filed for sending the agreement to sell Ex.P.1 to a handwriting expert to verify the signatures of the appellant No.1 Kalyan Singh. There is nothing in the application, as to why, such an application was not filed before the Trial Court. It is submitted by the Counsel for the appellants, that the appellants are rustic villagers and they do not know about the technicalities of law, and since, it was not advised by their Counsel, therefore, such an application was not filed before the Trial Court. The respondent has filed his reply to this application, and submitted that the statement of the respondent in his Court evidence, to the effect that the agreement to sell Ex. P.1 was executed by the appellant no.1, was never challenged by the appellants. Even the stamp vendor was summoned as a witness by the appellants themselves, but subsequently, they themselves had given up the witness. Thus, at this stage, the application cannot be allowed.

It is submitted that because of a lapse on the part of the Advocate in giving correct advise, the party to a litigation should not suffer. It is submitted that because of fault of an advocate, the party must not suffer. The submissions, made by the Counsel for the appellants, cannot be accepted and hence, it is rejected. The Advocates claim themselves to be professionals having knowledge of law. They are law graduates. They cannot claim that they were not having knowledge of law. The Advocates cannot say, that the party should not suffer because they were not technically sound. In a litigation, there are always two parties. If a very lenient view is adopted by ignoring the mistake of a lawyer, then it would always adversely affect the rights of the other litigants. If a person had decided to engage a lawyer having less knowledge, then it is litigant, who has to suffer for his choice. A litigant cannot plead that since, his lawyer had not given correct legal advice to him, therefore, he should not suffer. If a litigant feels that he has been cheated by his Counsel by not giving proper legal advice, then the said litigant has remedy, against his lawyer, under the law of the land, but to the detriment of the interest of the other litigant, no leniency can be shown to a litigant on the ground that the Counsel engaged by such litigant was not professionally competent. The professional incompetence of a lawyer cannot be presumed. If the lawyer had consciously decided not to move an application at the stage of trial, then no fault can be attributed to such a lawyer. Therefore, at the appellate stage, the I.A. No.5579 of 2003 cannot be allowed, specifically when the evidence of the respondent that the agreement to sell, Ex. P.1 was not challenged by the appellants. Furthermore, the appellants themselves had called the Stamp Vendor, Santosh Dubey. Santosh Dubey appeared before the Trial Court, but he was given up by the appellants themselves, thus, it is clear that the present application has been filed just in order to delay the proceedings. Hence, I.A. No. 5579/2003 is hereby rejected.

•

***212.CRIMINAL PRACTICE :**

Offence by Company – Prosecution of Director/Nominee of Company – Not permissible unless Company as a juristic person is arrayed as an accused – A nominee cannot be held vicariously liable for the offence committed by Company in absence of prosecution of Company. (*Aneeta Hada v. M/s Godfather Travels & Tour, (2012) 5 SCC 661,* followed)

आपराधिक प्रथा:

कंपनी के द्वारा अपराध - कंपनी के निदेशक/नामांकित का अभियोजन - तब तक संभव नहीं है जब तक कि कंपनी को एक विधिक व्यक्ति के रूप में अभियुक्त के रूप में न जोड़ा जाए - कंपनी के अभियोजन के अभाव में एक नामांकित पर कंपनी द्वारा कारित अपराध के लिए प्रतिनिधिक दायित्व अधिरोपित नहीं किया जा सकता है। (***अनीता हाड़ा वि. मेसर्स गॉ□फादर ट्रैवल्स एण□ टूर,*** *(2012) 5* ***एस.सी.सी.*** *661,* अनुसरित)

Mr. S.K. Shukla v. State of M.P.

Judgment dated 22.03.2018 passed by the High Court of Madhya Pradesh in M.Cr.C. No.12658 of 2015, reported in2018 (2) Crimes 527 (MP)

•

***213. CRIMINAL PROCEDURE CODE, 1973 – Sections 54 and 54A**

CRIMINAL TRIAL:

MLC Report, preparation of – Practice of issuing handwritten illegible MLC reports deprecated – Directions issued to all concerned Medical Officers to prepare MLC reports of all kinds in typed form only.

Note: **Letter No. v-iz-/Cell-4/2018/1185 Bhopal dated 24/07/2018 issued by Directorate of Health Services, Bhopal to all CMHOs, Civil Surgeons and Medical Superintendents to comply with this order.**

दण□ प्रक्रिया संहिता, *1973* **- धाराएं** *54* **एवं** *54***क**

आपराधिक विचारणः

विधिज्ञ-चिकित्सीय प्रतिवेदन; तैयार किया जाना - हस्तलिखित अपाठ्य विधिज्ञ-चिकित्सीय प्रतिवेदन जारी किए जाने की प्रवृत्ति की निन्दा की गई - समस्त संबंधित चिकित्साधिकारियों को निर्देश जारी किए गए कि सभी प्रकार के विधिज्ञ-चिकित्सीय प्रतिवेदन टंकित रूप में ही जारी किए जाएं।

नोट: संचालनालय, स्वास्थ्य सेवायें म.प्र., भोपाल के द्वारा सभी मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, सिविल सर्जन एवं अस्पताल अधीक्षकों को पत्र क्रमांकअ.प्र./सेल-*4/2018/1185* भोपाल दिनांक *24/07/2018* इस आदेश का पालन सुनिश्चित करने का निर्देश दिया गया है।

Ram Singh v. State of Madhya Pradesh

Order dated 09.07.2018 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 10517 of 2018

•

***214. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 and 197**
PREVENTION OF CORRUPTION ACT, 1988 – Section 19
Whether prior sanction for prosecution of public servants is required even before ordering investigation under Section 156(3) CrPC? Divergence of opinion between different Benches of Supreme Court – Matter referred to larger Bench.

दण प्रक्रिया संहिता, 1973 - **धाराएं** 156 **एवं** 197

भ्रष्टाचार निवारण अधिनियम, 1988 - **धारा** 19

क्या लोक सेवकों के विरूद्ध द.प्र.सं. की धारा 156 (3) के अधीन अन्वेषण का आदेश करने के पूर्व भी अभियोजन चलाने की पूर्वानुमति आवश्यक है? सर्वोच्च न्यायालय की विभिन्न पीठों में मत-भिन्नता - मामला वृहद पीठ को प्रेषित किया गया।

Manju Surana v. Sunil Arora & ors.
Judgment dated 27.03.2018 passed by the Supreme Court in Criminal Appeal No. 457 of 2018, reported in 2018 (2) Crimes 363 (SC)

•

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

(i) Perjury – *Sine qua non* for prosecution – There must be a *prima facie* case of deliberate falsehood and it is expedient in the interest of justice to punish the delinquent.

(ii) Whether on the basis of contradictory statement made in judicial proceeding, the court can prosecute the party under Section 340 CrPC r/w Section 195 of CrPC? Held, No – It must be shown that the party has intention of giving the false statement to be used in the judicial proceeding. (*Chajoo Ram v. Radhey Shyam and another, AIR 1971 SC 1367* and *Amarsang Nathaji v. Hardik Harshadbhai Patel and others, (2017) 1 SCC 113* relied on)

दण प्रक्रिया संहिता, 1973 - **धाराएं** 195 **एवं** 340

(i) शपथ भंग/शपथ पर मिथ्या साक्ष्य - अभियोजन हेतु अनिवार्य शर्त - विमर्शित झूठ बोलने का प्रथम दृष्टया मामला होना चाहिए और अपराधी को न्यायहित में दण्डित करना अनिवार्य हो।

(ii) क्या न्यायिक कार्यवाही में किये गये विरोधाभासी कथनों के आधार पर न्यायालय उस पक्षकार को धारा 340 सहपठित धारा 195 द.प्र.सं. के तहत अभियोजित कर सकती है? - अभिनिर्धारित, नहीं - यह दर्शित किया जाना आवश्यक है कि मिथ्या कथन को न्यायिक कार्यवाही में उपयोग करने का पक्षकार का आशय है। (***छजू राम वि. राधे श्याम और अन्य, एआईआर 1971 एससी 1367*** एवं ***अमरसंग नाथजी वि. हार्दिक हर्षदभाई पटेल और अन्य, (2017) 1 एससीसी 113,*** अवलंबित)

Prof. Chintamani Malviya v. High Court of Madhya Pradesh

Judgment dated 27.04.2018 passed by the Supreme Court in Criminal Appeal No. 649 of 2018, reported in 2018 CriLJ 3391

Relevant extracts from the judgment:

Having given our anxious consideration to the entirety of the matter, in our view, the guiding principle is the one as laid down in ***Chajoo Ram v. Radhey Shyam and another, AIR 1971 SC 1367.*** The law is clear, "prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent.... and there must be *prima facie* case of deliberate falsehood on the matter of substance and the Court should be satisfied that there is reasonable foundation for the charge". The assessment made by the High Court, as extracted in the paragraph herein above, in our considered view, does not satisfy the parameters and requirements as laid down by this Court.

Recently, this Court in ***Amarsang Nathaji v. Hardik Harshadbhai Patel and others, (2017) 1 SCC 113,*** summed up the legal position as under:

> "The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the Court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See ***K.T.M.S. Mohd. v. Union of India, AIR 1992 SC 1831***).The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case."

•

216. CRIMINAL PROCEDURE CODE, 1973 – Section 197

Requirement of sanction – Allegations of abuse and assault against Mining Officer on refusal to pay illegal gratification – Confiscation of vehicle by Mining Officer after the alleged incident – Cognizance of the offence challenged for requirement of Sanction – Held, the official act of the officer and offence complained of are inextricably interlinked – Previous sanction is essential.

दण प्रक्रिया संहिता, 1973 - **धारा** 197

पूर्वानुमति की आवश्यकता - अवैध परितोषण अदा करने से इंकार करने पर खनन अधिकारी के विरूद्ध अपशब्दों और हमला का अभिकथन - अभिकथित घटना के पश्चात् खनन अधिकारी द्वारा वाहन का अधिहरण - अपराध के संज्ञान को मंजूरी की आवश्यकता हेतु चुनौती दी गई - अभिनिर्धारित, अधिकारी का पदीय कृत्य एवं परिवादित अपराध परस्पर जटिल रूप से संबंद्ध है - पूर्व मंजूरी अनिवार्य है।

Rajkumar Gupta v. State of Madhya Pradesh

Order dated 13.03.2018 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 3566 of 2015, reported in 2018 Law Suit (MP) 721

Relevant extracts from the order:

The credible test to be applied in assessing if an accused is eligible for the protection of a previous sanction u/s. 197 Cr.P.C, is to see if the act so alleged to constitute an offence, was an intrinsic and inseparable part of an overall act done in discharge of the official duty of an accused. Here, the argument put forward for the petitioner that the Court must see whether the accused could have been found *prima facie* guilty of dereliction of duty if he had not acted in the manner which is alleged to have constituted the offence against him, is another credible test to be applied in arriving at a finding whether an accused is eligible for protection of a previous sanction u/S. 197 Cr.P.C. In this case, this Court is in agreement with the submission put forward by the learned counsel for the petitioner that had the petitioner not stopped the truck carrying the illegally quarried minor mineral, it would have resulted in a loss to the State exchequer which would have been a dereliction of duty on the part of the petitioner. The official act of the petitioner and the offence complained of, is so inextricably interlinked making it apparent that the act of the petitioner, alleged to be an offence by the respondent no.2, was an act performed in discharge of his official duty. Therefore, as held by the Hon'ble Supreme Court in ***Omprakash and ors. v. State of Jharkhand, (2012) 12 SCC 72,*** where the facts of the case go to reveal *ex facie*, the requirement of a sanction under Section 197 Cr.P.C, the same ought to have been there along with the charge-sheet at the time of taking cognizance of the offence. The contention of the respondent no.2 is that the cases relied upon by the petitioner where judgments passed by the Supreme Court in the criminal appeals after the conclusion of trial is unsustainable. In all the three cases, the Supreme Court had intervened at the initial stages of the case itself and proceedings before the Courts below were quashed on account of absence of sanction.

Judgment of the Supreme Court in ***State of Maharashtra v. Devhari Deva Singh Pawar and ors, (2008) 2 SCC 540,*** relied upon by the learned counsel for the respondent no. 2 clearly goes to show that the facts of that case disclosed that the acts alleged against the respondents in that case was definitely not in the discharge of their official duties. The acts alleged against the accused in that case was falsification of the official record, destruction of the official record

and attempt to conceal the official record. As regard the judgment of this Court in ***Pradeep Rajoria v. Chandra Pratap Singh Kushwaha and ors., 2007 (2) MPLJ 419,*** the said judgment was passed earlier in point of time to the judgments of the Supreme Court referred herein above. Under the circumstances, this Court did not have an opportunity to examine the said judgments of the Supreme Court, which very categorically stated that if there is a reasonable nexus between the act alleged to have been an offence and the discharge of his official duty then, the requirement of sanction under section 197 Cr.P.C. can be taken into account at the earliest stage itself. The judgment of the Supreme Court in ***Bholuram v. State of Punjab, Criminal Appeal No. 1366 of 2008, dated 29.8.2008*** which has been referred to by the learned counsel for the respondent no.2, is actually a ratio on the ambit and scope of the trial Court's power under section 319 of the Cr.P.C. In paragraph 61 of the judgment, the Supreme Court gives a passing reference with regard to the stage at which the requirement of sanction can be taken into account by the trial Court. The same is an obiter. However, being an obiter of the Supreme Court, the same would be a binding precedent on this Court in the absence of a judgement of the Supreme Court laying down the ratio, specific to the facts circumstances of the case at hand. However, in the light of the judgments of the Supreme Court in ***Rakesh Kumar Mishra v. State of Bihar and others, (2006) 1 SCC 557, Omprakash's*** case (supra) and ***Army Headquarters v. CBI, (2012) 6 SCC 228,*** which specifically lay down the ratio with regard to the requirement of sanction under Section 197 Cr.P.C, this Court is bound to follow the ratio laid down by the Supreme Court specifically with regard to Section 197 Cr.P.C. in those judgments.

•

***217. CRIMINAL PROCEDURE CODE, 1973 – Section 300**

Double Jeopardy – The scope of the provision of Section 300 of the Cr.P.C is wider than the protection afforded by Article 20 (2) of the Constitution of India – Section 300 of Cr.P.C also included the case of acquittal and also the case in which in earlier trial, the charge for which second trial is proposed, might have been framed under sub-section (2) of Section 221 of Cr.P.C. – Second trial cannot be allowed merely on the ground that some more allegations, which were not made earlier in the first trial, have also been made. [*State of Tamil Nadu v. Nalini & others, (1999) 5 SCC 253,* relied on]

दण प्रक्रिया संहिता, 1973 - धारा 300

दोहरा संकट - दण प्रक्रिया संहिता की धारा 300 का क्षेत्र भारत के संविधान के अनुच्छेद 20 (2) से प्रदत्त संरक्षण से अधिक व्यापक है - धारा 300 द.प्र.सं. दोषमुक्ति के प्रकरणों को समाहित करती है और ऐसे पूर्व प्रकरणों को भी समाहित करती है जिनमें धारा 221 (2) के अधीन ऐसे आरोप लगाये जा सकते थे जो द्वितीय विचारण में प्रस्तावित किये गये हैं - द्वितीय विचारण केवल इस आधार पर अनुमत नहीं किया जा सकता है कि कुछ और ऐसे अभिकथन किये गये हैं जो कि पूर्व के प्रकरण में नहीं

किये गये थे। (*स्टेट ऑफ तमिलनाडु विरूद्ध नलनी व अन्य, (1999) 5 एससीसी 253,* अनुसरित)

Jayant Laxmidas v. The State of Madhya Pradesh

Order dated 25.10.2017 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 7298 of 2009, reported in ILR (2018) MP 248

•

218. CRIMINAL PROCEDURE CODE, 1973 – Sections 309 and 311

Recall of witness – Advocate of the accused left the Court midway while cross examining the witness, levelling allegation against the Court – Accused insisted on cross-examination by the same Advocate – Opportunity to cross-examine closed – Application for recalling the witness for cross-examination filed after nine months – Held, refusal of Advocate to cross-examine earlier not proper – Option to appoint another Advocate refused by Accused – Prayer to recall the witness rightly rejected.

दण प्रक्रिया संहिता, 1973 - **धाराएं** 309 **एवं** 311

साक्षी का पुनः बुलाया जाना - अभियुक्त के अधिवक्ता साक्षी के प्रतिपरीक्षण के दौरान बीच में ही न्यायालय पर आक्षेप लगाते हुए न्यायालय छोड़कर चले गये - अभियुक्त द्वारा उक्त अधिवक्ता से ही प्रतिपरीक्षण कराये जाने हेतु जोर दिया गया - प्रतिपरीक्षण का अवसर समाप्त किया गया - साक्षी को प्रतिपरीक्षण हेतु पुनः बुलाये जाने के लिए नौ माह पश्चात् आवेदन - अभिनिर्धारित, अधिवक्ता द्वारा पूर्व में प्रतिपरीक्षण से इंकार करना उचित नहीं - अन्य अधिवक्ता को नियुक्त किये जाने के विकल्प से अभियुक्त द्वारा इंकार किया गया - साक्षी को पुनः बुलाये जाने की प्रार्थना ठीक ही नामंजूर की गई।

Kuldeep Singh Tomar v. State of Madhya Pradesh

Order dated 08.03.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.Cr.C. No. 5816 of 2018, reported in 2018 Law Suit (MP) 336

Relevant extracts from the order:

For smooth functioning of the legal system, support by Bar is essential and a Bar enjoys the unqualified trust and confidence of the people. Thus, the conduct of the Lawyer inside the Court should be of high traditions. It is made clear that since, a motion for contempt of Court has also been initiated by the Trial Court, and as, the same is not the subject matter of this application, therefore, this Court has constrained itself, to consider the role of the counsel for the applicant, because any observation may have some effect on the other proceedings, therefore, the facts of the case are being considered only with a view to find out that whether there was any valid reason for the counsel for the applicant to leave the Court room in the mid of cross-examination or not?

The applicant, has not clarified, either in his application under Section 311 of Cr.P.C., nor in this application under Section 482 of Cr.P.C. that what question was put by the counsel and what was the answer given by the witness and what was dictated by the Trial Court and how the said dictation was contrary to the reply given by the witness. Thus, in absence of any factual foundation, it would not be possible for this Court to consider that whether the conduct of the counsel for the applicant was proper or not, therefore, in absence of any factual foundation, it is held that without there being any basis, as the counsel for the applicant had left the Court, therefore, refusal to further cross examine the witness, cannot be said to be proper.

The next question for determination would be that where the counsel for the applicant had left the Court, then whether the Trial Court should have given an option to the applicant to appoint another lawyer or should have appointed an *amicus curiae* or was right in closing the right of the applicant to cross examine Ramgopal (P.W.5), after giving an opportunity to the applicant to cross examine the witness.

The Supreme Court in the case of ***Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1,*** has held as under :

> "Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the constitutional duty of the Court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the Court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused (see ***Suk Das v. UT of Arunachal Pradesh, (1986) 2 SCC 401***)."

Thus, where the accused is given an option, but if the same is not availed by him, then it cannot be said that in every circumstance, it is the duty of the Court to appoint *amicus curiae*. In the present case, after the counsel for the applicant had left the Court room, an option was given to the applicant to cross examine the witness, but that was refused by him and it was replied by him, that the cross examination shall be done by the same lawyer. Once, the applicant had expressed specifically that he wants to be represented by the counsel of his choice, then under this circumstance; the Trial Court could not have appointed any other lawyer as *amicus curiae*. In view of the specific reply given by the applicant i.e., the Trial Court was left with no other option, but to close the right of the applicant to cross examine Ramgopal (P.W.5).

Thus, the prayer for recall of a witness cannot be allowed merely on the saying of the accused. There must be strong reasons and the same are to be exercised with great caution and circumspection. Magnanimity cannot be shown in favour of the accused, by applying the principle of "Interest of Justice". The reason for seeking recall of a witness must be *bonafide* and the accused himself should not be responsible for creating a situation where the Court is left with no other option but to close his right to cross examine the witness. If the facts and circumstances of the present case are considered, then this Court is of the considered opinion that the applicant has failed to make out a case, pointing out that the cross examination of the witness was left in the mid way for the reasons beyond his control or beyond the control of his lawyer. In fact, this Court is of the view that it is the applicant, who himself is responsible for closer of his right to cross examine Ramgopal (P.W.5) and thus, the application filed by him under Section 311 of Cr.P.C. cannot be allowed.

•

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

INDIAN PENAL CODE, 1860 – Section 376

CRIMINAL TRIAL :

Recall of witness for re-examination – Application was preferred by accused on ground that necessary questions and suggestions could not be asked to prosecutrix and a witness – Held, previous defence counsel was not competent or has not effectively cross-examined witnesses is no ground for recalling witnesses – Factors like uncalled hardship to witnesses and uncalled delay in trial should also be considered while considering application (*State (NCT of Delhi) v. Shiv Kumar Yadav and anr., (2016) 2 SCC 402,* followed)

दण्ड प्रक्रिया संहिता, 1973 - **धारा** 311

भारतीय दण्ड संहिता, 1860 - **धारा** 376

आपराधिक विचारण:

पुनः परीक्षण हेतु साक्षी को बुलाया जाना - अभियुक्त की ओर से इस आधार पर आवेदन लगाया गया कि अभियोक्त्री एवं एक अन्य साक्षी से आवश्यक प्रश्न एवं सुझाव नहीं पूछे जा सके थे - अभिनिर्धारित, बचाव पक्ष के पूर्व अधिवक्ता सक्षम नहीं थे अथवा उन्होंने साक्षियों का प्रभावी प्रतिपरीक्षण नहीं किया है, यह साक्षियों को पुनः बुलाने का आधार नहीं है - साक्षियों को होने वाली अनावश्यक कठिनाई एवं विचारण में होने वाले अनावश्यक विलम्ब जैसे कारकों पर भी विचार किया जाना चाहिए। (***राज्य (राष्ट्रीय राजधानी क्षेत्र दिल्ली) विरूद्ध शिव कुमार यादव व अन्य,*** *(2016) 2* ***एस.सी.सी.*** *492,* अनुसरित)

Bachchu Lal Yadav v. State of Madhya Pradesh

Judgment dated 03.05.2017 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 609 of 2017, reported in 2018 (2) ANJ (MP) 72

•

220. CRIMINAL PROCEDURE CODE, 1973 – Sections 378 and 386

APPRECIATION OF EVIDENCE :

CRIMINAL PRACTICE :

(i) Witness – Related witness – Credibility – There is no proposition in law that relatives are to be treated as untruthful witnesses – Reasons have to be shown that the relatives had reason to shield actual culprit and falsely implicate the accused – Where evidence of an eye witness inspires confidence, it must be relied upon even though he may be a close relative of the victim – The sole eye witness was father of the deceased – He clearly described the way in which accused attacked the deceased causing fatal head injury – He was found to be a wholly trustworthy natural witness of the incident – Factors such as he was walking a meter ahead of the deceased, therefore cannot say that accused hit the deceased or that he did not suffer any injury – Held, meritless.

(ii) Appreciation of evidence – Duty of Court – Court should not adopt hypertechnical approach, but should look at the broader probabilities of the case – Entire evidence should not be rejected on the basis of minor contradictions – There may be gap of years between the date of incident and date of evidence in criminal cases – Certain contradictions may appear in testimony of even truthful witnesses due to their capacity to remember and reproduce the minor details – Discrepancies and contradictions which do not go to the root of the matter should not be given credence.

(iii) Appeal against acquittal – Power of appellate Court – Held, is same as that in appeal against conviction – Except that the presumption of innocence is in favour of the accused and is strengthened by the order of acquittal – Appellate Court may interfere when appreciation of evidence is based on erroneous considerations and there is manifest illegality in the conclusion arrived by the trial Court.

दण प्रक्रिया संहिता, 1973 - **धाराएं** 378 **एवं** 386

साक्ष्य का मूल्यांकन:

आपराधिक प्रथा:

(i) साक्षी - संबंधी साक्षी - विश्वसनीयता - विधि में ऐसी कोई प्रतिपादना नहीं है कि संबंधियों को असत्य साक्षी ही माना जाए - इस बात के कारण दर्शाए जाने चाहिए कि संबंधियों के पास वास्तविक अपराधी को बचाने एवं अभियुक्त को मिथ्या अलिप्त करने का हेतुक था - जहां चक्षुदर्शी साक्षी की अभिसाक्ष्य विश्वसनीय प्रकट होती हो वहां उस पर विश्वास किया जाना चाहिए भले ही साक्षी पीड़ित व्यक्ति का निकट संबंधी हो - एकमात्र चक्षुदर्शी साक्षी मृतक का पिता

था - उसने अभियुक्त द्वारा मृतक पर प्रहार करने की प्रविधि और सिर पर प्राणघातक चोट कारित करने का स्पष्ट वर्णन किया था - वह घटना का पूर्णतः विश्वसनीय एवं स्वाभाविक साक्षी पाया गया - ऐसे तथ्य कि चक्षुदर्शी साक्षी मृतक से एक मीटर आगे चल रहा था अतः नहीं बता सकता है कि अभियुक्त ने ही मृतक पर प्रहार किया था अथवा उसे घटना में कोई चोट नहीं आई थी - अभिनिर्धारित, प्रभावहीन।

(ii) साक्ष्य का मूल्यांकन - न्यायालय का कर्तव्य - न्यायालय को अति-तकनीकी दृष्टिकोण नहीं अपनाना चाहिए अपितु मामले की व्यापक संभाव्यताओं पर विचार करना चाहिए - लघु विरोधाभासों के आधार पर संपूर्ण साक्ष्य को ही अस्वीकार नहीं कर देना चाहिए - आपराधिक मामलों में घटना की तिथि एवं न्यायालय में साक्ष्य होने के मध्य वर्षों का अंतर हो सकता है - अतः सत्यनिष्ठ साक्षियों की अभिसाक्ष्य में भी कुछ विरोधाभास उनकी स्मरण शक्ति एवं सूक्ष्म विवरणों को पुनः प्रकट करने की क्षमता के कारण आ सकते हैं - ऐसी विसंगति एवं विरोधाभास जो मामले के गुणदोष पर प्रभाव नहीं □ालती हैं, उन्हें महत्व नहीं देना चाहिए।

(iii) दोषमुक्ति के विरूद्ध अपील - अपीलीय न्यायालय की शक्ति - अभिनिर्धारित, वही है जो दोषसिद्धि के विरूद्ध अपील में होती है - सिवाय इसके कि निर्दोषिता की उपधारणा अभियुक्त के पक्ष में होती है और दोषमुक्ति के आदेश से और अधिक सुदृढ़ हो जाती है - अपीलीय न्यायालय तब हस्तक्षेप कर सकता है जब साक्ष्य का मूल्यांकन अशुद्ध आधारों पर किया गया हो और विचारण न्यायालय के निष्कर्ष में सुस्पष्ट अवैधता हो।

Khurshid Ahmed v. State of Jammu and Kashmir

Judgment dated 15.05.2018 passed by the Supreme Court in Criminal Appeal No. 872 of 2015, reported in (2018) 7 SCC 429

Relevant extracts from the judgment:

The learned senior counsel submits that in the present case, according to the prosecution, Sajad Ahmed, father of the deceased (PW9) was the only person who was present at the scene of offence at the time of occurrence. The entire case, therefore, depends on the veracity of his evidence. PW9, being father of the deceased, the appellant-accused had naturally made the allegation that he is an interested witness and therefore his evidence is not reliable. We are not able to appreciate such contentions. This Court considered the aspect of truthfulness of an interested witness in several cases. In ***Dalip Singh & ors. v. State of Punjab, (1954) 1 SCR 145,*** it is observed:

> "Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that here is a tendency to drag in an innocent

person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth".

In ***Masalti v. State of U.P., (1964) 8 SCR 133,*** this Court observed:

"There is no doubt that when a criminal Court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal Courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice".

There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused [See : ***Harbans Kaur & anr. v. State of Haryana, 2005 CrLJ 2199***].

If the evidence of an eye witness, though a close relative of the victim, inspires confidence, it must be relied upon without seeking corroboration with minute material particulars. It is no doubt true that the Courts must be cautious while considering the evidence of interested witnesses.

In his evidence, the description of the incident by PW9 clearly portrays the way in which the accused attacked the deceased causing fatal head injury as propounded by the prosecution. The testimony of the father of deceased (PW9) must be appreciated in the background of the entire case.

In our opinion, the testimony of PW9 inspires confidence, and the chain of events and the circumstantial evidence thereof completely supports his statements which in turn strengthens the prosecution case with no manner of doubt. We have no hesitation to believe that PW9 is a 'natural' witness to the incident. On a careful scrutiny, we find his evidence to be intrinsically reliable and wholly trust worthy.

x x x

The argument that the evidence of PW9 cannot be weighed with as he was walking one meter ahead of the deceased at the time of incident and he cannot say that it was accused who hit the deceased with iron rod, does not sound correct and it cannot be given any weight considering the circumstance as a whole. It was also contested that the eye witness did not suffer any injury. It is not necessary that to prove an offence, every eyewitness who had seen the accused hitting the victim should also receive injuries. Such contentions are meritless and do not fall for consideration.

When analyzing the evidence available on record, Court should not adopt hypertechnical approach but should look at the broader probabilities of the case. Basing on the minor contradictions, the Court should not reject the evidence in its entirety. Sometimes, even in the evidence of truthful witness, there may appear certain contradictions basing on their capacity to remember and reproduce the minute details. Particularly in the criminal cases, from the date of incident till the day they give evidence in the Court, there may be gap of years. Hence the Courts have to take all these aspects into consideration and weigh the evidence. The discrepancies and contradictions which do not go to the root of the matter, credence shall not be given to them. In any event, the paramount consideration of the Court must be to do substantial justice. We feel that the trial Court has adopted an hyper technical approach which resulted in the acquittal of the accused.

x x x

The learned counsel strenuously submitted that in an appeal against acquittal, the scope of interference by the appellate Court is very narrow and the High Court erred in interfering with the well considered judgment of acquittal. It is appropriate to refer ***Padam Singh v. State of U.P., (2000) 1 SCC 621,*** in which while explaining the duty of the appellate court, this Court has expressed thus:

> "It is the duty of an appellate Court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate Court in drawing inference from proved and admitted facts. It must be remembered that the appellate Court, like the trial Court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final Court of Appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial Court."

The power of the appellate Court in an appeal against acquittal is the same as that of an appeal against conviction. But, in an appeal against acquittal, the Court has to bear in mind that the presumption of innocence is in favour of the accused and it is strengthened by the order of acquittal. At the same time, appellate Court will not interfere with the order of acquittal mainly because two views are possible, but only when the High Court feels that the appreciation of evidence is based on erroneous considerations and when there is manifest illegality in the conclusion arrived at by the trial Court. In the present case, there was manifest irregularity in the appreciation of evidence by the trial Court. The High Court based on sound principles of criminal jurisprudence, has interfered with the judgment of acquittal passed by the trial Court and convicted the accused as the prosecution was successful in proving the guilt of the accused beyond reasonable doubt.

•

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

Criminal revision – Procedure – The word "other person" used in Section 401 (2) Cr.P.C. includes the complainant/informant – A revision petition should not be allowed without impleading the complainant as respondent and without affording the complainant an opportunity of being heard.

दण्ड प्रक्रिया संहिता 1973 - **धाराएं** 397 **एवं** 401

आपराधिक पुनरीक्षण - प्रक्रिया - धारा 401 (2) दं.प्र.सं में प्रयुक्त पद ''अन्य व्यक्ति'' में परिवादी/सूचनाकर्ता भी सम्मिलित है - पुनरीक्षण याचिका बिना परिवादी को प्रत्यर्थी के रूप में संयोजित किए एवं बिना उसे सुनवाई का अवसर दिए स्वीकार नहीं की जानी चाहिए।

Gyan Singh v. State of M.P. and anr.

Judgment dated 28.02.2017 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1215 of 2015, reported in 2018 (2) ANJ (MP) 173

•

***222. EVIDENCE ACT, 1872 – Sections 3 and 106**

INDIAN PENAL CODE, 1860 – Section 302

Circumstantial evidence – Death of the deceased at the house of in-laws – Demand of dowry established – Death due to seven gun shots making the defence of suicide totally improbable – Defence of suicide not supported by medical evidence – False statement of the accused before police as to suicide while lodging FIR of incident – Absence of any explanation during statements under Section 313 Cr.P.C. – Sufficient links to complete chain of circumstantial evidence – Conviction upheld.

साक्ष्य अधिनियम, 1872 - **धाराएं** 3 **एवं** 106

भारतीय दण॰ संहिता, 1860 - **धारा** 302

पारिस्थितिक साक्ष्य - मृतक की उसके ससुराल गृह पर मृत्यु - दहेज की माँग किया जाना स्थापित - बंदूक की सात गोलियाँ लगने से मृत्यु जो कि आत्महत्या की प्रतिरक्षा को पूर्णतः अंसभाव्य बनाती है - आत्महत्या की प्रतिरक्षा चिकित्सीय साक्ष्य द्वारा समर्थित नहीं - अभियुक्त द्वारा घटना के संबंध में प्रथम सूचना रिपोर्ट दर्ज कराते समय पुलिस के समक्ष आत्महत्या के बारे में मिथ्या कथन - धारा 313 दं.प्र.सं. के अंतर्गत कथन के दौरान किसी भी स्पष्टीकरण का अभाव - पारिस्थितिक साक्ष्य की श्रृंखला को पूर्ण करने के लिये पर्याप्त कड़ियाँ - दोषसिद्धि यथावत।

Chandra Bhawan Singh v. State of Uttar Pradesh

Judgment dated 01.05.2018 passed by the Supreme Court in Criminal Appeal No. 654 of 2018, reported in AIR 2018 SC 2205

•

***223. EVIDENCE ACT, 1872 – Section 32**

Dying declaration, validity of – Whether dying declaration could be rejected merely because the same is not read over to the declarant and the declarant admitting the same to have been correctly recorded? Held, No – Law does not require that the dying declaration must contain an endorsement that it was read over and explained to the declarant, who found it to be true and correct.

साक्ष्य अधिनियम, 1872 - **धारा** 32

मृत्युकालिक कथन की वैधानिकता - क्या मृत्युकालिक कथन मात्र इस आधार पर नामंजूर किया जा सकता है कि उसे कथनकर्ता को पढ़कर नहीं सुनाया गया था और कथनकर्ता ने उसे सही लेखबद्ध किया जाना स्वीकार किया था? अभिनिर्धारित, नहीं - विधि में ऐसी कोई अपेक्षा नहीं है कि मृत्युकालिक कथन में ऐसा पृष्ठांकन होना चाहिए कि इसे कथनकर्ता को पढ़कर सुनाया व समझाया गया था और जिसने इसे सत्य एवं सही होना स्वीकार किया था।

Ganpat Bakaramji Lad v. State of Maharashtra

Judgment dated 09.03.2018 passed by the Bombay High Court in Criminal Appeal No. 186 of 2013, reported in 2018 (2) Crimes 478 (Bom.)

•

224. EVIDENCE ACT, 1872 – Section 68

SUCCESSION ACT, 1925 – Section 63

HINDU LAW :

(i) Joint family property and coparcenary property – distinguished.

(ii) Mode of proving Will – Law reiterated.

साक्ष्य अधिनियम, 1872 - **धारा** 68

उत्तराधिकार अधिनियम, 1925 - **धारा** 63

हिंदू विधिः

(i) संयुक्त पारिवारिक संपत्ति तथा सहदायिक सम्पत्ति - विभेदित।

(ii) वसीयत को साबित करने की रीति - विधि पुनरोद्धरित।

Vishnushankar (since dead) and ors. v. Girdharilal & ors.

Judgment dated 04.05.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in First Appeal No. 509 of 2002, reported in 2018 (3) MPLJ 201

Relevant extracts from the judgment:

Before expressing the view in the backdrop of the facts, it is expedient to reiterate the principles of law laid down by the Hon'ble Supreme Court in the case of joint family property according to Mithakshara Hindu school is held by the joint Hindu family is held in collective ownership by all the coparceners.

The Hon'ble Supreme Court in the case of ***SBI v. Ghamandi Ram, AIR 1969 SC 1330,*** has observed as under:

> "According to the Mitakshara School of Hindu Law all the property of a Hindu joint family is held in collective ownership by all the coparceners in a quasi-corporate capacity. The textual authority of the Mitakshara lays down in express terms that the joint family property is held in trust for the joint Hindu family members then living and thereafter to be born (see Mitakshara, Chapter I, pp.1-27). The incidents of coparcenership under the Mitakshara Law are: first, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person; .....

Relying upon the aforesaid judgment, the Hon'ble Supreme Court in the case of ***Hardeo Rai v. Sakuntala Devi and others, (2008) 7 SCC 46,*** has ruled as under:

> "There exists a distinction between a Mitakashra Coparcenary property and Joint Family property. A Mitakashra Coparcenary carries a definite concept. It is a body of individuals having been created by law unlike a joint family which can be constituted by agreement of the

parties. A Mitakashra Coparcenary is a creature of law. It is, thus, necessary to determine the status of the appellant and his brothers.

For the purpose of assigning one's interest in the property, it was not necessary that partition by metes and bounds amongst the coparceners must take place. When an intention is expressed to partition the coparcenary property, the share of each of the coparceners becomes clear and ascertainable. Once the share of a co-parcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as "joint tenants" but as "tenants in common....."

Under the Mithakshara School of Hindu Law, the lineal male descendants of a person upto the third generation, acquire on birth ownership in the ancestral properties of such person.

Now turning to the facts of the case in hand though the suit house No.44 (boundaries described in paragraph 3A of the plaint), a coparcenary property was originally owned by Shobharam. He had three sons, namely; Bhagirath, Nathulal and Punamchand. Punamchand had two sons, namely; Bherulal and Anokhilal. After death of Punamchand, admittedly; the property was partitioned between Bherulal and Anokhilal by way of family settlement somewhere in the month of May, 1960 followed by written partition on 23/05/1972 (exhibit P/12) and mutated in their names as house No. 44A and 44 in the municipal record, respectively. Therefore, the suit property lost its character after its partition and had become self-acquired property of Bherulal. Further, the plaintiff was not even born at the time of such partition as averred in paragraph 5 of the written statement and not denied by the plaintiff. As such, the finding of the trial Court is in ignorance of the law related to the incidents of coparcenership under the Mitakshara Law referred above. Moreover, the partition of the suit property had already taken place between Bherulal and Anokhilal, therefore, Section 6 of the Act, 1925 as then existed had no application for want of character of the property ceased to be coparcenary property.

The trial Court has also considered part of the suit property; i.e., agricultural land (described in paragraph 3B of the plaint) as joint Hindu family property under the Mitakshara School of Law though the same was acquired by Bherulal by a registered sale deed dated 03/08/1981 (exhibit D/7) from Peeru s/o Gopal, on the premise that the family continued to be joint Hindu family and, therefore, the property so acquired shall be deemed to be joint Hindu family property. This Court disagree with the trial Court as the acquisition of property (paragraph 3B of the plaint) by Bhurelal was after 20 years of cessation of joint Hindu family property. Therefore, it is incorrect to say that the property in paragraph 3B of the plaint (agricultural land) was joint Hindu family property.

x x x

For a valid 'Will' in terms of Section 63 of Succession Act (39 of 1925), it is to be attested by two witnesses. Further, to prove factum of execution of 'will', in terms of Section 68 of the Evidence Act, it is to be proved at least by one of the attesting witnesses.

•

***225. FAMILY COURTS ACT, 1984 – Section 9**

Settlement – Duty of Court, explained – Under Section 9, the Jurisdcition of Court is not just to decide a dispute – But Court also has a duty to involve itself in the process of conciliation/mediation to assist and persuade the parties in arriving at a speedy settlement of disputes – Further, such timely intervention of the Court will not only resolve the disputes and settle the parties peacefully but also prevent sporadic litigations between the parties.

परिवार न्यायालय अधिनिमय, 1984 - **धारा** 9

समझौता - न्यायालय के कर्त्तव्य समझाए गए - धारा 9 के तहत, न्यायालय का क्षेत्राधिकार केवल विवाद का फैसला करना नहीं है - बल्कि न्यायालय का यह भी कर्त्तव्य है कि वह पक्षकारों को विवाद के त्वरित निराकरण में सहायता करने व सहमत करने के लिए सुलह/मध्यस्थता की प्रक्रिया में शामिल हो - आगे, न्यायालय का उचित समय पर हस्तक्षेप न केवल विवादों को सुलझाएगा तथा पक्षकारों को शांतिपूर्वक समझौते तक पहुंचाएगा बल्कि पक्षकारों के मध्य छुटपुट मुकदमेबाजी को भी रोकेगा।

Anu Bhandari v. Pradip Bhandari

Judgment dated 05.03.2018 passed by the Supreme Court in Civil Appeal No. 2494 of 2018, reported in (2018) 6 SCC 389

•

***226.FOREST ACT, 1927 – Section 52**

CRIMINAL PROCEDURE CODE, 1973 – Sections 451 and 457

Release of vehicle by Magistrate – Seizure of vehicle in respect of alleged offence under Forest Act – Initiation of confiscation proceeding under Section 52 of the Act – Once the Magistrate receives information regarding initiation of confiscation proceedings under Section 52(4) of the Act, the Magistrate ceases to have jurisdiction to release the vehicle as per Section 52C of the Act.

वन अधिनियम, 1927 - **धारा** 52

दण प्रक्रिया संहिता, 1973 - **धाराएं** 451 **एवं** 457

मजिस्ट्रेट द्वारा वाहन की निर्मुक्ति - वन अधिनियम के अधीन अभिकथित अपराध के संबंध में वाहन की जप्ती - अधिनियम की धारा 52 के अंतर्गत अधिहरण की कार्यवाही आरंभ करना - जैसे ही मजिस्ट्रेट को अधिनियम की धारा 52 (4) के

अंतर्गत अधिहरण कार्यवाही शुरू किये जाने की सूचना प्राप्त होती है, अधिनियम की धारा 52ग के अनुसार मजिस्ट्रेट की वाहन को निर्मुक्त करने की अधिकारिता समाप्त हो जाती है

Jakir Khan v. State of Madhya Pradesh
Order dated 13.04.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 206 of 2012, reported in 2018 (2) ANJ (MP) 37

•

227. INDIAN PENAL CODE, 1860 – Sections 53, 498A and 306

(i) Abetment of suicide and cruelty – Proof – Wife committed suicide because of husband having illicit relationship with another woman – Despite agreement in Panchayat, husband continued his illicit relation – Held, Husband's illicit relation with another woman and its continuance would have definitely caused psychological imbalance and mental agony to wife inducing her to commit suicide – Conviction under Section 498A and 306 IPC upheld.

(ii) Quantum of Sentence – Deceased wife committed suicide within 4 months of marriage on account of illicit relationship of husband – Held, leniency not required to be shown – Further held, not a fit case for reducing the quantum of sentence of two years and five years awarded respectively under Sections 498A and 306 IPC.

भारतीय दण संहिता, 1860 - **धाराएं** 53, 498**क एवं** 306

(i) आत्महत्या का दुष्प्रेरण व क्रूरता - प्रमाण - पति के अन्य महिला से अवैध संबंध होने के कारण पत्नि ने आत्महत्या की - पंचायत में अनुबंध होने के बावजूद पति ने अवैध संबंध जारी रखे - अभिनिर्धारित, पति के अन्य महिला से अवैध संबंध होने और उसके जारी रखने से पत्नि को निश्चित रूप से मनोवैज्ञानिक असंतुलन व मानसिक त्रास होकर उसे आत्महत्या के लिए उत्प्रेरित किया होगा - धारा 498क व 306 भा.द.सं. के तहत दोषसिद्धि सही ठहराई गई।

(ii) दण की मात्रा - मृतक पत्नी ने विवाह के चार माह के अंदर, पति के अवैध संबंध होने के कारण आत्महत्या कर ली - अभिनिर्धारित, उदारता दिखाया जाना आवश्यक नहीं है - आगे यह भी अभिनिर्धारित कि, धारा 498क व 306 भा.द.सं. के तहत पारित क्रमशः दो वर्ष व पांच वर्ष के दण की मात्रा घटाने का यह उचित मामला नहीं है।

Siddaling v. State, through Kalagi Police Station

Judgment dated 09.08.2018 passed by the Supreme Court in Criminal Appeal No. 1606 of 2009, reported in AIR 2018 SC 3829

Relevant extracts from the judgment:

The facts in a nutshell are as follows. The appellant was having illicit relationship with one woman which fact has been proved by the prosecution by the evidence of PW-1, Shankar s/o Harishchandar, father of the deceased; PW-10, Jamakibai, mother of the deceased; PW-6, Sevu and PW-22, Hemla both brothers of the deceased. The prosecution has additionally adduced the documentary evidence viz. Agreement dated 22nd June, 2002, executed before the Panchayat thus whereof the appellant has admitted to be living with another woman and that was seen by his wife-Kavitha. In the said panchayat it was agreed that the appellant will sever his relation with the said woman and agreed to live with his wife in the house of his wife-Kavitha.

It has been brought in evidence by the evidence of the prosecution witnesses, mentioned above, that the appellant continued his relation with another woman which definitely caused mental agony to his wife-Kavitha.

Mr. Ananthamurthy has submitted that there has to be a ***mens rea*** to commit the offence punishable under Section 306 I.P.C. and that there ought to be active or direct act leading to the deceased to commit suicide, which is lacking in the present case. In support of his contention, learned counsel placed reliance upon judgment of this Court in ***Gurucharan Singh v. State of Punjab, (2017) 1 SCC 433***.

As held in ***Randhir Singh v. State of Punjab, (2004) 13 SCC 129,*** vide para 12, abetment involves a mental process of instigating a person or in any manner aiding that person in doing of the thing. Courts should carefully assess the facts of each case before deciding whether the cruelty meted out to the victim which induces her to commit suicide.

In the case in hand, the witnesses - PW-1, PW-6, PW- 10 and PW-22 have clearly in their statement stated that the appellant continued his relation with another woman. The appellant's illicit relation with another woman would have definitely created the psychological imbalance to the deceased which led her to take the extreme step of committing suicide. It cannot be said that the appellant's act of having illicit relationship with another woman would not have affected to negate the ingredients of Sections 306 I.P.C.

In our considered view, based upon the evidence and also Agreement dated 22nd June, 2002, the High Court has rightly maintained the conviction of the appellant under Sections 498-A and 306 I.P.C.

Insofar as the submission of learned counsel for the appellant, praying for leniency in the quantum of sentence, we are unable to accept the same. Keeping in view the fact that within four months of her marriage, the deceased-Kavitha

has taken the extreme step of putting an end of her life and also within three months of convening the panchayat, the deceased-Kavitha has committed suicide, showing any leniency would be a misplaced one. Considering the facts and circumstances of the present case, in our view, this is not a fit case for reducing the quantum of sentence of the appellant.

•

***228. INDIAN PENAL CODE, 1860 – Sections 228A and 376**

Identity of victim – Rape cases – Held, every attempt should be made not to disclose the identity of victim – The victim was named throughout the judgment of trial court as well as High Court – High Court directed to cause appropriate changes in the record and to issue appropriate directions to the trial courts to comply with Section 228A IPC.

भारतीय दण॰ संहिता, 1860 - **धाराएं** 228**क एवं** 376

पीड़ित की पहचान - बलात्कार के मामलों में - अभिनिर्धारित, पीड़ित की पहचान प्रकट न होने का प्रत्येक प्रयास किया जाना चाहिए - विचारण न्यायालय एवं उच्च न्यायालय के निर्णय में पीड़ित को उसके नाम से संबोधित किया गया था - उच्च न्यायालय को निर्देश दिया गया कि अभिलेख में यथोचित सुधार करें एवं विचारण न्यायालयों को भा.द.सं. की धारा 228ए का अनुपालन करने के यथोचित निर्देश जारी करें।

Lalit Yadav v. State of Chhastisgarh

Judgment dated 05.07.2018 passed by the Supreme Court in SLP (Criminal) No. 18436 of 2015, reported in (2018) 7 SCC 499

•

229. INDIAN PENAL CODE, 1860 – Section 300, Explanation 4 and Section 304, Part II

Murder – Culpable homicide not amounting to murder – Distinguished – Sudden verbal quarrel because of pending civil disputes – No premeditated plan to attack deceased – Deceased not died instantaneously but after sometime due to hemorrhage – Only two simple injuries caused even when attacked by group of accused by weapons – One such injury later turned fatal – Injury of deceased, though not intentional, sufficient to cause death – Held, these circumstances demonstrate that the appellant had no intention to cause death though he had knowledge that the weapon used by him to inflict injury on the scalp of deceased may cause death – Offence does not fall within the scope of Section 300 IPC but falls within Section 304 Part II of IPC.

भारतीय दण□ संहिता, 1860 - **धारा** 300, **स्पष्टीकरण** 4 **एवं धारा** 304, **भाग II**

हत्या - हत्या की कोटि में न आने वाला आपराधिक मानववध - भेद बताया गया - लंबित सिविल विवादों के कारण अचानक मौखिक लड़ाई - मृतक पर हमला करने की पूर्व नियोजित योजना नहीं - मृतक की तुरंत मृत्यु नहीं हुई बल्कि कुछ समय बाद रक्तस्राव के कारण हुई - अभियुक्तगण के समूह द्वारा हथियारों से हमला करने पर भी केवल दो सामान्य चोटें कारित हुईं - बाद में एक चोट घातक साबित हुई - मृतक को कारित चोट, यद्यपि आशयित नहीं, पर मृत्यु कारित करने हेतु पर्याप्त - अभिनिर्धारित, यह परिस्थितियां दर्शित करती हैं कि अपीलार्थी का आशय मृत्यु कारित करना नहीं था यद्यपि उसे ज्ञान था कि मृतक के सिर पर चोट कारित करने हेतु उपयोग में लाया गया हथियार मृत्यु कारित कर सकता है - अपराध धारा 300 भा.द.सं. की परिधि में नहीं आता बल्कि धारा 304 भाग II की परिधि में आता है।

Manoj Kumar v. State of Himachal Pradesh

Judgment dated 15.05.2018 passed by the Supreme Court in Criminal Appeal No. 797 of 2011, reported in 2018 (3) Crimes 1 (SC)

Relevant extracts from the judgment:

Having taken into consideration, the statement of witnesses on questions of fact, it would be appropriate to have thorough look at the question of law pertaining to Culpable Homicide. Learned counsel for the appellants contended that the defense emerging from the evidence is that the deceased party arrived at the place of the incident wherein PW-13 started verbally abusing the accused which ensued a sudden fight resulting in the injuries being caused to the deceased and while so the High Court failed to appreciate that there was no premeditation on behalf of the appellant-accused and the entire incident was due to a sudden fight and the High Court ought to have invoked Exception 4 to Section 300 IPC.

Exception 4 to Section 300 IPC reads as under: Exception 4.-Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

There is no dispute about the ingredients of Exception 4 to Section 300 IPC, the following conditions are to be satisfied namely:

(i) that the incident happened without premeditation;
(ii) in a sudden fight;
(iii) in the heat of passion;
(iv) upon a sudden quarrel and

(v) without the offender having taken undue advantage or acted in a cruel or unusual manner.

It may be relevant to note that in the case of ***Sridhar Bhuyan v. State of Orissa, (2004) 11 SCC 395,*** it was held as under-

For bringing in operation of Exception 4 to Section 300 Indian Penal Code, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The fourth exception of Section 300 Indian Penal Code covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused: (a) without premeditation; (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the "fight" occurring in Exception 4 to Section 300 Indian Penal Code is not defined in Indian Penal Code. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a

question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression "undue advantage" as used in the provision means "unfair advantage".

Thus, the totality of circumstances of the case on hand would amply show that there was a sudden verbal quarrel and evidently there was no pre-meditated plan to attack the deceased. In view of the civil disputes already pending between both the families, a minor verbal exchange bloated into a sudden physical attack.

In ***Camilo Vaz v. State of Goa, (2000) 9 SCC 1,*** referring to the ambit of Section 304 of the Code, this Court in similar set of circumstances held thus:

> "This section is in two parts. If analysed the section provides for two kinds of punishment to two different situations. (1) if the act by which death is caused is done with the intention of causing death or causing such bodily injury as is likely to cause death. Here important ingredient is the "intention"; (2) if the act is done with knowledge that it is likely to cause death but without any intention to cause death or such bodily injury as is likely to cause death. When a person hits another with a danda on vital part of the body with such a force that the person hit meets his death, knowledge has to be imputed to the accused. In that situation, case will fall in part II of Section 304 IPC as in the present case."

Again, this Court in ***Deo Nath Rai v. State of Bihar and others etc, AIR 2017 SC 5428,*** observed-

> "Looking to the totality of the facts and circumstances of the case and the evidence on record, it is clear that it was only the accused - Parsuram Rai who had assaulted Mohan Rai with the help of sword, whose assault resulted in grievous injury, and the deceased Mohan Rai ultimately succumbed to the said injury during the course of transit to the hospital.
>
> The incident had taken place when the deceased was returning from the disputed land and the accused persons were busy in the adjacent field transplanting paddy seedlings from where they saw Mohan Rai crossing their land. There was no premeditation of any kind on the part of the accused to commit the murder of the deceased. However, the eye witnesses have deposed that accused - Wakil Rai came and started quarreling with Mohan Rai when

other family members also joined. The quarrel not only suddenly erupted but also escalated without any premeditation. As rightly concluded by the High Court, the whole incident was spontaneous and went out of hand that too within short spell of time.

In the facts and circumstances of the case, though the High Court was justified in altering the conviction of the accused from Section 302 and 302/149 IPC to Section 304 Part-II IPC, it was not justified in imposing lesser sentence on the accused..."

It is important to have a look at the evidence of PW 5-Dr. Arvind Kanwar who has conducted Post mortem and according to him there was an incised wound on the right parietal region of size 4" and 10" above right ear and another incised wound of 1" in size on the right index finger. He has deposed that "the brain was found congested, yet no fracture was seen on the scalp". Though in the cross examination he has stated at one place that the injury No. 2 on the scalp might be 'grievous' that caused brain hemorrhage. This particular fact is not noted in the postmortem report. Regarding the cause of such injury, PW5 stated that it can be caused by striking with sharp edged object and the depth of the scalp injury depends upon the force and speed. He maintains the stand that it was a 'scalp injury' and not 'skull injury'. Moreover, he did not measure the depth of the head injury which was necessary for classification of injury.

We may note that the injury to the head resulted in Extra-Dural and Sub-Dural Hematoma. We are conscious of the fact that such symptoms of the same may take some hours to develop in many cases as has happened in this case at hand. [Modi, A Textbook of Medical Jurisprudence and toxicology, 25th Eds., p.701].We are also apprised that in such cases a detailed post-mortem may be necessary and it is important to know the existence of prior medical history and condition. In this case a generalized statement by the Doctor conducting the post-mortem that he had causally enquired about any existing medical condition with the deceased. It may further be relevant to note the extract from the Modi, A Textbook of Medical Jurisprudence and Toxicology, wherein it is noted that- It must be born in mind that a slight injury on the head may cause cerebral hemorrhage in person previously predisposed to it from age or disease. [Id. At 704].

The above opinion goes to show that the injury no. 2 on the scalp resulted in hemorrhage which has not been duly accounted for. Moreover, the force and gravity of assault indicates that the aforesaid assault was carried out with only sufficient knowledge of likely death of the deceased in a free fight situation. Had he got intention to commit the murder of the deceased by inflicting such injury, he might have used the weapon with sufficient force and in that case, definitely

it would have caused a deep injury causing fracture of skull. This Court is bound to show some deference to this particular aspect while evaluating the facts and circumstances of this case at hand.

In the case on hand, the death is not instantaneous, but the deceased died after sometime, due to hemorrhage. When several persons of the accused group wielding weapons attacked the deceased, it is surprising to see only two injuries, that too, two simple injuries alone are inflicted; of course, one such simple injury turns out to be fatal sometime later. This circumstance demonstrates that the appellant had no intention to cause death, though he has knowledge that the weapon used by him to inflict injury on the scalp of the deceased may cause death. But in the absence of intention to cause death or to cause such bodily injury as is likely to cause death, the offence does not fall within the scope of Section 300, IPC but it will fall within Section 304, Part II of the IPC.

•

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

Abetment of suicide – Offence made only when situation is made deliberately to drive a person to commit suicide – Government servant committed suicide – Allegation that mental torture by withholding salary, threat to stop increment and excessive work load on deceased by superior officer – Held, assigning of work to junior or withholding his salary by superior officer may call for in work exigencies – Absence of suicide note is also a factor to be considered – Requirements of Section 306 not satisfied.

भारतीय दण संहिता, 1860 - धारा 306

आत्महत्या का दुष्प्रेरण - अपराध तभी गठित होगा जब जानबूझकर ऐसी परिस्थितियां निर्मित की गई हों कि कोई व्यक्ति आत्महत्या कर ले - शासकीय सेवक ने आत्महत्या की - वरिष्ठ अधिकारी पर मृतक के साथ वेतन रोककर, वेतनवृद्धि रोकने की धमकी देकर एवं कार्य का अत्यधिक बोझ लादकर मानसिक यंत्रणा का आक्षेप - अभिनिर्धारित, वरिष्ठ अधिकारी के द्वारा कनिष्ठ को कार्य सौंपना अथवा उसका वेतन रोकना कार्य की अनिवार्यता हो सकती है - आत्महत्या करने वाले के द्वारा कोई नोट न छोड़ने का तथ्य भी महत्वपूर्ण है - अतः धारा **306** की अपेक्षायें पूरी नहीं होती हैं।

Vaijnath Kondiba Khandke v. State of Maharashtra

Judgment dated 17.05.2018 passed by the Supreme Court in Criminal Appeal No. 765 of 2018, reported in AIR 2018 SC 2659

•

231. INDIAN PENAL CODE, 1860 – Section 325

Punishment – Imposition of jail sentence and fine both are mandatory once the accused is held guilty for the offence punishable under Section 325 IPC – Either the award of jail sentence awarded by the Sessions Court be upheld or the jail sentence be reduced to any reasonable term – No jurisdiction to fully set aside the jail sentence and substitute it by imposing only fine of ` 10000/-.

भारतीय दण संहिता, 1860 - **धारा** 325

दण - एक बार अभियुक्त को धारा 325 भा.दं.सं के अधीन दणनीय अपराध में दोषी पाने पर, कारावास का दण व जुर्माना, दोनों अधिरोपित करना आज्ञापक है - सेशन न्यायालय द्वारा अधिरोपित कारावास के दण को या तो पुष्ट करना चाहिए या कारावास के दण को किसी समुचित अवधि के लिए घटाना चाहिए - कारावास के दण को पूर्णतः अपास्त करने और उसे ₹ 10000/- के जुर्माना मात्र से प्रतिस्थापित करने की अधिकारिता नहीं है।

State of Uttar Pradesh v. Tribhuwan and ors.

Judgment dated 06.11.17 passed by the Supreme Court in Criminal Appeal No. 2437 of 2010, reported in 2018 (1) ANJ (SC) 159

Relevant extracts from the judgment:

So far as Section 325 IPC is concerned, its reading would show that once the accused is held guilty of commission of offence punishable under Section 325 IPC, then imposition of jail sentence and fine on the accused is mandatory. In other words, the award of punishment would include both, i.e. jail sentence and fine. So far as jail sentence is concerned, it may extend upto 7 years as per Court's discretion whereas so far as fine amount is concerned, its quantum would also depend upon the Court's discretion.

x x x

In our considered opinion, the High Court was, therefore, not right in setting aside the entire jail sentence of respondent No. 1 while upholding his conviction under Section 325 IPC. The High Court, in our view, ought to have either upheld the award of jail sentence of four years awarded by the Sessions Court or reduce the jail sentence to any reasonable term but it had no jurisdiction to fully set aside the jail sentence and substitute it by imposing only fine of Rs. 10000/-.

•

***232. INDIAN PENAL CODE, 1860 – Sections 375 and 376D**

CRIMINAL PRACTICE :

(i) Age of prosecutrix – Determination of – Prosecutrix alleged to be of 16 years of age at the time of incident – Original matriculation certificate and school leaving certificate were

seized but were left with the victim keeping the photocopies – Original documents were not produced and proved during trial – Neither prosecutrix nor her mother could state the date of birth of prosecutrix in their deposition – Prosecution also failed to produce and prove the school admission register and to examine the Headmaster of the school – There was no horoscope nor any birth certificate of the prosecutrix – Held, there is no clinching oral or documentary evidence to prove the age of prosecutrix to be below 18 years.

(ii) Age of prosecutrix – Determination of – Medical evidence on the basis of physical, dental and radiological examination suggest the age of victim to be of 15 to 17 years of age at the time of examination – The margin of error in age ascertained by radiological examination is two years on either side, has been judicially recognized – Held, the medical evidence could not have been the determinative factor that the victim was aged about sixteen years.

भारतीय दण संहिता, 1860 - धाराएं 375 एवं 376घ

आपराधिक प्रथा:

(i) अभियोक्त्री की आयु का निर्धारण - अभियोक्त्री घटना के समय कथित रूप से **16** वर्ष की बताई गई - मूल मैट्रिक प्रमाणपत्र एवं स्थानांतरण प्रमाणपत्र जप्त किए गए थे परंतु उनकी फोटो कॉपी रखकर मूल अभियोक्त्री को ही वापस कर दिए गए - विचारण के दौरान मूल दस्तावेज प्रस्तुत कर प्रमाणित नहीं किए गए - न तो अभियोक्त्री और न ही उसकी मां अपनी अभिसाक्ष्य में अभियोक्त्री की जन्म तिथि बता सकी थीं - अभियोजन विद्यालय प्रवेश पंजी को प्रस्तुत कर प्रमाणित करने एवं प्रधानाध्यापक को परीक्षित कराने में भी विफल रहा - अभियोक्त्री का न तो जन्म प्रमाणपत्र था और न ही जन्म पत्रिका - अभिनिर्धारित, कोई भी विश्वसनीय मौखिक अथवा दस्तावेजी साक्ष्य नहीं है जो अभियोक्त्री की आयु घटना के समय **18** वर्ष से कम होना प्रमाणित करे।

(ii) अभियोक्त्री की आयु का निर्धारण - भौतिक, दन्त एवं रेयोलॉजिकल परीक्षण के आधार पर चिकित्सीय अभिमत यह था कि परीक्षण के समय अभियोक्त्री की आयु **15** से **17** वर्ष के मध्य थी - रेयोलॉजिकल परीक्षण के द्वारा आंकलित आयु में गलती की संभावना, अधिक व कम, दो वर्ष होना न्यायिक रूप से स्वीकार्य है - अभिनिर्धारित, चिकित्सीय अभिमत अभियोक्त्री की आयु लगभग **16** वर्ष होने का निश्चायक नहीं हो सकता है।

Litu Behera alias Jaga v. State of Orissa

Judgment dated 06.01.2018 passed by the Orissa High Court in JCRLA No. 71 of 2015, reported in 2018 Cri.L.J. (NOC) 72 (Ori.)

•

***233. INDIAN PENAL CODE, 1860 – Sections 415 and 420**

Cheating – Intention to deceive – Dispute as to booking of travel tour – Allegations that subsequently extra charges were demanded – Denial to return advance money by the accused on cancelling tour – Extra charges demanded were negligible – Held, every violation of term of contract is not cheating – No indication of intent to cheat from inception – Dispute of predominantly civil nature – Charges quashed.

भारतीय दण संहिता, 1860 - **धाराएं** 415 **एवं** 420

छल - प्रवंचना का आशय - ट्रेवल टूर को आरक्षित किये जाने के संबंध में विवाद - यह अभिकथन कि पश्चात् में अतिरिक्त प्रभार की माँग की गई - यात्रा रद्द करने पर अभियुक्त द्वारा अग्रिम जमा को लौटाने से इंकार किया गया - माँगे गये अतिरिक्त प्रभार नगण्य थे - अभिनिर्धारित, संविदा के निबंधनों का प्रत्येक उल्लंघन छल नहीं है - प्रारंभ से छल करने के आशय का कोई संकेत नहीं - विवाद मुख्य रूप से सिविल प्रकृति का है - आरोप अभिखण्डित किये गये।

Akhil Mishra v. State of Madhya Pradesh

Order dated 11.04.2018 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 510 of 2017, reported in 2018 Law Suit (MP) 470

•

234. INDIAN PENAL CODE, 1860 – Sections 463, 464 and 465

Forgery – Essential ingredients enunciated – Charge of forgery – Making of false document is mandatory to bring home charge of forgery – It is different from causing it to be made – Ingredients of both Sections 463 and 464 must be satisfied to prove forgery – Document forged by some imposter – Accused merely acted upon such document – Held, offence of forgery not made out.

भारतीय दण संहिता, 1860 - **धाराएं** 463, 464 **एवं** 465

कूटरचना - आवश्यक तत्व उल्लेखित किए गए - कूटरचना का आरोप - मिथ्या दस्तावेज रचना कूटरचना का आरोप प्रमाणित करने के लिए आज्ञापक है - मिथ्या दस्तावेज रचने देने से भिन्न है - कूटरचना साबित करने के लिए धारा 463 व 464 दोनों के तत्व प्रमाणित करना आवश्यक है - किसी प्रतिस्थापक द्वारा दस्तावेज की कूटरचना की गई - अभियुक्त ने मात्र ऐसे दस्तावेज का उपयोग किया था - अभिनिर्धारित, कूटरचना का अपराध प्रमाणित नहीं होता है।

Sheila Sebastian v. R. Jawaharaj & anr.

Judgment dated 11.05.2018 passed by the Supreme Court in Criminal Appeal No. 359 of 2010, reported in 2018 (2) Crimes 449 (SC)

Relevant extracts from the judgment:

Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial Court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.

•

***235. INDIAN PENAL CODE, 1860 – Section 498-A**

EVIDENCE ACT, 1872 – Sections 6 and 32 (1)

Appreciation of evidence – Cruelty – Evidence regarding what deceased told as to harassment by accused has no connection with any circumstances of transaction which resulted in her death – Such evidence is not admissible u/s 32(1) as well as u/s 6 of the Evidence Act – For an offence u/s 498A, IPC, question of death of deceased cannot be an issue for consideration. (*Inderpal v. State of MP, (2001) 10 SCC 736* and *Bhairon Singh v. State of MP, AIR 2009 SC 2603* followed)

भारतीय दण संहिता, 1860 - **धारा** 498-**क**

साक्ष्य अधिनियम, 1872 - **धाराएं** 6 **एवं** 32 (1)

साक्ष्य का मूल्यांकन - क्रूरता - मृतक ने अभियुक्त द्वारा उत्पीड़न के बारे में जो कहा उससे संबंधित साक्ष्य का उस संव्यवहार की परिस्थिति, जिसके परिणामस्वरूप उसकी मृत्यु हुई, किसी भी प्रकार का संबंध नहीं है - ऐसी साक्ष्य न तो साक्ष्य

अधिनियम की धारा 32(1) और न ही धारा 6 के अंतर्गत ग्राह्य है - धारा 498-क भा.दं.सं. के अंतर्गत अपराध हेतु मृतक की मृत्यु का प्रश्न विचार का बिंदु नहीं है। (***इन्द्रपाल वि. म.प्र. राज्य, (2001) 10 एससीसी 736*** एवं ***भैरों सिंह वि. म.प्र. राज्य, एआईआर 2009 एससी 2603*** अवलंबित)

Rajesh v. State of Madhya Pradesh

Judgment dated 31.01.2018 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2262 of 2009, reported in ILR (2018) MP 591

•

***236. LAND ACQUISITION ACT, 1894 – Sections 18 and 23**

Determination of compensation – Computation – Factors to be considered – Post acquisition sale statistics cannot be relied upon – Land situated at 5 kms from town – Town has agricultural produce market – Major part of land is irrigated as per report of Tehsildar – Cogent evidence of 300-325 orange trees of 4 to 5 years old on the land – Generally orange trees start yeilding fruits from fifth year – Crops are also grown over land – Babul trees, underground pipelines and barbed fencing on the land – Held, there was sufficient agricultural income from the land – Claimant is entitled to compensation for land, orange trees and babul trees, underground pipelines and barbed fencing apart from solatium and interest.

भू-अर्जन अधिनियम, 1894 - **धाराएं** 18 **एवं** 23

प्रतिकर का निर्धारण - गणना - विचार में लेने योग्य कारक - अर्जन के पश्चात् के विक्रय संबंधी आंकड़ों पर विश्वास नहीं किया जा सकता है - अर्जित भूमि कस्बे से पांच किलोमीटर दूर है - कस्बा कृषि उत्पादों का बाजार है - तहसीलदार के प्रतिवेदन अनुसार भूमि का अधिकांश भाग सिंचित था - भूमि पर 4 से 5 वर्ष पुराने 300-325 संतरे के पौधे होने की विश्वसनीय साक्ष्य - सामान्यतया संतरे के पौधे पांचवें वर्ष से फल देने लगते हैं - भूमि पर फसल भी लगाई जाती हैं - उस पर बबूल के पेड़, भूमिगत पाइप लाइन एवं कंटीली बाड़ - अभिनिर्धारित, भूमि पर्याप्त कृषि आय देने वाली थी - दावाकर्ता अर्जित भूमि, संतरे के पौधों, बबूल के पेड़ों, भूमिगत पाइप लाइन एवं कंटीली बाड़ के लिए प्रतिकर के साथ-साथ तोषण एवं ब्याज प्राप्त करने का भी अधिकारी है।

Bilquis v. State of Maharashtra

Judgment dated 11.05.2018 passed by the Supreme Court in Civil Appeal No. 5008 of 2018, reported in (2018) 7 SCC 530

•

237. LAND ACQUISITION ACT, 1894 – Sections 18 and 23

(i) Determination of compensation – Principles of computation – Determining compensation without considering the evidence on record – Held, is not proper – Each case must be examined on its own facts – Transaction or acquisition over five years before the present acquisition is unreliable standard – Recent sale deeds of lands in close proximity of the acquired land are most important piece of evidence – Must be considered while determining fair market value of the land.

(ii) Fair market value – Onus to prove – Is upon the claimants – This onus may be discharged by proving sale instances or other evidences – After initial discharge of this burden, onus shifts on the State to justify the award.

भू-अर्जन अधिनियम, 1894 - **धाराएं** 18 **एवं** 23

(i) प्रतिकर का निर्धारण - गणना के सिद्धांत - अभिलेख पर उपलब्ध साक्ष्य को विचार में लिए बिना प्रतिकर निर्धारित करना - अभिनिर्धारित, उचित नहीं है - प्रत्येक मामला अपने तथ्यों पर परीक्षित किया जाना चाहिए - वर्तमान भू-अर्जन से पांच वर्ष से अधिक पुराना भू-अर्जन अथवा संव्यवहार विश्वसनीय मानक नहीं है - अर्जित भूमि के निकटस्थ भूमि के हाल के विक्रय पत्र अतिमहत्वपूर्ण साक्ष्य हैं - भूमि का उचित बाजार मूल्य निर्धारित करने के लिए इन्हें विचार में लेना चाहिए।

(ii) उचित बाजार मूल्य - प्रमाण-भार - दावाकर्ता पर होता है - यह भार विक्रय पत्रों अथवा अन्य साक्ष्य द्वारा उन्मोचित किया जा सकता है - इस भार के प्रारंभिक उन्मोचन पर, प्रमाण-भार राज्य पर चला जाता है कि अधिनिर्णय को उचित ठहराए।

Loveleen Kumar and ors. v. State of Haryana and ors.

Judgment dated 16.05.2018 passed by the Supreme Court in Civil Appeal No. 5261 of 2018, reported in (2018) 7 SCC 492

Relevant extracts from the judgment:

Having gone through the material on record and after considering the arguments of the advocates, we are of the opinion that the Reference Court, as well as the High Court, have not considered the sale deeds produced on behalf of the State for determination of compensation. A chart of the sale deeds on record filed before us by the learned advocates appearing on behalf of the State reveals ***prima facie*** the value of certain lands involved in those sale deeds. The site plan of the village Hansi depicts such sold patches as being in the middle of the acquired land. The lands in all the sale deeds shown alongside the plan are in close proximity and adjoining to the land acquired under the Section 4 notification of the present case. There is no reason as to why the High

Court, while coming to its conclusion, has not referred to the sale statistics. If the sale statistics are to be ignored, the High Court should have furnished reasons for doing so.

The High Court has mainly relied upon ***Ashrafi v. State of Haryana, (2013) 5 SCC 527,*** for coming to its conclusion. In our considered opinion, the method of granting compensation on the basis of cumulative increase as done was not permissible in the facts of the case, in view of the sale deeds produced. The method of working out compensation without considering the evidence on record cannot be said to be justifiable. The land in ***Ashrafi*** (supra) was acquired in the year 1995 and was very small. It was for a commercial purpose. In the matter on hand, the land was acquired in the year 2005. Thus, there is a gap of about 10 years between the two acquisitions. Relying on such an acquisition of a decade ago may be unsafe.

This Court in the case of ***ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745,*** observed that a transaction or acquisition over five years before the present acquisition is an unreliable standard. It held as follows:

> "Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase."

It is a settled principle of law that the onus to prove entitlement to receive higher compensation is upon the claimants. In ***Basant Kumar v. Union of India, (1996) 11 SCC 542,*** this Court held that the claimants are expected to lead cogent and proper evidence in support of their claim. Onus primarily is on the claimants, which they can discharge while placing and proving on record sale instances

and/or such other evidences as they deem proper, keeping in mind the method of computation for awarding of compensation which they rely upon. In this very case, this Court stated the principles of awarding compensation and placed the matter beyond ambiguity, while also capsulating the factors regulating the discretion of the Court while awarding the compensation. This principle was reiterated by this Court even in ***Gafar v. Moradabad Development Authority, (2007) 7 SCC 614***, and the Court held as under:

> "As held by this Court in various decisions, the burden is on the claimants to establish that the amounts awarded to them by the Land Acquisition Officer are inadequate and that they are entitled to more. That burden had to be discharged by the claimants and only if the initial burden in that behalf was discharged, the burden shifted to the State to justify the award."

Thus, the onus being primarily upon the claimants, they are expected to lead evidence to revert the same, if they so desire. In other words, it cannot be said that there is no onus whatsoever upon the State in such reference proceedings. The Court cannot lose sight of the facts and clear position of documents, that obligation to pay fair compensation is on the State in its absolute terms. Every case has to be examined on its own facts and the Courts are expected to scrutinise the evidence led by the parties in such proceedings.

•

238. LIMITATION ACT, 1963 – Section 27 and Articles 64 and 65

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

(i) Adverse possession – Against State – Cannot be only on account of long possession – There should be *nec vi, nec clam, nec precario* – In absence of pleading as to who the true owner is, there cannot be any adverse possession.

(ii) Adverse possession – Plea cannot be taken as an affirmative action – No declaration can be sought that adverse possession has matured into ownership. (*Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669,* followed)

(iii) Land belonged to State – No need to acquire its own land – Claimants being unauthorised occupants – Held, are not persons interested in the event of acquisition of land – Act of 2013 not applicable.

परिसीमा अधिनियम, 1963 - **धारा** 27 **एवं अनुच्छेद** 64 **व** 65

भू-अर्जन, पुनर्वास और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, 2013

(i) विरोधी आधिपत्य - राज्य के विरुद्ध - मात्र दीर्घ आधिपत्य के आधार पर नहीं हो सकता है - इसके लिए आधिपत्य न तो बलपूर्वक, न ही अनुमति से और न ही छिपाते हुए लिया जाना चाहिए - वास्तविक स्वामी कौन है इस तथ्य के अभिवचन के अभाव में कोई विरोधी आधिपत्य नहीं हो सकता है।

(ii) विरोधी आधिपत्य - इसका अभिवाक् सकारात्मक कार्रवाई के रूप में नहीं लिया जा सकता है - ऐसी घोषणा नहीं मांगी जा सकती है कि विरोधी आधिपत्य स्वामित्व में विकसित हो चुका है। (***गुरुद्वारा साहिब वि. ग्राम पंचायत गांव सिरथला एवं अन्य, (2014) 1 एससीसी 669,*** अनुसरित)

(ii) भूमि राज्य के स्वामित्व की थी - स्वयं की भूमि अभिग्रहित करने की आवश्यकता नहीं है - दावाकर्ता अनाधिकृत आधिपत्यधारी होने से भू-अर्जन की स्थिति में हितबद्ध व्यक्ति नहीं हैं - 2013 का अधिनियम लागू नहीं होता है।

Munawwar Ali v. Union of India

Judgment dated 13.11.2017 passed by the High Court of Madhya Pradesh in Writ Petition No. 8830 of 2017, reported in 2018 (3) MPLJ 360 (DB)

Relevant extracts from the judgment:

The first ingredient of claiming adverse possession is open, continuous and hostile possession to the knowledge of the true owner. The petitioners have not stated as to who the true owner is.

The hostile possession against the State as an owner cannot be simplicitor on account of long possession. Such question has been examined in ***State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652,*** case. In the said case, the plaintiffs claimed adverse possession of the property as it was asserted that they have constructed house in the year 1955. The Supreme Court examined the question of perfection of title by adverse possession and that too in respect of public property. The Court held as under:-

> "So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third party encroacher title where he had none. The decision in ***P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314,*** adverted to the ordinary classical requirement that it should be *nec vi, nec clam, nec precario* that is the possession required must be adequate in continuity, in publicity and in extent to show that it is

possession adverse to the competitor. It was also observed therein that whatever may be the *animus* or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required *animus*. In the decision reported in ***Secy. of State for India in Council v. Debendra Lal Khan, (1933) LR (LXI) I-A. 78 PC,*** strongly relied on for the respondents, the Court laid down further that it is sufficient that the possession be overt and without any attempt at concealment so that the person against whom time is running, ought if he exercises due vigilance, to be aware of what is happening and if the rights of the Crown have been openly usurped it cannot be heard to plead that the fact was not brought to its notice. In ***Annasaheb Bapusaheb Patil & Others v. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs etc., (1995) 2 SCC 543,*** it was observed that a claim of adverse possession being a hostile assertion involving expressly or impliedly in denial of title of the true owner, the burden is always on the person who asserts such a claim to prove by clear and unequivocal evidence that his possession was hostile to the real owner and in deciding such claim, the Courts must have regard to the *animus* of the person doing those acts."

In a converse proposition, in a judgment ***State of Haryana v. Mukesh Kumar and others, (2011) 10 SCC 404,*** the Supreme Court was seized of a matter where the State claimed adverse possession. The Court negated it. The Supreme Court held as under:-

"A person pleading adverse possession has no equities in his favour since he is trying to defeat the rights of the true owner. It is for him to clearly plead and establish all facts necessary to establish adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days the English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission.

In ***Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan, (2009) 16 SCC 517,*** this Court ultimately observed as under:

"Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an

owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation."

x x x

Adverse possession allows a trespasser – a person guilty of a tort, or even a crime, in the eyes of law – to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change."

Thus, the cases where the adverse possession is sought against the State and where the State has sought adverse possession, have been examined in the above mentioned two judgments i.e. Harphool Singh and Mukesh Kumar. In view of the law laid down in aforesaid judgments, we find that the claim of the petitioners to protect their possession is wholly untenable and cannot be sustained in law.

x x x

Still further, no person is entitled to take plea of adverse possession as an affirmative action it has been so held by the Supreme Court in ***Gurdwara Sahib v. Gram Panchayat Village Sirthala and another, (2014) 1 SCC 669.*** It has been further held that a Plaintiff cannot seek a declaration to the effect that such adverse possession has matured into ownership. The relevant extract reads as under:-

"There cannot be any quarrel to this extent that the judgments of the Courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence."

x x x

The Act of 2013 has no applicability to the present case as the State is the owner of the land in question and as an owner, the State will not acquire its own land. The petitioners are unauthorised occupants over such land and therefore, they cannot claim to be the persons interested in the event of acquisition of the land. Thus, the submission of the learned counsel for the petitioners that they cannot be dispossessed as they are in possession of the land and the same has not been acquired in terms of the Act of 2013, is misconceived and is rejected.

•

***239. LIMITATION ACT, 1963 – Articles 64 and 65**

Adverse Possession – Plea of adverse possession against members of family, whether permissible? Held, there can be no adverse possession against the members of family for want of any *animus* amongst them over the land belonging to their family.

परिसीमा अधिनियम, 1963 - **अनुच्छेद** 64 **एवं** 65

विरोधी आधिपत्य - क्या परिवार के सदस्यों के विरूद्ध विरोधी आधिपत्य का अभिवाक् अनुज्ञेय है? अभिनिर्धारित, पारिवारिक सदस्यों के विरूद्ध, उनके मध्य किसी शत्रुभाव के अभाव में, उनकी पारिवारिक भूमि पर विरोधी आधिपत्य नहीं हो सकता है।

Nanjegowda alias Gowda (dead) by L.Rs. and others v. Ramegowda
Judgment dated 04.12.2017 passed by the Supreme Court in Civil Appeal No. 7089 of 2010, reported in 2018 (2) MPLJ 658 (SC)

•

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

Driving licence – Whether a person holding licence to drive a Light Motor Vehicle (LMV) is entitled to drive a Light Commercial/Transport Vehicle (LCV)? Held, Yes – There is no requirement to obtain separate endorsement to drive light transport vehicle. *(Mukund Dewangan v. Oriental Insurance Company Ltd. etc., AIR 2017 SC 3668,* followed).

मोटरयान अधिनियम, 1988 - **धारा** 149 (2) (a) (ii)

चालन अनुज्ञप्ति - क्या हल्का मोटर यान चलाने की अनुज्ञप्ति रखने वाला व्यक्ति हल्का व्यावसायिक/ट्रांसपोर्ट यान चलाने की पात्रता रखता है? अभिनिर्धारित, हां - हल्का व्यावसायिक/ट्रांसपोर्ट यान चलाने के लिए किसी पृथक पृष्ठांकन की आवश्यकता नहीं होती है। (***मुकुन्द देवांगन वि. ओरिएन्टल इन्श्योरेन्स कम्पनी लि., एआईआर*** *2017* ***एससी*** *3668,* अनुसरित)

Kalicharan v. Zaved Khan

Judgment dated 03.08.2017 passed by the High Court of Madhya Pradesh, (Gwalior Bench) in M.A. No. 1275 of 2010, reported in 2018 ACJ 1869

•

***241. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 142**

LIMITATION ACT, 1963 – Section 5

(i) Delay – Condonation – Stage of filing an application u/S 142 Negotiable Instrument Act for condonation of delay – Law reiterated (*Subodh S. Salaskar v. Jayprakash M. Shah & another, (2008) 13 SCC 689,* and *Keshav Chouhan v. Kiran Singh, 2015 (4) MPLJ 230*, relied on).

(ii) Calculation of incorrect period of delay, whether a ground to dismiss an application for condonation of delay u/S 142 of the Act – Held, No.

(iii) Filing of an application under Section 5 Limitation Act in proceeding under N.I. Act, maintainability of – Section 5 of Limitation Act is not applicable to complaint made under Section 138 of N.I. Act – But an application should not be decided on the basis of provision of law mentioned in it, but must be decided on the basis of relief sought by it.

परक्राम्य लिखत अधिनियम, 1881 - **धारा** 142

परिसीमा अधिनियम, 1963 - **धारा** 5

(i) विलम्ब - क्षमा - परक्राम्य लिखत अधिनियम की धारा 142 के अधीन विलंब क्षमा हेतु आवेदन संस्थित करने का प्रक्रम - विधि पुनरोद्धरित (***सुबोध एस. सालस्कर वि. जयप्रकाश एम. शाह और अन्य,*** *(2008) 13* ***एससीसी*** *689* एवं ***केशव चौहान वि. किरन सिंह,*** *2015 (4)* ***एमपीएलजे*** *230,* अवलंबित)

(ii) क्या विलंब परिसीमा की अशुद्ध गणना, अधिनियम की धारा 142 क अधीन विलंब क्षमा हेतु आवेदन की नामंजूरी का आधार हो सकता है?- अभिनिर्धारित, नहीं।

(iii) परक्राम्य लिखत अधिनियम के अधीन कार्यवाही में परिसीमा अधिनियम की धारा 5 के अंतर्गत आवेदन प्रस्तुत किये जाने की पोषणीयता - परिसीमा

अधिनियम की धारा 5 परक्राम्य लिखत अधिनियम की धारा 138 के अधीन किये गये परिवाद पर प्रयोज्य नहीं है - परन्तु किसी आवेदन का निराकरण उसमें उल्लिखित विधि के प्रावधानों के आधार पर न किया जाकर, इसमें प्रार्थित अनुतोष के आधार पर किया जाना चाहिए।

Vinod Chourasiya and another v. R.S. Bhadoriya

Order dated 16.02.2017 passed by the High Court of Madhya Pradesh (Gwalior Bench) in M.Cr.C. No. 7437 of 2016, reported in 2018 (2) ANJ (MP) 1

•

242. PREVENTION OF CORRUPTION ACT, 1988 – Section 17

SPECIAL POLICE ESTABLISHMENT ACT, 1947 (M.P.) – Section 3

Whether the State Special Police Establishment has jurisdiction to investigate offences by Central Government employees under the Prevention of Corruption Act, 1988? Held, Yes – No provision of Madhya Pradesh Special Police Establishment Act, 1947 restricts it to deal with the offence of bribery and corruption by State Government employees only – Therefore, the offence of bribery and corruption against the Central Government employees posted in the State of M.P. can be investigated by the regular police force or State Special Police Establishment.

भ्रष्टाचार निवारण अधिनियम, 1988 - **धारा** 17

विशेष पुलिस स्थापना अधिनियम, 1947 **(म.प्र.)** - **धारा** 3

क्या राज्य विशेष पुलिस स्थापना को भ्रष्टाचार निवारण अधिनियम, 1988 के अधीन केन्द्रीय कर्मचारियों द्वारा कारित अपराधों का अनुसंधान करने की अधिकारिता है? अभिनिर्धारित, हाँ - मध्यप्रदेश विशेष पुलिस स्थापना अधिनियम, 1947 का कोई भी प्रावधान इसे मात्र राज्य सरकार के कर्मचारियों द्वारा किए गए रिश्वत लेने एवं भ्रष्टाचार के अपराधों तक सीमित नहीं करता है - अतः, मध्य प्रदेश मेंं पदस्थ केन्द्रीय कर्मचारियों द्वारा रिश्वत लेने एवं भ्रष्टाचार के अपराध का अनुसंधान स्थानीय पुलिस अथवा राज्य विशेष पुलिस स्थापना द्वारा किया जा सकता है।

Arvind Jain v. State of Madhya Pradesh

Judgment dated 26.10.2017 passed by the High Court of Madhya Pradesh in Criminal Revision No. 544 of 2016, reported in 2018 CriLJ 3059 (MP) (FB)

Relevant extracts from the judgment:

In view of the consideration of Section 3 of M.P. Special Police Establishment Act, 1947 read with the provisions of Section 17 of the Prevention of Corruption Act and also taking into consideration the provisions of Section 156 of the Code of Criminal Procedure, there is no even a slightest indication of any of the

provisions of the Act that it was meant to deal with the offence of bribery and corruption by the State Government employees only and to exclusion of the offences committed by the Central Government employees. No such exclusion is found in the Act either expressly or by implication. The contention that the Delhi Special Police Establishment Act, 1946 confers exclusive jurisdiction on the Special Police force created under the Act to investigate the offences of bribery and corruption committed by the Central Government Employees, is wholly unfounded and misplaced. While Central Act does provide for an agency for investigation of such offences committed by the Central Government employees, there is however, no provision in the Act to exclude jurisdiction of the Police Officer of the various states to investigate the said offences when committed by such employees in their state. The scope of Central Act of 1946 is rather limited in asmuch as it provides for the investigation of such offences when committed by the Central Government employees only. The Special Police Force under this Central Act cannot investigate the offence committed by the State Government employees.

The legal position in the matter is made luculent by the Supreme Court in ***A.C. Sharma v. Delhi Administration, AIR 1973 SC 913,*** wherein almost similar fact situation, the Apex Court held :

> "The setting up of Delhi Special Police Establishment by the Central Government under the D.S.P.E. Act does not by itself deprive the anti-corruption branch (Delhi Administration) of its jurisdiction to investigate the offence of bribery and corruption against Central Government employees in Delhi."

In the conspectus of above discussion, it is held that in view of Section 3 of M.P. Special Police Establishment Act, 1947, the police has jurisdiction to investigate and conduct the trial for the offences under the Prevention of Corruption Act, 1988. The offence of bribery and corruption against the Central Government employees posted in the State of M.P. can be investigated by regular police force or Special Police Establishment.

•

243. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Sections 7 and 13

(i) Whether storage of any adulterated food for the purpose of manufacturing any article of food for sale is storage of adulterated food? Held, Yes – Explanation to Section 7 prohibits storing of adulterated food notwithstanding the fact that such adulterated food is not offered for sale, but is used in making some food which is offered for sale.

(ii) Test report – Variation between report of Public Analyst and Director, Central Food Laboratory – Such variation has no effect – Held, report of Director, CFL supersedes that of Public

Analyst – It annuls and replaces the report of Public Analyst, attains finality and becomes irrebutable.

खाद्य अपमिश्रण निवारण अधिनियम, 1954 - **धाराएं** 7 **एवं** 13

(i) क्या किसी अपमिश्रित खाद्य पदार्थ का भंडारण अन्य खाद्य सामग्री तैयार करके विक्रय करने के उद्देश्य से किया जाना अपमिश्रित खाद्य पदार्थ का भंडारण करना कहा जाएगा? अभिनिर्धारित, हां - धारा 7 का स्पष्टीकरण भी अपमिश्रित खाद्य पदार्थ के भंडारण को निषेधित करता है चाहे ऐसा खाद्य पदार्थ विक्रय न किया जा रहा हो अपितु किसी खाद्य सामग्री को तैयार करने के लिए रखा गया हो जो विक्रय की जाएगी।

(ii) परीक्षण प्रतिवेदन - लोक विश्लेषक एवं संचालक, केन्द्रीय खाद्य प्रयोगशाला के प्रतिवेदन में भिन्नता - ऐसी भिन्नता का कोई प्रभाव नहीं होगा - अभिनिर्धारित, संचालक का प्रतिवेदन लोक विश्लेषक के प्रतिवेदन को अतिष्ठित कर देता है - यह लोक विश्लेषक के प्रतिवेदन को निष्प्रभावी कर उसका स्थान ले लेता है और अंतिम एवं अखण्डनीय होता है।

Delhi Administration v. Vidya Gupta

Judgment dated 24.04.2018 passed by the Supreme Court in Criminal Appeal No. 625 of 2018, reported in 2018 (2) Crimes 436 (SC)

Relevant extracts from the judgment:

The explanation to the Section (Section 7) does not support this contention. It clearly lays down that if a person stores any adulterated food for the purpose of manufacturing from it any article of food for sale, he shall be deemed to store adulterated food. The purpose of this provision is clear, it prohibits the storing of adulterated food notwithstanding the fact that such adulterated food is itself not offered for sale, but is used in making some food which is offered for sale. It is clearly to prevent the adulteration of food and its sale to the public even when it is meant to be used for preparing some other food which is offered for sale. Thus, either way, whether the adulterated food is stored for sale, or if such food is stored for making some other food which is sold, such storing is an offence. Parliament has rightly assumed that no one, who offers food for sale, would store food which is not meant to be used in some food meant for sale.

The learned counsel for the accused relied on the judgement of this Court in ***Municipal Corporation of Delhi v. Laxmi Narain Tandon, (1976) 1 SCC 546.*** In that case, this Court upheld the decision of a full bench of the Delhi High Court which held that the expression "store" in Section 7 means "storing for sale" and consequently the storing of an adulterated article of food not meant for sale would not constitute an offence under Section 16(1)(a). According to the learned counsel, therefore, the High Court was right in maintaining the acquittal of the respondent since the Ghee was found to have been stored not for sale, but for a purpose other than that of sale i.e. for the purpose of preparation of sweets.

Though valid when rendered, the decision relied on can no longer govern the point decided. When this Court decided ***Tandon's case,*** (supra) the section did not explicitly prohibit the storing of adulterated food which was not meant for sale. This Court, therefore, held that storing of adulterated food which was not meant for sale was not an offence. ***Tandon's case,*** (supra) was decided on 17.12.1975; the amendment which introduced the deeming fiction that a person shall be deemed to store any adulterated food, even if he stores such food for manufacturing from it any article for sale was introduced by Act 34 of 1976 w.e.f. 01.04.1976. ***Tandon's case,*** (supra) therefore has no application to the present case.

In the present case, the sample of Ghee that was taken was from the Ghee that was stored for the purpose of making jalebis. On the accused's own admission, the offence is clearly made out under Section 7 of the Act.

x x x

The proviso to sub-Section 5 provides that the certificate from the Director shall be final and conclusive evidence of the facts stated therein.

The above scheme, particularly sub-Section 3 which provides that the certificate of the Director shall supersede the report of the PA and the proviso which makes such a certificate final and conclusive evidence, puts it beyond any shadow of doubt that the report of the PA loses any significance in the proceedings as a piece of evidence.

Therefore, there is no reason for the Court to refer to the contents of the report of the PA. Where there is no reason to refer to its contents of the report of the PA, there is even less reason to refer to the variation between the report of the PA and the Director. The Court is enjoined by law to consider the contents of the certificate of the Director only.

Moreover, this view is no more *res integra* in view of the judgment of this Court in ***Calcutta Municipal Corporation v. Pawan Kumar Saraf and another, (1999) 2 SCC 400.*** This Court held as follows:-

> "Per majority (Thomas and Quadri, JJ.) When Section 13(3) says that the certificate of Director, CFL shall supersede the report, it means that the report would stand annulled or obliterated. The word "supersede" in law means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal". Once the certificate of the Director of the Central Food Laboratory reaches the Court, the report of the Public Analyst stands displaced and what may remain is only a fossil of it. In the above context the proviso to sub-section (5) of Section 13 can also be looked at which deals with the evidentiary value of such certificate. If a fact is declared by a statute as final and conclusive, its impact is

crucial because no party can then give evidence for the purpose of disproving that fact. This is the import of Section 4 of the Evidence Act. Thus the legal impact of a certificate of the Director of the Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned."

The finding of the High Court that the variation between the two reports was 0.76% and therefore more than 0.3% as permitted in ***Ram Singh's, 2009 (2) crimes (HC) 402***, is completely unsustainable and liable to be set aside. The reliance placed by the High Court on the decisions in ***Kanshi Nath v. State, 2005 (2) FAC 219*** and ***State v. Mahender Kumar & ors., 2008 (1) FAC 177,*** which hold that if in the comparison of the reports of the PA and the Director vast variations are found, then the samples are not representative, is improper. Those decisions do not lay down good law. It is thus clear that the accused was not entitled to the acquittal and the acquittal is liable to be set aside. We, therefore, set aside the acquittal of the respondent and convict him for the offence under Section 2 (ia) (a) (c) & (m) of the Act, punishable under Section 16 (1) (a), read with Section 7 of the Act.

•

244. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Sections 8, 10 and 33

EVIDENCE ACT, 1872 – Sections 3 and 118

APPRECIATION OF EVIDENCE :

(i) Evidence of prosecutrix – Child witness of 12 years of age – Truthfulness and verasity – Prosecutrix explained the reprobate conduct of accused (her father) about rubbing his genitals against her anus – This statement remained constant and unwavering during trial – No allegation of penetrative assault, hence, absence of injury is irrelevant – Nature of the act itself excludes the possibility of other witnesses – Prosecutrix had no reason to falsely implicate accused – Non-cordial relation between mother of prosecutrix and accused cannot lead to presumption of tutoring – Statement of prosecutrix found to be trustworthy.

(ii) Identity of victim – POCSO cases – It is the duty of Special Court to ensure that identity of child is not disclosed during the course of investigation or trial – Objectives of the provision, explained – Duties of different stakeholders also explained.

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 - **धाराएं** 8, 10 **एवं** 33

साक्ष्य अधिनियम, 1872 - **धाराएं** 3 **एवं** 118

साक्ष्य का मूल्यांकनः

(i) अभियोक्त्री की साक्ष्य - 12 वर्षीय बाल साक्षी - सत्यता एवं विश्वसनीयता - अभियोक्त्री ने अभियुक्त (अपने पिता) के निंदनीय कृत्य कि उसने अपने गुप्तांग को अभियोक्त्री के गुदाद्वार पर रगड़ा था, स्पष्टतः बताया - यह अभिकथन विचारण के दौरान स्थिर एवं अटल रहा - प्रवेशन हमले का कोई आक्षेप नहीं था, अतः चोट का अभाव असंगत है - अपराध की प्रकृति स्वतः अन्य साक्षियों की संभावना को समाप्त कर देती है - अभियोक्त्री के पास अभियुक्त को मिथ्या आलिप्त करने का कोई कारण नहीं था - अभियोक्त्री की मां एवं अभियुक्त के मध्य सौहार्द्रपूर्ण संबंधों का अभाव सिखाए गए होने की उपधारणा का द्योतक नहीं है - अभियोक्त्री विश्वसनीय साक्षी पाई गई।

(ii) पीड़ित की पहचान - पॉक्सो अधिनियम के मामले - यह विशेष न्यायालय का कर्तव्य है कि संपूर्ण अनुसंधान एवं विचारण के दौरान बालक की पहचान प्रकट न हो - इस प्रावधान के उद्देश्यों की व्याख्या की गई - विभिन्न हितधारकों के कर्त्तव्यों को स्पष्ट किया गया।

Subash Chandra Rai v. State of Sikkim

Judgment dated 31.03.2018 passed by the High Court of Sikkim in Criminal Appeal No. 17 of 2017, reported in 2018 CriLJ 3146 (Sikkim)

Relevant extracts from the judgment:

What emanates from the evidence on record is that apart from the victim, P.W.3 there is no other witness to the sexual assault committed on her. The witness has categorically deposed that when she, her mother and the Appellant were living in Tumin, East Sikkim, the Appellant used to come to her bed, disrobe her and rub his genital on her anus. On his repeating the act several times, she informed her mother, P.W.4 of it, who asked the victim to sleep with her in the Kitchen. The Appellant however was prone to enter the Kitchen during the night and commit the same offence, besides he also showed her videos of naked boys and girls which were stored in his mobile. After they shifted to Mangan, North Sikkim, he continued with the offence, but her mother remained helpless despite knowledge of the perverse acts as she herself used to be physically assaulted by the Appellant. A careful perusal of the cross-examination which the victim was subjected to would reveal that no questions were put to the victim to contradict her evidence pertaining to the act of sexual assault on her. Thus, her evidence regarding the sexual act committed on her by the Appellant remained uncontroverted.

I am not inclined to accept nor appreciate the argument of Learned Counsel for the Appellant that the child was susceptible to tutoring from her mother. The evidence of P.Ws 1, 5 and 6 reveal that besides the child disclosing the incidents of sexual assault to them in the absence of P.W.4, she was resolute in her stand that the Appellant had sexually assaulted her and described the reprobate acts perpetrated on her by him. Merely because P.W.4 was presumably not in a cordial relationship with her husband did not mean that she would have made the victim a bait to bail out of the marriage by accusing him of depraved and degenerate acts. Such accusations could not have assured her of an escape from her marriage without recourse to legal procedure.

The victim herein has no reason to implicate the Appellant and it is but trite to mention that the nature of the act itself would ensure exclusion of other witnesses.

x x x

In the instant matter, I have to note that the Learned Trial Court has been largely circumspect with regard to the identity of the victim during the trial. However, it would be worthwhile to indicate here that Section 33(7) of the POCSO Act enjoins upon the Special Court to ensure that the identity of the child is not disclosed at any time during the course of investigation or trial. The Explanation to the Section elucidates that the identity of the child includes the identity of the child's family, school, relatives, neighbourhood or any other information by which the identity of the child may be revealed. There are a few slip-ups in this regard in the Order of the Learned Trial Court dated 30.08.2016 and the impugned Judgment. Besides ensuring that the Court does not disclose the child's identity, the Learned Special Court is also vested with the responsibility of ensuring that this does not occur during the investigation. In this context, it is for the Learned Special Court to devise methods for such steps. One would find on perusal of the Charge-sheet that the name of the victim, her address and detail of school has been revealed therein flagrantly by the Investigating Agency throwing caution and the mandate of the Statute to the winds. The provisions in law which seek to protect the identity of the child are for the purpose of sheltering her from curiosity and prying eyes which could further traumatize her psychologically creating insecurity and apprehension in the victim's mind. It is also an effort, *inter alia*, to protect her future, to prevent her from being tracked, identified and for warding off unwanted attention and to prevent repetition of such offences on her on the assumption that she is easy prey. The Investigating Agency for their part should ensure that the identity of the victim is protected and not disclosed during investigation or in the Charge-Sheet. A separate File may perhaps be maintained in utmost confidence, for reference, if so required. Statutes have been enacted to protect children of crimes of which the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "Juvenile Justice Act") and POCSO Act are of special relevance. These Acts impose an obligation not only on the Court and

the Police, but also the Media and Society at large to protect children from the exponentially increasing sexual offences against children and to the best of their ability to take steps for prevention of such sexual exploitation of children.

•

***245. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 2(a), 2(f) and 12**

(i) Whether Domestic Violence Act is applicable to divorcee wife, who has been divorced prior to enforcement of the Act? Held, Yes.

(ii) Whether subsistence of marriage is condition precedent for filing an application u/S 12 of the Act – Held, No.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 - **धाराएं** 2(**क**), 2(**च**) **एवं** 12

(i) क्या घरेलू हिंसा अधिनियम ऐसी विवाह विच्छिन्न पत्नी पर भी लागू होता है, जिसका विवाह विच्छेद अधिनियम के लागू होने के पूर्व हो गया है? अभिनिर्धारित, हाँ।

(ii) क्या विवाह का अस्तित्व में रहना अधिनियम की धारा 12 के अंतर्गत आवेदन संस्थित करने की पुरोभाव्य शर्त है? अभिनिर्धारित, नहीं।

Smt. Saban Alias Chand Bai v. Mohd.Talib Ali and anr.

Judgment dated 30.10.2013 passed by the High Court of Rajasthan in Criminal Revision Petition No. 362 of 2011, reported in 2014 CLJ 866, affirmed by the Supreme Court in Special Leave to Appeal (Crl) No (s) 655/2014 dated 10.05.2018.

Relevant extracts from the judgment:

The contours of a domestic relationship, which is a *sine qua non* for definition of "aggrieved person" as laid down in Section 2 (f) make it abundantly clear that the legislature in its wisdom has given a wide definition to domestic relationship to include any relationship between two persons who either live at the present moment or have at any point of time in the past lived together in a shared household. The relationship between the two persons can be by consanguinity, marriage, a relationship in the nature of marriage, adoption or as family members living together as a joint family.

It is pertinent to note that the domestic relationship as envisaged by Section 2 (f) of the Act is not confined to the relationship as husband and wife or a relationship in the nature of marriage, but it includes other relationship as well such as sisters, mother etc. Thus, merely because the husband and wife or a person living in a relationship in the nature of marriage or the two persons living together in any other domestic relationship as envisaged under Section 2 (f) subjected to domestic violence, such a victim of domestic violence shall not

cease to be the “aggrieved person” so as to disentitle her from invoking the provisions of the Act. As a matter of fact, since there cannot be a legal divorce between the persons living in the relationship in the nature of marriage, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act and not to apply the said provisions to the aggrieved person whose marriage stands dissolved by a decree of divorce prior to coming into force of the Act will run contrary to the objects sought to be achieved by the Act. *A fortiorari*, if it was intended by the legislature to provide for the remedy only in respect of the act of domestic violence committed prior to the coming into force of the Act during the subsisting domestic relationship, the expression “have, at any point of time, lived together” was not required to be used in the definition of “domestic relationship” as incorporated under Section 2 (f) of the Act.

The definition of “respondent” incorporated in the Act as aforesaid makes it manifestly clear that a woman victim of domestic violence, an aggrieved person, is entitled to lodge proceedings for various reliefs provided for against the person who is or has been in a domestic relationship with her. That apart, the proviso to Section 2 (q) clarifies that the aggrieved wife or a female living in relationship in the nature of marriage may also file a complaint against the relatives of the husband or the male partner which obviously includes the female members of the husband or male partner’s family. But from the definition in no manner can it be inferred that the existence of subsisting domestic relationship between the aggrieved person and the respondent is condition precedent for invoking the various remedial measures provided under the Act.

x x x

The matter needs to be viewed from yet another angle. Indisputably, so as to make a woman entitled to invoke the jurisdiction of the Court under Section 12 of the Act for the reliefs specified under Section 18 to 23 she must fall within the definition of ‘aggrieved person’ in terms of provisions of Section 2(a) of the Act but then, the particular act of domestic violence pleaded may not have any direct bearing on or nexus with the reliefs which could be granted by the Court under the provisions of the Act. Similarly, the absence of subsisting domestic relationship in no manner prevents the Court from granting certain reliefs specified under the Act. For example, even after dissolution of marriage between the parties, a divorcee husband may attempt to commit the act of violence such as entering the place of employment of the aggrieved person, attempting to communicate in any form with the aggrieved person, cause violence to dependents or other relatives or any person etc. and in that case, the aggrieved person is not precluded from seeking protection orders from the Magistrate as provided for under Section 18 of the Act. Likewise, if the divorcee husband attempts to dispossess the divorcee wife from the shared household or attempt to dispossess the divorcee wife from the property jointly owned, she is not

precluded from invoking the jurisdiction of the Court seeking restrain order under Section 19 of the Act. Besides, even after the dissolution of marriage, if the husband refuses to return to the aggrieved person her `Stridhan' or any other property or valuable security, she is not precluded from invoking the jurisdiction of the Magistrate under Sub-section (8) of Section 19 seeking direction to the respondent husband to return the same. That apart, Section 20 empowers the Magistrate to pass appropriate orders extending monetary relief to the aggrieved person or any child of the aggrieved person to meet the expenses incurred or any losses suffered as a result of domestic violence. Needless to say that even if the domestic violence was committed prior to the coming into force of the Act, the cause of action accrued to the aggrieved person to seek the relief under Section 20 of the Act, may persist. Coming to Section 21 which deals with custody orders of the child or children to the aggrieved person or the person making application on her behalf, obviously presupposes non-existence of the domestic relationship between the parties and therefore, if the interpretation of the provisions sought to be given by the respondent is accepted, the very purpose of incorporating the provisions regarding the custody of the child or children shall render otiose. It is pertinent to note that Section 22 makes the provision for grant of compensation and damages to the aggrieved person for injuries including torture and emotional distress caused by the act of domestic violence by the respondent. As observed hereinabove, any physical or sexual abuse may be the cause of torture and emotional distress and that apart, the emotional abuse may give rise to a recurring cause of action to the aggrieved person, for the reliefs specified and therefore, the actual act of domestic violence being committed before or after the coming into force of the Act and the subsisting domestic relationship between the parties, are hardly of any relevance so far as grant of the relief as specified under Section 22 of the Act is concerned.

x x x

For the aforementioned reasons, we hold that the remedy under Section 12 of the Act covers the act of violence committed even prior to coming into force of the Act and could be taken into consideration by the Magistrate while passing the orders extending the reliefs to the aggrieved person under Sections 18, 19, 20, 21, 22 and 23 of the Act. That apart, it is not necessary that the applicant-woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under Section 12 of the Act before the Magistrate for one or more reliefs as provided for under the Act. In other words, the aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.

•

***246. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13, 17 and 34 CIVIL PROCEDURE CODE, 1908 – Section 9 and Order 7 Rule 11**

Rejection of Plaint – Bar on jurisdiction – Suit for permanent injunction against bank in relation to mortgaged property claiming to be tenant – Proceedings under the Act has already been initiated – New amendment inserted in the year 2016 – Aggrieved tenant may seek relief before Tribunal under Section 17 (4-A) – Jurisdiction of the Civil Court is barred.

प्रतिभूतिकरण और वित्तीय आस्तियों का पुनर्गठन एवं प्रतिभूति हित प्रवर्तन अधिनियम, 2002 - **धाराएं** 13, 17 **एवं** 34

सिविल प्रक्रिया संहिता, 1908 - **धारा** 9 **एवं आदेश** 7 **नियम** 11

वादपत्र का नामंजूर किया जाना - क्षेत्राधिकार का वर्जन - बंधक संपत्ति के संबंध में अभिधारी होने का दावा करते हुए बैंक के विरूद्ध स्थाई व्यादेश हेतु वाद - अधिनियम के अंतर्गत कार्यवाहियाँ पहले ही आरंभ हो गयी थी - नये संशोधन वर्ष 2016 में जोड़े गये - व्यथित अभिधारी धारा 17 (4-क) के अधीन अधिकरण के समक्ष अनुतोष माँग सकता है - सिविल न्यायालय का क्षेत्राधिकार वर्जित है।

Punjab National Bank v. Jainam Dormitary and anr.

Judgment dated 19.06.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 136 of 2018, reported in 2018 Law Suit (MP) 781

•

***247. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 13, 17 and 34 CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11**

Rejection of Plaint – Bar on jurisdiction – Suit for partition of the property in relation to which proceedings under the SARFAESI Act has been initiated – Adequate and efficacious remedy is before Tribunal under Sections 17 and 18 of the SARFAESI Act – Suit is not maintainable. (*Jagdish Singh v. Heeralal and others, (2014) 1 SCC 479*, relied on)

प्रतिभूतिकरण और वित्तीय आस्तियों का पुनर्गठन एवं प्रतिभूति हित प्रवर्तन अधिनियम, 2002 - **धाराएं** 13, 17 **एवं** 34

सिविल प्रक्रिया संहिता, 1908 - **आदेश** 7 **नियम** 11

वादपत्र का नामंजूर किया जाना - क्षेत्राधिकार का वर्जन - उस संपत्ति के विभाजन के लिए वाद जिसके संबंध में सरफेसी अधिनियम के अंतर्गत कार्यवाही

शुरू हो चुकी है - यथोचित एवं प्रभावी अनुतोष सरफेसी अधिनियम की धाराओं 17 एवं 18 के अंतर्गत न्यायाधिकरण के समक्ष है - वाद पोषणीय नहीं है। (***जगदीश सिंह वि. हीरालाल और अन्य, (2014) 1 एससीसी 479,*** अवलंबित)।

Sree Anandhakumar Mills Ltd. v. Indian Overseas Bank and ors.
Judgment dated 03.05.2018 passed by the Supreme Court in Civil Appeal No. 7214 of 2012, reported in 2018 Law Suit (SC) 535

•

***248. SERVICE LAW:**

Whether the services rendered by the Judicial Officers as Fast Track Court Judges is liable to be counted for their pensionary and other benefits? Held, Yes – The period of service rendered as Fast Track Court Judges directed to be counted for the length of service in determination of pension and retiral benefits.

सेवा विधिः

क्या न्यायिक अधिकारियों द्वारा फास्ट ट्रैक न्यायालय के न्यायाधीशों के रूप में की गई सेवा उनकी पेंशन व अन्य लाभों के लिए सेवा की अवधि की गणना में ली जाएगी? अधिनिर्धारित, हाँ - पेंशन एवं अन्य सेवानिवृत्ति लाभों के निर्धारण हेतु फास्ट ट्रैक न्यायालय के न्यायाधीश के रूप में की गई सेवा को सेवा अवधि में जोड़े जाने के निर्देश जारी किए गए।

Mahesh Chandra Verma v. State of Jharkhand and ors.
Judgment dated 11.05.2018 passed by the Supreme Court in Civil Appeal No. 4782 of 2018, reported in (2018) 7 SCC 270

•

249. SPECIFIC RELIEF ACT, 1963 – Section 20
CIVIL PROCEDURE CODE, 1908 – Order 7 Rule 11 (d)
Rejection of plaint – Suit for specific performance of contract of sale – Application under O. 7 R. 11 (d) CPC alleging that suit is barred by limitation – Held, whether time is essence of the contract of sale is question of fact and can be addressed by the trial Court after parties lead evidence – Such question cannot be dealt with on an application under O. 7 R. 11 (d) CPC.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 - **धारा** 20

सिविल प्रक्रिया संहिता, 1908 - **आदेश** 7 **नियम** 11 **(घ)**

वादपत्र का नामंजूर किया जाना - विक्रय की संविदा के विनिर्दिष्ट अनुपालन का दावा - आदेश 7 नियम 11 (घ) सीपीसी के तहत इस आधार पर आवेदन कि दावा परिसीमा से बाधित है - अभिनिर्धारित, क्या समय विक्रय की संविदा का सार है यह तथ्य का प्रश्न है तथा पक्षकारों द्वारा साक्ष्य प्रस्तुत करने के पश्चात विचारण

न्यायालय द्वारा अभिनिश्चित किया जा सकता है - यह प्रश्न आदेश 7 नियम 11 (घ) सीपीसी के तहत आवेदन में विचार नहीं किया जा सकता।

Himmatlal and ors. v. M/s. Rajratan Concept and ors.

Judgment dated 03.07.2018 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 191 of 2014, reported in AIR 2018 MP 197

Relevant extracts from the judgment:

It is settled law that while addressing on an application under Order 7 Rule 11(d) CPC the trial Judge is generally required to see only the plaint averments or integral part thereof filed with the plaint or placed on record.

It is also settled principle of law; whether time is essence of the contract to sell is a question of fact and the real test is the intention of the parties. It depends upon facts and circumstances of each case. The intention can be ascertained from

(i) the express words used in the contract;

(ii) the nature of the property which forms the subject-matter of the contract;

(iii) the nature of the contract itself; and

(iv) the surrounding circumstances.

The onus to plead and prove that time was the essence of the contract is on the person alleging it, thus giving an opportunity to the other side to adduce rebuttal evidence that time was not of the essence. When the plaintiff pleads that time was not of the essence and the defendant does not deny it by evidence, the Court is bound to accept the plea of the plaintiff. (***Swarnam Ramchandran (Smt.) & anr. v. Aravacode Chakungal Jayapalan, (2004) 8 SCC 689,*** referred to).

As a matter of fact, time is presumed not to be essence of the contract relating to the immoveable property unless contrary intention is well explicit on the touch stone of aforementioned relevant considerations.

The Hon'ble Supreme Court in the case of ***Govind Prasad Chaturvedi v. Hari Dutt Shastri, (1977) 2 SCC 539,*** has held as under :-

> ".... It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may

be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract."

For ready reference Article 54 under the Limitation Act is quoted below :-

54	For specific performance of a contract.	Three Years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

In terms of the aforesaid Article, suit for specific performance of a contract is required to be filed within three years from the date fixed for the performance. However, in the event no specific date for the performance, within a period of three years from the date when the plaintiff notices the refusal. The Hon'ble Supreme Court in the case of ***Ahmmadsahab Abdul Mulla (deceased by L.Rs.) v. Bibijan & ors., AIR 2009 SC 2193,*** while interpreting the expression "date" under Article 54 has held that the expression "date fixed for the performance is a crystallized notion and suggestive of the specified date in the calendar. Para 7 thereof is quoted below :-

> "The inevitable conclusion is that the expression "date fixed for the performance is a crystallized notion. This is clear from the fact that the second part "time from which period begins to run" refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on "when the plaintiff has notice that performance is refused". Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression "date" used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits."

This Court refrains from commenting upon the dispute raised by petitioners/defendants Nos. 2, 3 and 5 on facts pleaded in the plaint particularly in the context of existence of agreement and acceptance of advance payments on 27.6.2002, 18.8.2004 and 06.12.2010.

Aforesaid facts have relevance and direct bearing on the question of limitation giving rise to mixed question of law and facts and can be addressed by trial Court after parties lead evidence.

It is pertinent to mention that the agreement in question dated 27.06.2002 has never been cancelled and there is no refusal to execute the sale deed. As such there is no notice to the plaintiff for performance of contract as contended by learned counsel for the respondent No.1/plaintiff in its reply before this Court and not controverted by petitioners/defendants Nos. 2, 3 and 5.

This Court reiterates the law that question – Whether time is essence of the contract of sale is question of fact and can be addressed by the trial Court after parties lead evidence. Such question cannot be dealt with on an application under Order 7 Rule 11(d) CPC.

•

250. TRANSFER OF PROPERTY ACT, 1882 – Section 53A
SPECIFIC RELIEF ACT, 1963 – Sections 2 and 20
REGISTRATION ACT, 1908 – Sections 17(1-A) and 49
Admissibility of unregistered agreement to sell – May be admitted as evidence of contract in suit for specific Performance – It is admissible only as evidence of sale under Section 49 of Registration Act and not to have effect for purpose of Section 53A of Transfer Property Act.

संपत्ति अंतरण अधिनियम, 1882 - **धारा** 53**क**

विनिर्दिष्ट अनुतोष अधिनियम, 1963 - **धाराएं** 2 **एवं** 20

रजिस्ट्रीकरण अधिनियम, 1908 - **धाराएं** 17(1-**क**) **एवं** 49

अपंजीकृत विक्रय अनुबंध की ग्राह्यता - विनिर्दिष्ट अनुपालन के वाद में संविदा की साक्ष्य के रूप में ग्राह्य हो सकता है - यह रजिस्ट्रीकरण अधिनियम की धारा 49 के अधीन साक्ष्य के रूप में ग्राह्य है और यह सम्पत्ति अंतरण अधिनियम की धारा 53क के प्रयोजन के लिए कोई प्रभाव नहीं रखेगा।

Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar and ors.
Judgment dated 04.07.2018 passed by the Supreme Court in Civil Appeal No. 18377 of 2017, reported in (2018) 7 SCC 639

Relevant extracts from the judgment:

The core issue to be answered in the present appeal is whether the suit agreement dated 9th July 2003, on the basis of which relief of specific performance has been claimed, could be received as evidence as it is not a registered document. Section 17(1A) of the 1908 Act came into force with effect from24th September, 2001 whereas, the suit agreement was executed subsequently on 9th July, 2003.

On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more *res integra*. In ***S. Kaladevi v. V.R. Somasundaram and ors., (2010) 5 SCC 401,*** this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

This Court has adverted to the principles delineated in ***K.B. Saha and Sons Private Limited v. Development Consultant Limited, (2008) 8 SCC 564,*** and has added one more principle thereto that a document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. In view of this exposition, the conclusion recorded by the High Court in the impugned judgment that the sale agreement dated 9th July, 2003 is inadmissible in evidence, will have to be understood to mean that the document though exhibited, will bear an endorsement that it is admissible only as evidence of the agreement to sell under the proviso to Section 49 of the 1908 Act and shall not have any effect for the purposes of Section 53A of the 1882 Act. In that, it is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce oral and documentary evidence.

•

cannot conceive of a greater judicial sin than the sin of treating the 'oppressor' and the 'oppressed' on a par. Or that of rewarding the oppressor and punishing the oppressed whilst administering the law designed to protect the oppressed.

– M.P. Thakkar, J. in
Mohd. Salimuddin v. Misri Lal,
(1986) 2 SCC 378, Para 1.

PART - II A

GUIDELINES ON CRIMINAL LIABILITY FOR MEDICAL NEGLIGENCE IN INDIA

In India 'medical negligence' gives right to both criminal as well as civil liabilty. As far as criminal liabilty is concerned, Doctors/Medical Professionals can be prosecuted for criminal negligence under the provisions of IPC.

Judges very often come across cases relating to medical negligence where offences under section 336, 337, 338 and 304A IPC are registered against medical professionals. Before proceeding with these cases, the judges must have requisite knowledge of concept and various guidelines issued by Hon'ble Supreme Court and High Courts on the subject.

CONCEPT OF NEGLIGENCE AS CRIMINAL LIABILTY IN CONTEXT OF MEDICAL PROFESSION:

In the landmark judgement of ***Jacob Mathew v. State of Punjab and anr, (2005) 6 SCC 1,*** the Hon'ble Supreme Court while settling the test for determining 'criminal negligence' by Doctors/Medical Professionals summed up the concept of negligence in context of medical profession as follows:

"(1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgement or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed. When it comes to the failure of taking precautions what has to be seen is whether those precautions were taken which the ordinary experience of men has found to be sufficient; a failure to use special or extraordinary precautions which might have

prevented the particular happening cannot be the standard for judging the alleged negligence. So also, the standard of care, while assessing the practice as adopted, is judged in the light of knowledge available at the time of the incident, and not at the date of trial. Similarly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that particular time (that is, the time of the incident) at which it is suggested it should have been used.

(3) A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

(4) The test for determining medical negligence as laid down in ***Bolam's case, (1957) 1 W.L.R. 582, 586*** holds good in its applicability in India.

(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word 'gross' has not been defined in Section 304A of IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occuring in Section 304A of IPC has to be read as qualified by the word 'grossly'.

(7) To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted as most likely imminent.

(8) *Res ipsa loquitur* is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining *per se* the liability for negligence within the domain of criminal law. *Res ipsa loquitur* has, if at all, a limited application in trial on a charge of criminal negligence.

BOLAM'S TEST: BASIC TEST FOR DETERMINING 'NEGLIGENCE' BY DOCTORS/ MEDICAL PROFESSIONALS:

The basic test for determiming 'negligence' by doctors/medical professionals is known as the ***'Bolam's Test'***.

This ***'Bolam's test',*** the typical rule for assessing the appropriate standard of reasonable care in negligence cases involving skilled professionals (e.g. doctors) has been laid down by McNair, J. in an English tort law case, ***Bolam v. Friern Hospital Management Committee, (1957) 1 W.L.R. 582, 586*** in the following words:

> "Where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill.....A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art." (Charlesworth and Percy, ibid, Para 8.02).

The Hon'ble Supreme Court in ***Jacob Mathews v. State of Punjab, 2005 ACJ 1840 (SC),*** while holding that "Bolam's Test" holds good in its applicability in india has further mentioned in para 21 and 25 as follows"

> "21. The water of Bolam test has ever since flown and passed under several bridges, having been cited and dealt with in several judicial pronouncements, one after the other and has continued to be well received by every shore it has touched as neat, clean and well condensed one. After a review of various authorities ***Bingham, L.J.*** in his speech in ***Eckersley v. Binnie, (1988) 18 Con LR 1, 79*** summarised the Bolam test in the following words:-
>
> > "From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other assiduous and intelligent members of his profession in knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in

any professional task he undertakes to the extent that other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not require of a professional man that he be a paragon combining the qualities of polymath and prophet." (***Charles-worth and Percy,*** ibid, Para 8.04)

"25. The classical statement of law in Bolam's case has been widely accepted as decisive of the standard of care required both of professional men generally and medical practitioners in particular. It has been invariably cited with approval before Courts in India and applied to as touchstone to test the pleas of medical negligence."

WHAT IS THE DEGREE OF NEGLIGENCE REQUIRED TO FASTEN CRIMINAL LIABILITY IN CASES OF MEDICAL NEGLIGENCE:

In ***Jacob Mathew*** (supra), the Hon'ble Supreme Court taking a very strict threshold for the criminal liability in cases of medical negligence has also held that the word 'gross' has not been used in Section 304A IPC, yet it is settled that in criminal law, negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash' or 'negligent act' as occurring in Section 304A IPC has to be read as qualified by the word 'grossly'.

Again, in ***Martin F D'Souza v. Mohd. Ishfaq, (2009) 2 SCC 40,*** Hon'ble the Supreme Court has held that:

"To fasten liability in criminal proceedings e.g. under Section 304A IPC, the degree of negligence has to be higher than the negligence which is enough to fasten liability in civil proceedings. Thus for civil liability it may be enough for the complainant to prove that the doctor did not exercise reasonable care in accordance with the principles mentioned above, but for convicting a doctor in a criminal case, it must also be proved that this negligence was gross amounting to recklessness". Reiterating the Bolam's rule further held that, in cases against doctors, both civil and criminal, before issuing notice to the doctor concerned, the Court should first refer the case to a competent doctor or committee of doctors. If the report states that there is a *prima facie* proof of negligence, only then should the Court concerned issue notice to the doctor concerned."

Again in ***A.S.V. Narayana Rao v. Ratnamala, (2013) 10 SCC 741,*** while assessing the degree of negligence on the part of a medical professional, the Hon'ble Supreme Court applied the standard of "gross negligence".

Thus Hon'ble the Supreme Court has laid down the criteria of 'gross negligence' or negligence of a 'very high degree' to fasten criminal liabilty in cases of medical negligence.

GUIDELINES ISSUED BY HON'BLE SUPREME COURT TO PROTECT DOCTORS FROM FRIVOLOUS PROSECUTIONS:

Noticing a sudden increase in cases of criminal prosecution against doctors, the Hon'ble Supreme Court in ***Jacob Mathew's*** case (supra) sounding a note of caution to ensure that doctors are not subjected to frivolous and unjust prosecution, laid down guidelines to be followed before launching a prosecution against a doctor for negligence, till such time guidelines are framed by the Government in this regard.

The Apex Court opined that "Statutory Rules or Executive Instructions" incorporating certain guidelines need to be framed and issued by the Government of India and/or the State Governments in consultation with the Medical Council of India. So long as it is not done, we propose to lay down certain guidelines for the future which should govern the prosecution of doctors for offences of which criminal rashness or criminal negligence is an ingredient.

The Court further opining that many complainants prefer recourse to criminal process as a tool for pressurizing the medical professional for extracting uncalled for or unjust compensation, such malicious proceedings have to be guarded against, issued guidelines are as under:

1 *Prima facie* evidence is a must:

A private complaint may not be entertained unless the complainant has produced *prima facie* evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

2 Directions for police to take medical opinion before proceeding:

The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably, from a doctor in government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test to the facts collected in the investigation.

3 Directions for arrest of doctors:

A doctor accused of rashness or negligence, may not be arrested in a routine manner (simply because a charge has been levelled against him). Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigating agency feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

These are the general guidelines to be followed while launching prosecution against Doctors/Medical Professionals.

GUIDELINES ISSUED BY HON'BLE MADHYA PRADESH HIGH COURT FOR DEALING WITH CASES IMPLICATING DOCTORS WORKING IN GOVERNMENT HOSPITALS AND HEALTH CENTRES:

Recently, the Hon'ble Madhya Pradesh High Court in ***Dr. B. C Jain v Maulana Salim, 2017 SCC Online MP 297,*** a case relating to the prosecution of a doctor in the service of the State Government for an offence u/s 304A IPC in failing to send the cerebral spine fluid (CSF) for pathological evaluation, has also laid down the guidelines to be followed while dealing with cases implicating doctors working in Government Hospitals and Health Centres.

The Hon'ble Court while opining that *"Looking at the rising trend of roping in doctors working in the Government Hospitals, this Court considers it essential to lay down guidelines for the police and the courts below while dealing with cases implicating doctors working in Government Hospitals and Health Centres"* has laid down the following guidelines:

I. Directions for enquiry by medical board:

That, all allegations relating to negligent conduct on the part of a Government Doctor for which a prosecution u/s 304A IPC and/or its cognate provisions, or under such other law involving penal consequences is sought, the same shall be enquired into by a Medical Board consisting of at least three doctors, constituted by the Dean of any Government Medical College in the State of Madhya Pradesh, upon the request of the Police, Administration or the direction of a Court/Tribunal/Commission, within seven days of such requisition.

II. The doctor so selected by the Dean of the Medical College concerned to sit on the Medical Board, shall not be inferior in seniority and experience to that of an Associate Professor.

III. Directions regarding opportunity of hearing to be given to accused doctor:

The doctor against whom such negligence is alleged, shall be given an opportunity by the Medical Board to give his reply/explanation in writing and if the doctor so desires to be heard personally, he shall be given such an opportunity by the Medical Board. However, if the Medical Board is of the opinion that the request for personal hearing is with the intent of procrastinating the proceedings before the Board, it may, for reasons to be recorded, waive the opportunity of a personal hearing and proceed to decide the case on the basis of the documents/treatment record and give its finding.

IV. Directions regarding time limit for completion of enquiry by medical board:

The Medical Board shall endeavor to complete the exercise within sixty days from the date on which it is constituted and upon completion of the enquiry, submit the report to the police, Administration or the Court/Tribunal/Commission, as the case may be.

V. Directions to police for registration of FIR:

The police shall not register an FIR against such a doctor in the absence of the report of the Medical Board referred herein above and also, only when the report by the Medical Board has held the doctor *prima facie* guilty of "Gross Negligence" and not otherwise.

VI. Directions in case of complaint cases:

If a complaint case has been prefered u/s 200 Cr.P.C., there shall be no order u/S 156 (3) Cr.P.C. unless the complaint is accompanied by the report of the Medical Board adverted to in guideline with ***prima facie*** finding of "Gross Negligence" on the part of the Doctor. However, if the complaint is not accompanied with a report of the Medical Board, the Court may ask the police to enquire into the case u/S 202 CrPC. The police, if so directed by the Court, shall approach the Dean of the Medical College for constitution of the Medical Board and thereafter, place the report of the Medical Board before the Court concerned.

VII. Directions regarding sanction u/S 197 CrPC:

If the opinion of the Medical Board is one of "Gross Negligence'' on the part of the doctor, the Court concerned shall direct the police to seek sanction u/S 197 CrPC from the State Government. The State Government shall, within thirty days from the date of such request for sanction, either grant or refuse the same, which the police shall convey to the Court concerned. Thereafter, the Court concerned shall either dismiss the complaint case against the doctor by exercising jurisdiction u/S 203 Cr.P.C or issue process u/S 204 Cr.P.C. and try the case in accordance with the law."

[Case laws of ***Manorama Tiwari v. Surendra Nath Rai, (2016) 1 SCC 594,*** and ***Amal Kumar Jha v. State of Chhattisgarh, (2016) 6 SCC 734,*** can also be referred on this point. In these cases, the Hon'ble Supreme Court has also held that protection of section 197 CrPC is available to Doctors/Medical professionals.]

WHETHER F.I.R. CAN BE DIRECTLY LODGED AGAINST MEDICAL PROFESSIONALS?

Section 154 CrPC casts a mandatory duty on the officer incharge of a police station to register FIR on receiving information disclosing a cognizale offence without looking to the reasonableness or credibility of the said information at that point of time.

But a five judge Constitutional Bench of Hon'ble Supreme Court in ***Lalita Kumari v Govt. of UP & ors, (2014) 2 SCC 1,*** has carved out an exception to the above mandate for some cases including medical negligence cases.

The Apex Court has held that in such cases, on receipt of the information, the police may conduct a time bound preliminary inquiry, not exceeding seven days to ascertain whether cognizable offence is made out or not. However, thereafter in a review petition No. CRL. M.P. 5029/2014 in Writ petition (CRL) 68/2008, the Hon'ble Supreme Court by its order dated 05.03.2014, has extended the time of preliminary inquiry to fifteen days generally and in exceptional cases, by giving adequate reasons, to six weeks.

Hence, as per the direction of Hon'ble Supreme Court, the duration of a preliminary inquiry now can extend upto six weeks but not beyond that in any condition in medical negligence cases and only if the preliminary inquiry discloses the commission of a cognizable offence, can FIR be registered against medical professionals.

To conclude, it is necessary to keep the above aspects in mind while dealing with cases of medical negligence against doctors so as to be able to draw a distinction between the blameworthy and the blameless as has been mentioned in para 27 in ***Jacob Mathew's*** case (supra) that "no sensible professional would intentionally commit an act or omission which would result in loss or injury to the patient as the professional reputation of the person is at stake. A single failure may cost him dear in his career".

•

"Yesterday I was clever, so I wanted to change
the world. Today I am wise, so I am changing Myself."

PART – III

CIRCULARS/NOTIFICATIONS

NOTIFICATION DATED 16.08.2018 OF THE MINISTRY OF FINANCE REGARDING DATE OF ENFORCEMENT OF THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018

का. आ. 3995 (अ) - परक्राम्य लिखित (संशोधन) अधिनियम, 2018 की धारा 1 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद् द्वारा, सितम्बर, 2018 के पहले दिन को उस दिन के रूप में नियत करती है, जब उक्त अधिनियम के उपबंध लागू होंगे।

S.O. 3995 (E).– In exercise of the powers conferred by sub-section (2) of Section 1 of The Negotiable Instruments (Amendment) Act, 2018 (20 of 2018), the Central Government hereby appoints the 1st day of September, 2018, as the date on which the provisions of the said Act shall come into force.

[F.No. 6/5/2016-BO.II]
Dr. MADNESH KUMAR MISHRA, Jt. Secy.

•

NOTIFICATION DATED 20.08.2018 OF THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT REGARDING DATE OF ENFORCEMENT OF THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018

का आ. 4027 (अ) - केन्द्रीय सरकार अनुसूचित जाति और अनुसूचित जन जाति (अत्याचार निवारण) संशोधन अधिनियम, 2018 की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 20 अगस्त, 2018 को ऐसी तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

S.O. 4027 (E).— In exercise of the powers conferred by sub-section (2) Section 1 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, the Central Government hereby appoints the 20th day of August, 2018, as the date on which the provision of the said Act shall come into force.

[No. 11012/2/2018-PCR (Desk)]
RASHMI CHOWDHARY, Jt. Secy.

•

NOTIFICATION DATE 19.09.2018 OF THE MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT) REGARDING DATE OF ENFORCEMENT OF THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

का आ. 4027 (अ) - केन्द्रीय सरकार विनिर्दिष्ट अनुतोष अधिनियम, 2018 की धारा 1 की उपराधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 01 अक्टूबर 2018 को ऐसी तारीख के रूप में नियत करती है जिसको उक्त अधिनियम के उपबंध प्रवृत्त होंगे।

S.O. 4888 (E). – In exercise of the powers conferred by sub-section (2) of section 1 of the Specific Relief (Amendment) Act, 2018, the Central Government hereby appoints the 1st day of October, 2018 as the date on which the provisions of the said Act shall come into force.

[F. No. 11(2)/2015-Leg. III]
K. BISWAL, Addl. Secy.I

•

A judge can't have any preferred out come in any particular case. the judge's only obligation and it's a solemn obligation is to the rule of law.

PART – IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE MADHYA PRADESH LAND REVENUE CODE (AMENDMENT) ACT, 2018

NO. 23 OF 2018

[Received the assent of the Governor on the 23rd July, 2018; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 27th July, 2018].

An Act further to amend the Madhya Pradesh Land Revenue Code, 1959.

Be it enacted by the Madhya Pradesh Legislature in the sixty-ninth year of the Republic of India as follows :-

1. **Short title and commencement –** (1) This Act may be called the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018.

   (2) It shall come into force on such date as the State Government may, by notification, appoint.

2. **Amendment of Section 2 –** In section 2 of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) (hereinafter referred to as the principal Act), in sub-section (1),–

   (i) for clause (a), the following clause shall be substituted, namely-

   "(a) **"abadi"** means the area reserved from time to time in a village for the residence of the inhabitants thereof or for purposes ancillary thereto, and any other cognate variation of this expression such as "village site" or "gaonsthan" shall also be construed accordingly;";

   (ii) after clause (t), the following clause shall be inserted, namely

   "(f-1)**"development plan"** shall have the same meaning as assigned to it in the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No. 23 of 1973);";

   (iii) for clause (i), the following clause shall be substituted, namely:-

   "(i) **"holding"** means a parcel of land separately assessed to land revenue and held under a tenure:";

   (iv) after clause (m), the following clause shall be inserted, namely:

   "(m-l)**"land revenue"** means all moneys payable to the State Government for holding land and includes premium, rent lease money, quit rent or any other cognate variation of these expressions;";

(v) for clause (q), the following clause shall be substituted, namely:

"(q) **"plot number"** means the number assigned to a portion of land formed into or recognised as a plot number under this Code;";

(vi) in clause (t), in sub-clause (i), the words "by an occupancy tenant to his Bhumiswami according to the provisions of section 188 or" shall be omitted;

(vii) after clause (v), the following clauses shall be inserted, namely:

"(v-I) **"sector"** means any tract of land in urban area formed into or recognised as a sector under the provisions of this Code;

(v-2) **"service land"** means such land in a non-urban area which is given to a kotwar for the purpose of agriculture during his tenure of post;";

(viii) for Clause (x), the following clause shall be substituted, namely:

"(x) **"survey number"** means the number assigned to a portion of land formed into or recognised as a survey number under this Code and entered in the land records under an indicative number known as the khasra number;";

(ix) clause (y) shall be deleted;

(x) for clause (z-3), the following clause shall be substituted, 'namely:

"(z-3)**"unoccupied land"** means the land other than the abadi or service land, or the land held by a Bhumiswami or a Government lessee;";

(xi) for clause (z-5), the following clause shall be substituted, namely:

"(z-5)**"village"** means any tract of land in a non-urban area which, before the coming into force of this Code, was recognized or was declared as a village under the provisions of any law for the time being in force and any other tract of land in a non-urban area which is recognized as a village at any land surveyor which the State Government may, by notification, declare to be a village.".

3. Amendment of Section 4 – In Section 4 of the principal Act, for subsection (2), the following sub-section shall be substituted, namely:-

"(2) Notwithstanding anything contained in sub-section (1), the President and members of the Board shall also sit at such other place or places as the State Government may, after consultation with the President of the Board, notify.".

4. Substitution of Section 7– For Section 7 of the principal Act, the following Section shall be substituted, namely:-

"7. Jurisdiction of Board – The Board shall exercise the powers and discharge the functions conferred upon it by or under this Code or such other functions as have been conferred or may be conferred by

or under any enactment upon it or as may be specified by a notification of the State Government or Central Government in that behalf.".

5. **Substitution of Section 11–** For section 11 of the principal Act, the following section shall be substituted, namely:-

"**11. Revenue Officers–** There shall be the following classes of the Revenue officers, namely:-

Principal Revenue Commissioner;
Commissioner;
Additional Commissioner;
Commissioner Land Records;
Additional Commissioner Land Records;
Collector;
Additional Collector;
District Survey Officer;
Sub Divisional Officer;
Deputy Survey Officer;
Assistant Collector;
Joint Collector;
Deputy Collector;
Tahsildar;
Additional Tahsildar;
Assistant Survey Officer;
Superintendent of Land Records;
NaibTahsildar;
Assistant Superintendent of Land Records.".

6. **Amendment of Section 13 –** In Section 13 of the principal Act,-

(i) for sub-section (2), the following sub-section shall be substituted, namely,-

"(2) The State Government may alter the limits of any district or subdivision or tahsil and may create new or abolish existing districts or sub-divisions or tahsils:

Provided that the State Government shall invite objections to such proposals in the prescribed Form and shall take into consideration objections received, if any.";

(ii) sub-section (3) shall be deleted.

7. **Insertion of Section 13-A–** After section 13 of the principal Act, the following section shall be inserted, namely:-

"13-A. Appointment of Principal Revenue Commissioner and his powers and duties – The State Government may, by notification, appoint a Principal Revenue Commissioner who shall exercise such powers and perform such duties conferred and imposed on him by the State Government.".

8. **Substitution of Section 19 –** For Section 19 of the principal Act, the following section shall be substituted, namely:-

"19. **Appointment of Tahsildars, Additional Tahsildars and NaibTahsildars** (1) The State Government may appoint for each district as many persons as it thinks fit to be-

(a) Tahsildar;

(b) Additional Tahsildar; and

(c) NaibTahsildar,

who shall exercise therein the powers and perform the duties conferred or imposed on them by or under this Code or by or under any other enactment for the time being in force.

(2) The Collector may place a Tahsildar as in charge of a tahsil, who shall exercise therein the powers and perform the duties conferred or imposed on him by or under this Code or by or under any other enactment for the time being in force.

(3) The Collector may place one or more Additional Tahsildars and NaibTahsildars in a tahsil who shall exercise therein such powers and perform such duties conferred or imposed on a Tahsildar by or under this Code or by or under any other enactment for the time being in force, as the Collector may, by an order in writing, direct.".

9. **Deletion of Section 21–** Section 21 of the principal Act shall be deleted.

10. **Substitution of Section 22–** For Section 22 of the principal Act, the following Section shall be substituted, namely:-

"22. **Sub-Divisional Officers.–** The Collector may place any Assistant Collector or Joint Collector or Deputy Collector to be in charge of one or more sub-divisions of the district who shall exercise therein the powers and perform the duties conferred or imposed on a SubDivisional Officer by or under this Code or by or under any other enactment for the time being in force.".

11. **Substitution of Section 24 –** For Section 24 of the principal Act, the following section shall be substituted, namely:-

"24. **Conferral by State Government of powers of Revenue Officers on any public servant or local body. –** The State Government may confer on any public servant or local body the powers conferred by or under this Code on any Revenue Officer:

Provided that the powers of-

(a) Collector under sections 72, 113, 135, 165, 237, 238, 243 and 251;

(b) Sub-Divisional Officer under sections 59, 115, 170, 170A, 170B, 234, 241, 242, 248(2-A) and 253;

(c) Appellate authority under section 44; and

(d) Revisional authority under section 50;

shall not be conferred on any public servant or local body.

Explanation- For the purpose of this Section, "public servant" means any person who holds an office of the State Government or any body corporate or institution established and controlled by the State Government.".

12. Amendment of Section 27 – In Section 27 of the principal Act, for the proviso, the following proviso shall be substituted namely:-

"Provided that Sub-Divisional Officer may enquire into, or hear, any case at any place within the district.".

13. Amendment of Section 28 – In Section 28 of the principal Act, for the words "All Revenue Officers, Revenue Inspectors, measurers and patwaris", the words "Any Revenue Officer, Revenue Inspector, Nagar Sarvekshak and patwari" shall be substituted.

14. Substitution of Section 29 – For section 29 of the principal Act, the following section shall be substituted, namely:-

"29. Power to transfer cases. – (1) Whenever it appears that an order is expedient for the ends of justice, the Board may direct that any particular case be transferred from one Revenue Officer to another Revenue Officer of an equal rank.

(2) The Commissioner may, if he is of opinion that it is expedient for the ends of justice, order that any particular case be transferred from a Revenue Officer to another Revenue Officer of an equal rank in the same district or any other district in the same division.".

15. Amendment of Section 35 – In section 35 of the principal Act,

(i) sub-section (1) shall be deleted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely-

"(3) The party against whom any order is passed under sub-section (2) may apply within thirty days from the date of such order or knowledge of the order in case the notice or summons was not duly served, to have it set aside on the• ground that he was prevented by any sufficient cause from appearing at the hearing and the Revenue Officer may, after notice to the opposite party which was present on the date on which such order was passed and after making such inquiry as he considers necessary, set aside the order passed.".

16. **Deletion of Section 41–** Section 41 of the principal Act shall be deleted.

17. **Substitution of Section 44 –** For section 44 of the principal Act, the following Section shall be substituted, namely,-

"**44. Appeal and appellate authorities.–** (1) Save where it has been otherwise provided, an appeal shall lie from every original order of a Revenue Officer competent to pass such order under this Code or the rules made thereunder

(a) if such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer-to the Sub-Divisional Officer;

(b) if such order is passed by any Revenue Officer subordinate to the Deputy Survey Officer-to the Deputy Survey Officer;

(c) if such order is passed by the Sub-Divisional Officer-to the Collector;

(d) if such order is passed by the Deputy Survey Officer-to the District Survey Officer;

(e) if such order is passed by any Assistant Collector, Joint Collector or Deputy Collector to whom the powers have been conferred under section 24 – to the Collector;

(f) if such order is passed by any Revenue Officer in respect of whom a direction has been issued under sub-section (3) of section 12 – to such Revenue Officer as the State Government may direct;

(g) if such order is passed by a Collector or District Survey Officer – to the Commissioner;

(h) if such order is passed by the Commissioner – to the Board.

(2) Save as otherwise provided, a second appeal shall lie against every order passed in first appeal under this Code or the rules made thereunder-.

(a) by the Sub-Divisional Officer or the Deputy Survey Officer or the Collector or the District Survey Officer – to the Commissioner;

(b) by the Commissioner-to the Board.

(3) The second appeal shall lie only-

(a) if the original order has in the first appeal been varied or reversed otherwise than in a matter of cost; or

(b) on any of the following grounds and no other, namely:-

(i) that the order is contrary to law or, usage having the force of law; or

(ii) that the order has failed to determine some material issue of law, or usage having force of law: or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits.

(4) An order passed in review varying or reversing any order shall be appealable in like manner as the original order,".

18. Deletion of Section 45 – Section 45 of the Principal Act shall be deleted.

19. Substitution of Section 46 – For Section 46 of the Principal Act, the following section shall be substituted, namely. -

"46. No appeal against certain orders.– Notwithstanding anything contained in Section 44,-

(a) no appeal shall lie from an order-

(i) allowing or rejecting an application for condonation of delay on the grounds specified in Section 5 of the Limitation Act, 1963 (No. 36 of 1963); or

(ii) rejecting an application for review; or

(iii) allowing or rejecting an application for stay; or

(iv) of an interim nature; or

(v) passed under the provisions of Sections 29, 30, 104, 106, 114A, 127, 146, 147, 150, 152, 161, 207, 208, 210, 212, 213, 215, 220 and 243; and

(b) no second appeal shall lie from an order passed in first appeal against an order passed under the provisions of sub-section (1) of Section 131, Section 134, Section 173, Section 234, Section 239, Section 240, Section 241, Section 242, Section 244 and Section 248.".

20. Substitution of Section 47– For Section 47 of the principal Act, the following section shall be substituted, namely:-

"47 Limitation of appeals.–The period of limitation for filing first or second appeal shall be forty-five days from the date of the order appealed against:

Provided that where an order, against which the appeal is preferred, was made before the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018, the period of limitation of appeal shall be as provided in the Code prior to the said Amendment Act:

Provided further that where a party, other than a party against whom the order has been passed *exparte*, had no previous notice of the date on which the order was passed, limitation shall be computed from the date of the communication of such order.".

21. Amendment of Section 49 – In Section 49 of the principal Act, in subsection (3) for first proviso, the following proviso shall be substituted, namely:

"Provided that the appellate authority shall not ordinarily remand the case for disposal to any Revenue Officer subordinate to it;".

22. Substitution of Section 50 – For section 50 of the principal Act, the following Section shall be substituted, namely:-

"50. Revision.– (1) Subject to the provisions of sub-sections (2), (3), (4) and (5),-

(a) the Board may, at any time on its own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Commissioner;

(b) the Commissioner may, at any time on his own motion or on an application made by any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by the Collector or the District Survey Officer;

(c) the Collector or the District Survey Officer may, at any time on his own motion or on an application of any party, call for the record of any case which has been decided or proceedings in which an order has been passed under this Code by a Revenue Officer subordinate to him;

and if it appears that the subordinate Revenue Officer-

(i) has exercised a jurisdiction not vested in him by this Code; or

(ii) has failed to exercise a jurisdiction so vested; or

(iii) has acted in the exercise of his jurisdiction illegally or with material irregularity,

the Board or the Commissioner or the Collector or the District Survey Officer may make such order in the case as it or he thinks fit.

(2) No application for revision shall be entertained-

(a) against an order appealable under this Code;

(b) against any order passed in second appeal under this Code;

(c) against an order passed in revision;

(d) against an order of the Commissioner under-section 210;

(e) unless presented within forty-five days from the date of order or its communication to the party, whichever is later:

Provided that where an order, against which an application for revision is being preferred, was made before the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018

the period of limitation for presenting the application for revision shall be as provided in the Code prior to the said Amendment Act.

(3) The Board or the Commissioner or Collector or the District Survey Officer shall not, under this Section, vary or reverse any order made or any order deciding an issue, in the course of proceeding, except where-

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the proceedings; or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

(4) A revision shall not operate as a stay of proceeding before the Revenue Officer, except where such proceeding is stayed by the Board or the Commissioner or the Collector or the District Survey Officer, as the case may be.

(5) No order shall be varied or reversed in revision unless notice has been served on the parties interested and opportunity given to them of being heard.

Explanation – For the purpose of this section all Revenue Officers shall be deemed to be subordinate to the Board.".

23. Amendment of Section 51 – In Section 51 of the principal Act, for sub-section (1) and sub-section (2), the following sub-sections shall be substituted, namely:-

"(1) The Board or any Revenue Officer may, either ***suomotu*** or on an application of any party interested, review any order passed by it or him, or by any predecessor-in-office and pass such order in reference thereto as it or he may think fit:

Provided that-

(i) if the Commissioner, Collector or District Survey Officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to the Collector or District Survey Officer proposes to review an order, whether passed by himself or his predecessor, he shall first obtain the sanction in writing of the Collector or District Survey Officer to whom he is immediate subordinate;

(ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;

(iii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending, be reviewed;

(iv) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings, and no application for the review of such order shall be entertained unless it is made within forty-five days from the passing of the order.

(2) No order shall be reviewed except on the following grounds, namely:

(a) discovery of new and important matter or evidence, which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made;

(b) some mistake or error apparent on the face of the record; or

(c) any other sufficient reason.".

24. Substitution of Section 54– For section 54 of the principal Act, the following section shall be substituted, namely:-

"54. Pending revisions.– Notwithstanding anything contained in this Chapter, any proceedings pending in revision immediately prior to coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018,-

(a) if initiated on an application of a party, be heard and decided by the Board or the Revenue Officer competent to hear and decide them under sub-section (I) of section 50 as amended by the aforesaid Amendment Act and, if required for this purpose, shall be transferred to such competent Revenue Officer;

(b) if initiated *suo motu* by the Board or any Revenue Officer, shall be heard or decided by the Board or such Revenue Officer, as the case may be, as if this Amendment Act had not been passed;

(c) if initiated by the Settlement Commissioner, shall be transferred to the Commissioner of concerned division, who shall heard and decide it;

(d) if initiated by the Settlement Officer, shall be transferred to the District Survey Officer or the Collector, as the case may be, who shall heard and decide it.".

25. Deletion of Section 55 – Section 55 of the principal Act shall be deleted.

26. Amendment of Section 56 – In section 56 of the principal Act, for the words "in exercise of its/his powers under this Code or any other enactment for the time being in force, as the case may be", the words "in exercise of powers under this Code" shall be substituted.

27. Amendment of Section 57 – Sub-section (2) of section 57 of the principal Act shall be deleted.

28. Amendment of Section 58 – In section 58 of the principal Act,

(i) for sub-section (1), the following sub-section shall be substituted, namely: -

"(1) All land to whatever purpose applied and wherever situate, is liable to the payment of revenue to the State Government except such land as has been wholly or partially exempted from such liability by or under this Code or by special grant of or contract with the State Government or such land which is wholly or partially exempted from such liability by notification, issued in this behalf by the State Government.".

(ii) Sub-section (2) shall be deleted.

29. Substitution of Section 58-A– For section 58-A of the principal Act, the following section shall be substituted namely'-

"58-A.Exemption from payment of land revenue-Notwithstanding anything contained in this Code, no land revenue shall be payable in respect of-

(a) any holding up to two hectares used exclusively for the purpose of agriculture;

(b) such other land used for non-agricultural purpose as the State Government may, by notification, specify.

Explanation.– For the purpose of this section, "holding" means the sum of all lands held by a person individually and his share in the lands held by him jointly, if any, in the entire State.".

30. Deletion of Section 58-B – Section 58-B of the principal Act shall be deleted.

31. Substitution of Section 59 – For section 59 of the principal Act, the following section shall be substituted, namely:-

"59. Land revenue according to purpose for which land is used

(1) The assessment of land revenue shall be made with reference to the following use of land at such rates as may be prescribed:

(a) for the purpose of agriculture including any improvement made thereon;

(b) for the purpose of dwelling houses;

(c) for educational purpose;

(d) for commercial purpose;

(e) for industrial purpose including the purpose of mines and minerals;

(f) for purpose other than those specified in items (a) to (e) above as may be notified by the State Government.

(2) Where land assessed for use for any one purpose is diverted to any other purpose, the land revenue payable upon such land shall,

notwithstanding that the term for which the assessment may have been fixed has not expired, be liable to assessment at the rates prescribed for the purpose to which it has been diverted.

(3) Where the land held free from the payment of land revenue on condition of being used for any purpose is diverted to any other purpose it shall become liable to the payment of land revenue and assessed at the rates prescribed for purpose for which it has been diverted.

(4) Where land assessed for use for any one purpose is diverted to any other purpose, and land revenue is assessed thereon under the provisions of this section, the premium on such diversion shall be payable at such rates as may be prescribed.

(5) Whenever land assessed for one purpose is diverted to another purpose, the Bhumiswami shall compute the premium and reassessed land revenue payable and deposit the amount so computed in the manner prescribed.

(6) The Bhumiswami shall give a written intimation of such diversion to the Sub-Divisional Officer alongwith the receipt of the deposit of the amount under subsection (5), and the land shall be deemed to have been diverted from the date of such intimation.

(7) On the receipt of intimation under sub-section (6), the Sub-Divisional Officer shall, as soon as possible, make enquiry into the correctness of the computation made by the Bhumiswami and communicate to the Bhumiswami either confirming the computation made under subsection (5) or informing him the correct amount of premium and land revenue payable. In case the amount deposited under subsection (5) is less than the amount computed by the Sub-Divisional Officer, the difference shall be paid by the Bhumiswami within sixty days of receipt of such intimation:

Provided that in case the amount deposited under sub-section (5) is greater than the amount computed by the Sub-Divisional Officer, the difference shall be refunded to the Bhumiswami within sixty days.

(8) If the Sub-Divisional Officer fails to communicate to the Bhumiswami under sub-section (7) within five years from the date of intimation received under sub-section (6), the arrears of re-assessed land revenue shall not be payable for a period exceeding five years.

(9) If the Bhumiswami fails to give the intimation of diversion under subsection (6), the Sub-Divisional Officer on his own motion or on receiving such information shall compute the premium and re-assess the land revenue payable on account of such diversion and also impose a penalty equal to fifty per centum of the total amount payable:

Provided that such re-assessed land revenue shall be payable from the actual date of diversion subject to a maximum period of five years:

Provided further that no penalty shall be imposed for one year from the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018.

(10) The Bhumiswami shall divert land for only such purpose as is permissible under the law governing the use of land for the time being in force:

Provided that no action of the Bhumiswami or Sub-Divisional Officer under this section shall be construed as granting of permission to change use of land contrary to the provisions of the applicable law:

Provided further that the competent authority may take action against Bhumiswami for such diversion contrary to the provisions of the law for the time being in force irrespective of any action taken under this section.

(11) The premium and re-assessed land revenue shall be computed at the rates prevailing on the date of intimation by the Bhumiswami under sub-section (6) or the date of passing of order by Sub-Divisional Officer under sub-section (9), as the case may be.

(12) All proceedings under this section pending before the Board or any Revenue Officer prior to commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 shall stand abated and the Sub-Divisional Officer shall impose premium and assess the land revenue on account of diversion in accordance with the provisions of this section.".

32. Substitution of Section 60 – For section 60 of the principal Act, the following section shall be substituted, namely:-

"60. Assessment of un-assessed land – All lands on which the assessment has not been made, the assessment of land revenue shall be made by the Collector in accordance with rules made under this Code.".

33. Substitution of Chapter VII and Chapter VIII – For Chapter VII and VIII of the principal Act, containing sections 61 to 103 (both inclusive), the following Chapter shall be substituted, namely:-

"CHAPTER VII

Land Survey

61. Definition of land survey – The "land survey" means

(a) all or any of the following activities-

(i) division of land into survey numbers, recognition of existing survey numbers, reconstitution thereof or forming new survey numbers in land used for agricultural purposes and activities incidental thereto;

(ii) division of land into plot numbers, recognition of existing plot numbers, reconstitution thereof or forming new plot numbers and grouping them into blocks in land used for non-agricultural purposes and activities incidental thereto;

(iii) grouping of the survey numbers and blocks into villages in non-urban areas and into sectors in urban areas and activities incidental thereto;

(b) preparation of a Field Book describing the area, current land use and other attributes of each survey number, block number or plot number, as the case may be;

(c) preparation or revision or correction of field map, as the case may be;

(d) preparation of record of rights, in order to bring the land records up to date in any local area;

(e) preparation of any other record, as may be prescribed.

62. Appointment of Commissioner Land Records– The State Government may appoint a Commissioner Land Records who shall, subject to the direction issued in this regard by the State Government, manage the land survey and the land records.

63. Appointment of Additional Commissioners Land Records and their powers and duties – (1) The State Government may appoint one or more Additional Commissioner Land Records.

(2) An Additional Commissioner of Land Records shall exercise such powers and discharge such duties, conferred and imposed on a Commissioner Land Record by this Code or rules made there under in such cases or classes of cases, as the State Government or Commissioner Land Records may direct and while exercising such powers and discharging such duties, the Additional Commissioner Land Records shall be deemed to have been appointed as a Commissioner Land Records for the purposes of this Code or any rule made.

64. Notification of proposed land survey.– (1) The Commissioner Land Records may commence land survey in a tahsil area by publishing a notification in the official Gazette to that effect.

(2) Land survey may extend to all lands in the tahsil area or part thereof as the Commissioner Land Records may direct in the notification issued under sub-section (1).

(3) The lands notified under sub-section (1) shall be held to be under land survey from the date of said notification till the subsequent notification declaring the land survey to be closed is issued.

65. District Survey Officer, Deputy Survey Officer and Assistant Survey Officer – (l) In respect of the lands under land survey,-

(a) the Collector of a district shall be the District Survey Officer;

(b) the Sub-Divisional Officer of a sub-division shall be the Deputy Survey Officer for his sub-division;

(c) the Tahsildar, Additional Tahsildar or Naib Tahsildar shall be Assistant Survey Officer within their respective jurisdiction.

(2) All District Survey Officers shall be subordinate to the Commissioner Land Records.

(3) All Deputy Survey Officer and Assistant Survey Officers in a district shall be subordinate to the District Survey Officer.

(4) All Assistant Survey Officers in a sub-division shall be subordinate to the Deputy Survey Officer.

66. Powers of District Survey Officer, Deputy Survey Officer and Assistant Survey Officer– (1) In respect of lands under land survey the powers of the Collector, the Sub-Divisional Officer or the Tahsildar under this Code shall vest in the District Survey Officer, Deputy Survey Officer or Assistant Survey Officer respectively.

(2) The State Government may invest any Deputy Survey Officer or Assistant Survey Officer with all or any of the powers of the District Survey Officer under this Code.

67. Formation of survey numbers, block numbers, plot numbers and their grouping into villages in non-urban areas or into sectors in urban areas.–Subject to rules made under this Code, the District Survey Officer may

(a) take measurements of the land to which land survey extends and construct such number of survey marks thereon as may be necessary;

(b) divide such land into survey numbers, recognize existing survey numbers, reconstitute survey numbers or form new survey numbers in land used for agricultural purpose;

(c) divide such land into block numbers, recognize existing block numbers, reconstitute block numbers or form new block numbers in land used for non agricultural purpose;

(d) divide blocks in plot numbers, recognize existing plot numbers, reconstitute plot numbers or form new plot numbers in land used for non agricultural purpose;

(e) group survey numbers and blocks into villages in non-urban areas and into sectors in urban areas:

Provided that the plots of any land lying within the boundaries of a layout approved under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, shall be deemed to be plots under this Code:

Provided further that except as hereinafter provided and subject to the approved development plan of the area, if any, no survey number or plot number shall henceforth be made of an extent less than the minimum prescribed.

68. Power to re-number or sub-divide or amalgamate survey number, block number and plot number – (1) The District Survey Officer may either re-number or sub-divide survey numbers into as many sub-divisions as may be required or amalgamate one or more survey numbers into a single survey number in view of the acquisition of rights in land or for any other reason.

(2) The District Survey Officer may either re-number or sub-divide block numbers and plot numbers into as many sub-divisions as may be required or amalgamate one or more block numbers and plot numbers into a single block number or plot number in view of the acquisition of rights in land or for any other reason:

Provided that no division or amalgamation of block number or plot number shall be permissible where such block or plot or any part thereof falls within the boundaries of layout approved under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973.

(3) The division or amalgamation of any survey number, block number or plot number and assessment thereof shall be carried out in accordance with rules made under this Code.

(4) The District Survey Officer may modify a block by removing one or more plot numbers from a block or adding one or more plot numbers from an adjoining block.

(5) Where a holding consists of several survey numbers and plot numbers, the District Survey Officer shall assess the land revenue payable for each survey number or plot number.

(6) Whenever the survey numbers, block numbers or plot numbers are re-numbered, the District Survey Officer shall correct the entries in all records prepared or maintained under this Code.

69. Entry of survey numbers, block numbers and plot numbers and their sub-divisions in land record – The area and assessment of survey numbers and plot numbers and their sub-divisions and area of block numbers shall be entered in land records in such manner as may be prescribed.

70. **Determination of abadi of village. –** The District Survey Officer shall, in the case of every inhabited village, ascertain and determine, with due regard to rights in lands, the area to be reserved for the residence of the inhabitants or for purposes ancillary thereto, and such area shall be deemed to be the abadi of the village.

71. **Power of District Survey Officer to divide or unite villages and sectors or exclude area therefrom –** (1) The District Survey Officer may divide a village to constitute two or more villages or may unite two or more villages and constitute one village or may alter the limits of a village by including therein any area of a village in the vicinity thereof or by excluding any area comprised therein, in accordance with the rules made under this Code.

(2) The District Survey Officer may divide a sector to constitute two or more sectors or may unite two or more sectors and constitute one sector or may, alter the limits of a sector by including therein any area of a sector in the vicinity thereof or by excluding any area comprised therein, in accordance with the rules made under this Code.

72. **Assessment –** The District Survey Officer shall fix the assessment on each holding at such rates as may be prescribed.

73. **All lands liable to assessment –** The District Survey Officer shall make assessment on all lands to which the survey extends whether such lands are liable to the payment of land revenue or not.

74. **Duty of District Survey Officer to maintain maps and records. –** When an area is under land survey, the duty of maintaining the maps and records of such area shall stand transferred from Collector to the District Survey Officer, who shall thereupon exercise all the powers conferred on the Collector under any of the provisions of Chapters IX and XVIII.

75. **Power of Sub-Divisional Officer to correct errors. –** The SubDivisional Officer may, at any time after the closure of land survey, correct any error in the area or assessment of any survey number or plot number or block number due to mistake of surveyor arithmetical miscalculation:

Provided that no arrears of land revenue shall become payable by reason of such correction.

76. **Powers provided under this Chapter to be exercised by Collector, Sub-Divisional Officer and Tahsildar in area not under land survey. –** In any area not under land survey, the Collector, the Sub-Divisional Officer or the Tahsildar shall exercise the powers of District Survey Officer Deputy Survey Officer or Assistant Survey Officer respectively provided under this Chapter within their respective jurisdiction.

77. **Power to make rules –** The State Government may make rules for carrying out the land survey under this Chapter:.

34. **Substitution of Section 104 –** For Section 104 of the principal Act, the following section shall be substituted, namely:-

"104 Formation of patwarihalkas in non-urban area and formation of sectors in urban area and appointment of patwaris and Nagar Sarvekshaks. –

(1) The Commissioner Land Records shall for each tahsil, arrange the villages into patwarihalkas and divide each urban area into sectors and may, at any time, alter the limits of existing patwarihalkas or sectors and may create new patwarihalkas or sectors or abolish existing patwarihalkas or sectors.

(2) The Collector shall appoint a patwari to each patwarihalka and a Nagar Sarvekshak to each sector for maintaining correct land records and for such other duties as may be prescribed.

(3) Till the formation of sectors in an urban area under sub-section (1), every village, existing therein immediately before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018, shall be deemed to be a sector and relevant land records of such village shall be deemed to be land records of such sector.".

35. **Substitution of Section 105 –** For section 105 of the principal Act, the following section shall be substituted, namely-

"105. Formation of Revenue Inspector circles in non-urban area – The Commissioner Land Records shall arrange the patwarihalkas in a tahsil into Revenue Inspector circles and may, at any time alter the limits of any circle and may create new circles or abolish existing circles.".

36. **Substitution of Section 106 –** For section 106 of the principal Act, the following section shall be substituted, namely-

"106. Appointment of Revenue Inspectors in non-urban areas –The Collector may appoint in each Revenue Inspector circle a Revenue Inspector to supervise the preparation and maintenance of land records and to perform such other duties as may be prescribed.".

37. **Substitution of Section 107 –** For section 107 of the principal Act, the following section shall be substituted, namely:-

"107. Maps of villages, abadi, blocks and sectors – (I) For each village –

(a) a map shall be prepared showing the boundaries of survey numbers and block numbers which shall be called "village map";

(b) a map shall be prepared for abadi showing the area occupied by holders and the area not so occupied, giving separate plot numbers and such other particulars as may be prescribed which shall be called "abadi map";

(c) a map shall be prepared for diverted lands showing the area occupied by holders giving separate plot numbers and such other particulars as may be prescribed, which shall be called "block map".

(2) For each urban area a map shall be prepared of each sector showing the area occupied by holders and area not so occupied, giving separate survey numbers, block numbers and plot numbers and such other particulars as may be prescribed, which shall be called 'sector map".

(3) The maps under sub-section (1) and (2) shall be prepared on such scale as may be prescribed.".

38. Substitution of Section 108 – For section 108 of the principal Act, the following section shall be substituted, namely:-

"108. Record of rights – (1) A record of rights shall, in accordance with rules made in this behalf, be prepared and maintained for every village area and for each sector of every urban area and such record shall include following particulars:-

(a) the names of all Bhumiswamis together with survey numbers or plot numbers held by them and purposes for which they are being used and their area and status of irrigation in case of land used for agriculture;

(b) the names of all Government lessees and such classes of lessees as may be specified by the State Government together with survey numbers or plot numbers held by them and purposes for which they are being used and their area and status of irrigation in case of land used for agriculture;

(c) the names of all persons occupying the abadi of the village, or in urban area all persons occupying the land which was abadi of a village before the constitution of such urban area, as the case may be, along with the nature of their interest in land, plot numbers held by them and purpose for which the land is being used;

(d) the nature and extent of interest in land assigned or granted to any person by the State Government or by the person authorised under any enactment or direction of the State Government or the Central Government along with-

(i) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any:

(ii) the land revenue or lease rent payable by such persons if any; and

(iii) such other particulars as may be prescribed.

(2) The record of rights mentioned in sub-section (1) shall be prepared during a land surveyor whenever the State Government may, by notification, so direct.".

39. Substitution of Section 109 – For section 109 of the principal Act, the following section shall be substituted, namely.-

"109. Acquisition of rights to be reported – (1) Any person lawfully acquiring any right or interest in land shall report his acquisition of such right within six months from the date of such acquisition in the form prescribed–

(a) to the patwari or any person authorised by the State Government in this behalf or Tahsildar, in case of land situated in non-urban area;

(b) to the Nagar Sarvekshak or any person authorised by the State Government in this behalf or Tahsildar. in case of land situated in urban area:

Provided that when the person acquiring the right is a minor or is otherwise disqualified, his guardian or other person having charge of his property shall make the report to the parwari or nagarsarvekshak or the person authorised or the Tahsildar.

Explanation I. The right mentioned above does not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882 (No. IV of 1882).

Explanation II. A person, in whose favour a mortgage is redeemed or paid off or a lease is determined, acquires a right within the meaning of this section.

Explanation III. Intimation in writing required to be given under this section may be given either through a messenger or handed over in person or may be sent by registered post or by such other means as may be prescribed.

Explanation IV. For the purpose of this section, "otherwise disqualified" includes the "person with disability" as defined in clause (5) of section 2 of the Rights of person with Disabilities Act, 2016.

(2) When any document purporting to create, assign or extinguish any title to or any charge on land used for agricultural purposes, or in respect of which a khasra has been prepared, is registered under the Indian Registration Act, 1908 (No. 16 of 1908), the Registering Officer shall send intimation to the Tahsildar having jurisdiction over the area in which the land is situated in such Form and at such times as may be prescribed.

(3) Any person whose rights, interests or liabilities are required to be or have been entered in any record or register under this Chapter, shall be bound on the requisition in writing of any Revenue Officer, Revenue Inspector, Nagar Sarvekshak or Patwari engaged in compiling or revising the record or register, to furnish or produce for his inspection, within one month from the date of such requisition, all such information

or documents needed for the correct compilation or revision thereof, as may be within his knowledge or in his possession or powers. A written acknowledgement of the information furnished or document produced shall be given to the person.

(4) Any person neglecting to make the report required by sub-section (I) or furnish the information or produce the documents required by sub-section (3) within the period specified therein shall be liable, at the discretion of the Tahsildar, to a penalty not exceeding five thousand rupees.

(5) Any report regarding the acquisition of any right under this section received after the specified period shall be dealt with in accordance with the provisions of section 110.".

40. Substitution of Section 110 – For section 110 of the principal Act, the following section shall be substituted, namely:-

"110. Mutation of acquisition of right in land records. – (1) The patwari or Nagar Sarvekshak or person authorised under section 109 shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from any other source.

(2) The patwari or Nagar Sarvekshak or person authorised, as the case may be, shall intimate to the Tahsildar, all reports regarding acquisition of right received by him under sub-section (1) in such manner and in such Form as may be prescribed, within thirty days of the receipt thereof by him. .

(3) On receipt of intimation under section 109 or on receipt of intimation of such acquisition of right from any other source, the Tahsildar shall within fifteen days,-

(a) register the case in his court;

(b) issue a notice to all persons interested and to such other persons and authorities as may be prescribed, in such Form and manner as may be prescribed; and

(c) display a notice relating to the proposed mutation on the notice board of his office, and publish it in the concerned village or sector in such manner as may be prescribed;

(4) The Tahsildar shall, after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry as he may deem necessary, pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matter, and make necessary entry in the village khasra or sector khasra, as the case may be, and in other land records.

(5) The Tahsildar shall supply a certified copy of the order passed under sub-section (4) and updated land records free of cost to the parties within thirty days, in the manner prescribed and only thereafter close the case:

Provided that if the required copies are not supplied within the period specified, the Tahsildar shall record the reasons and report to the Sub-Divisional Officer.

(6) Notwithstanding anything contained in section 35, no case under this section shall be dismissed due to the absence of a party and shall be disposed of on merits.

(7) All proceedings under this section shall be completed within two months in respect of undisputed case and within six months in respect of disputed case from the date of registration of the case. In case the proceedings are not disposed of within the specified period, the Tahsildar shall report the information "of pending cases to the Collector in such Form and manner as may be prescribed.".

41. Deletion of Section 112 – Section 112 of the principal Act shall be deleted.

42. Substitution of Section 113 – For section 113 of the principal Act, the following section shall be substituted, namely-

"113. Correction of errors in record of rights – The Collector may, at any time, correct or cause to be corrected any clerical errors and any errors which the parties interested admit to have been made in the record-of-rights prepared under section 108.".

43. Substitution of Section 114 – For section 114 of the principal Act, the following section shall be substituted, namely:-

"114. Land records – (1) Following land records shall be prepared for every village, namely:-

(a) village map, abadi map and block map under section 107;

(b) record of rights under section 109;

(c) village khasra or village field book in such Form as may be prescribed;

(d) Bhoo-Adhikar Pustika under section 114-A;

(e) (i) details of all unoccupied land under section 233;

(ii) Nistar Patrak under section 234;

(iii) Wajib-ul-arz, if any, under section 242;

(f) details of diverted land; and

(g) any other record as may be prescribed.

(2) Following land records shall be prepared for each sector in every urban area, namely:-

(a) sector map under section 107;
(b) record of rights under section 108;
(c) sector khasra or sector field book in such Form as may be prescribed;
(d) Bhoo-Adhikar Pustika under section 114-A;
(e) (i) details of all unoccupied land under section 233;
(ii) land reserved for public purposes under section 233-A;
(f) details of diverted land; and
(g) any other record as may be prescribed.".

44. Substitution of Section 114-A – For Section 114-A of the principal Act, the following section shall be substituted, namely:-

"114-A.Bhoo-Adhikar Pustika.– (1) The Tashildar may provide to every Bhumiswami whose name is entered in the khasara prepared under section 114 a Bhoo-Adhikar Pustika in respect of his all holdings in the village or sector, as the case may be, which shall be provided to him in such Form and on payment of such fee as may be prescribed.

(2) The Bhoo-Adhikar Pustika shall consist of two parts bound as one book, which shall contain such particulars as may be prescribed.

(3) A Tahsildar may, on his own motion or on application of the Bhumiswami, after making such enquiry as he deems fit, correct any wrong or incorrect entry in BhooAdhikar Pustika.".

45. Substitution of Section 115– For section 115 of the principal Act, the following section shall be substituted, namely:-

"1l5. Correction of wrong or incorrect entry in land record– (l) A Sub-Divisional Officer may, on his own motion or on application of an aggrieved person, after making such enquiry as he deems fit, correct any wrong or incorrect entry including an unauthorised entry in the land records prepared under section 114 other than Bhoo-AdhikarPustika and - record of rights, and such corrections shall be authenticated by him:

Provided that no action shall be initiated for correction of any entry pertaining to a period prior to five years without the sanction in writing of the Collector.

(2) No order shall be passed under sub-section (l) without
(a) getting a written report from the Tahsildar concerned; and
(b) giving an opportunity of hearing to all parties interested:

Provided that where interest of Government is involved, the Sub-Divisional Officer shall submit the case to the Collector.

(3) On receipt of a case under sub-section (2), the Collector shall make such enquiry and pass such order as he deems fit.".

46. **Deletion of Section 116 –** Section 116 of the principal Act shall be deleted.
47. **Deletion of Section 118 –** Section 118 of the principal Act shall be deleted.
48. **Deletion of Section 119 –** Section 119 of the principal Act shall be deleted.
49. **Amendment of Section 120 –** In section 120 of the principal Act, for the word "Measurer", the words "Nagar Sarvekshak" shall be substituted.
50. **Deletion of Section 121 –** Section 121 of the principal Act shall be deleted.
51. **Substitution of Section 124 –** For Section 124 of the principal Act, the following section shall be substituted, namely-

    "124. Construction of boundary marks of village, Sectors, and survey numbers or plot numbers – (1) Boundaries of all villages and sectors shall be fixed and demarcated by permanent boundary marks.

    (2) The State Government may, in respect of any village or sector, by notification, order that the boundaries of all survey numbers, block numbers or plot numbers of the village or sector or part thereof shall also be fixed and demarcated by boundary Mark.

    (3) Such boundary marks shall, subject to the provisions hereinafter contained, be of such specification and Shall be constructed and maintained in such manner as may be prescribed.

    (4) Every holder of land shall be responsible for the maintenance and repair of the permanent boundary marks erected hereon.".
52. **Amendment of Section 125 –** In section 125 of the principal Act, in the marginal heading and provision, for the words "villages, Survey numbers and plot numbers", the words "villages, sectors, survey numbers, block numbers and plot numbers" shall be substituted.
53. **Amendment of Section 126 –** In section 126 of the principal Act,
    (i) in sub-section (I), for the words "summarily eject", the words "summarily eject in a manner prescribed" shall be substituted;
    (ii) sub-sections (2) and (3) shall be deleted.
54. **Substitution of Section 127 –** For section 127 of the principal Act, the following section shall be substituted, namely:-

    "127. Demarcation and maintenance of boundary lines – (1) Every holder of land adjoining a village road or sector road or unoccupied land or land reserved for community purposes shall, at his own cost and in the manner prescribed-

    (a) affix the boundary marks between his land and village road or sector road or unoccupied land or land reserved for community purposes adjoining it, and

    (b) repair and renew such boundary marks from time to time.

(2) If the holder fails to affix the boundary marks or repair or renew the boundary marks as required by sub-section (1), the Tahsildar may, after such notice, as he deems fit, cause the boundary marks to be affixed or the boundary marks to be repaired or renewed and may recover the cost incurred as an arrear of land revenue.

Explanation – For the purpose of this section. "Village road or sector road" means a road as such which bears an indicative survey number or plot number.".

55. Amendment of Section 128 – In section 128 of the principal Act, in sub-section (I), for the words "After the end of November in each year the patel of the village", the words "The Patwari or Nagar Sarvekshak" shall be substituted.

56. Substitution of Section 129 – For section 129 of the principal Act, the following section shall be substituted, namely:-

"129. Demarcation of boundaries of survey number or sub-division of survey number or block number or plot number– (1) The Tahsildar may, on application of a party depute a Revenue Inspector or Nagar Sarvekshak to demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number and construct boundary marks thereon.

(2) The Revenue Inspector or Nagar Sarvekshak so deputed shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a subdivision of survey number or of a block number or of a plot number, construct boundary marks thereon and submit a demarcation report to the Tahsildar in such manner as may be prescribed. The demarcation report shall also include the particulars of the possession, if any, of any person other than the Bhumiswami on the land demarcated.

(3) For carrying out the demarcation the Revenue Inspector or Nagar Sarvekshak may take the assistance of such agency and in such manner as may be prescribed.

(4) On the receipt of the demarcation report, the Tahsildar may, after giving opportunity of hearing to the parties interested including the neighbouring land holders, confirm the demarcation report or may pass such order as he thinks fit.

(5) A party aggrieved by the confirmation of demarcation report under sub-section (4), may apply to the Sub-Divisional Officer to set it aside on any of the following grounds-

(a) that he was not given notice required under sub-section (2) or opportunity of hearing under sub-section (4); or

(b) any other sufficient ground:

Provided that such application shall not be entertained after the expiry of forty-five days from the date of confirmation of the demarcation report by the Tahsildar or the date of knowledge, whichever is later.

(6) The Sub-Divisional Officer may, if he admits the application made under subsection (5), after giving opportunity of hearing to the parties interested including the neighbouring land holders and making such enquiries as he may think fit, either confirm the demarcation report submitted under sub-section (2) or depute a team consisting of such persons as may be prescribed to carry out the demarcation once again.

(7) The team deputed under sub-section (6) shall, after giving notice to parties interested including the neighbouring land holders, demarcate the boundaries of a survey number or of a sub-division of survey number or of a block number or of a plot number, construct boundary marks thereon and submit report to the Sub-Divisional Officer in such manner as may be prescribed and the Sub-Divisional Officer may pass such orders on it as he thinks fit.

(8) Notwithstanding anything contained in sections 44 and 50, no appeal or application for revision shall lie against any order passed or proceedings taken under this section.

(9) The State Government may make rules for regulating the procedure to be followed by the Tahsildar in demarcating the boundaries of a survey number or of a subdivision of survey number or of a block number or of a plot number prescribing the nature of the boundary marks to be used, and authorizing the levy of fees from the holders of land in demarcated survey number or sub-division or block number or plot number.".

57. Amendment of Section 130 – In section 130 of the principal Act, for the words "one thousand", the words "five thousand" shall be substituted and the words "and of rewarding the informant, if any" shall be omitted.

58. Substitution of Section 131 – For section 131 of the principal Act, the following section shall be substituted, namely:-

"131. Rights of way and other private easements – (l) In the event of a dispute arising as to the route by which a cultivator shall have access to his fields or to the unoccupied lands or pasture lands of the village, otherwise than by the recognised roads, paths or common land, including those road and paths recorded in the village Wajib-ul-arz prepared under section 242 or as to the source from or course by which he may avail himself of water or as to the course by which he may drain water from his fields, a Tahsildar may, after local enquiry, decide the matter with reference to the previous custom in each case and with due regard to the conveniences of all the parties concerned.

(2) The Tahsildar may, at any stage of the enquiry, pass an interim order to grant immediate relief in respect of any matter under dispute in subsection (1) if he is of the opinion that grant of such relief is necessary in the facts and circumstances of the case:

Provided that such interim order shall stand vacated on the expiry of ninety days from the date of the order unless vacated earlier.".

59. Deletion of Section 132 – Section 132 of the principal Act shall be deleted.

60. Substitution of Section 133 – For section 133 of the principal Act, the following section shall be substituted, namely:-

"133. Removal of obstruction – (I) If a Tahsildar finds that any encroachment or obstruction impedes the free use of a recognised road or path including those roads and paths recorded in the village Wajib-ul-arz or Common land of a village or impedes the road or water course or source of water or drainage of water which has been the subject of a decision under section 131, he may order the person responsible for such encroachment or obstacle to remove it.

(2) If such person fails to comply with the order passed under sub-section (1), the Tahsildar may cause the encroachment or obstacle to be removed and may recover from such person the cost of removal thereof and such person shall be liable, under the written order of the Tahsildar stating the facts and circumstances of the case, to a penalty which may extend to ten thousand rupees.

(3) If any person fails to remove the encroachment or obstruction for more than seven days after the date of order of removal thereof under sub-section (1), then without prejudice to the penalty that may be imposed under sub-section (2), the Sub-Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first order of removal of encroachment or obstruction and six months in case of second or subsequent order of removal of encroachment or obstruction:

Provided that no action under this sub-section shall be taken unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison:

Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the encroachment or obstruction has been removed:

Provided also that no woman shall be arrested or detained under this section.".

61. **Deletion of Section 136–** Section 136 of the principal Act shall be deleted.

62. **Amendment of Section 138 –** In section 138 of the principal Act, in sub-section (1), the word "primarily" shall be omitted.

63. **Deletion of Section 139 –** Section 139 of the principal Act shall be deleted.

64. **Substitution of Section 140 –** For section 140 of the principal Act, the following section shall be substituted, namely:-

"**140. Dates on which land revenue falls due and payable –** (1) The land revenue payable on account of a year shall fall due on the first day of April of that year and shall be paid up to the last day of June of that year, in such manner, to such person and at such places as may be prescribed:

Provided that the dues of the land revenue payable at the time of the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 shall be paid before the 1st April, 2019.

(2) A person may, at his option, pay up to ten years land revenue in advance:

Provided that no rebate shall be granted on such advance payment:

Provided further that if the land revenue is subsequently enhanced the difference of amount shall be payable.".

65. **Substitution of Section 141 –** For section 141 of the principal Act, the following section shall be substituted, namely:-

"**141. Definition of "arrear" and "defaulter"–** Any land revenue due and not paid till the end of period as specified in section 140 becomes therefrom an arrear, and the persons responsible for it become defaulters.".

66. **Substitution of Section 142–** For section 142 of the principal Act, the following section shall be substituted, namely:-

"**142. Person receiving land revenue bound to give receipt –** Every person who receives a payment on account of land revenue or on account of any sum of money recoverable as an arrear of land revenue shall grant a receipt to the payee for such sum and in such Form as may be prescribed.".

67. **Substitution of Section 143 –** For section 143 of the principal Act, the following section shall be substituted, namely: -

"**143. Penal interest on delayed payment of land revenue-** If land revenue is not paid up to the end of the period as specified in section 140, simple interest shall be payable on the arrear thereafter till the date of payment at the rate of twelve per centum per annum for first twelve months and thereafter at the rate of fifteen per centum per annum:

Provided that no such interest shall be payable for delayed payment, where any payment of land revenue has been suspended by the order of the Government." .

68. Substitution of Section 144 – For section 144 of the principal Act, the following section shall be substituted, namely: -

"144. Remission or suspension of land revenue on failure of crops –The State Government may, by notification stating the reasons, grant remission or suspension of land revenue in years in which crops have failed in any area or in which crops could not be grown in any area in consequence of any order made under any law by a competent authority.".

69. Amendment of Section 145 – In section 145 of the principal Act, in sub-section (I), for the words "by the Collector or by the Tahsildar", the words "by the Tahsildar" shall be substituted.

70. Substitution of Section 146 – For section 146 of the principal Act, the following section shall be substituted, namely: -

"146. Notice of demand – (1) A Tahsildar shall cause a notice of demand to be served on any defaulter before the issue, of any process under section 147 for the recovery of an arrear.

(2) Any defaulter may apply to the Tahsildar that nothing is due or that the amount due is less than the amount for which the notice of demand has been served and the Tahsildar shall decide the objection so raised and only thereafter proceed to issue any process under section 147, if required.".

71. Amendment of Section 147– Section 147 of the principal Act shall be renumbered as sub-section (1) thereof and –

(i) in sub-section (1) as so renumbered,–

(a) the words "or Gram Sabha" occurring in the opening paragraph shall be omitted;

(b) for clause (c), the following clause shall be substituted, namely:

"(c) by attachment and sale of any other immovable property wherever situate belonging to the defaulter:"; .

(ii) after sub-section (1) as so renumbered, the following sub-sections shall be added, namely-

"(2) Notwithstanding anything contained in sub-section (1), the Tahsildar may recover the arrear of land revenue by attaching any financial asset including bank account or locker, wherever situate, of the defaulter. The attachment of financial assets of the defaulter shall, so far as possible be made by serving a garnishee order on the incharge of financial assets in the manner laid down in Order 21 contained in the First Schedule to the Code of Civil Procedure, 1908 (No.5 of 1908). In case of a locker hired by the defaulter, the same shall be sealed in the presence of such incharge, who shall thereafter await further orders of the Tahsildar regarding preparation of inventory of its contents and their ultimate disposal.

(3) The Sub-Divisional Officer may cause any person committing default in payment of an arrear of land revenue exceeding rupees fifty lakh to be arrested and shall send him with a warrant to be confined in a civil prison for a period not exceeding fifteen days unless the arrears are sooner paid:

Provided that no action under this sub-section shall be taken unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to show cause why he should not be committed to the civil prison.

(4) Notwithstanding anything contained in sub-section (3), no person shall be arrested or confined in a civil prison for an arrear of land revenue, where and for so long as such person-

(a) is a minor, or a person mentally ill or mentally retarded; and

(b) is exempted under sections 133, 135 or 135-A of the Code of Civil Procedure, 1908.

(5) The Sub-Divisional Officer issuing the arrest warrant may withdraw such warrant if the defaulter pays or undertakes to pay the whole or substantial portion of the arrears and furnishes adequate security therefor.".

72. Amendment of Section 149 – In section 149 of the principal Act, the words and brackets "clauses (a) and (c) of" shall be omitted.

73. Substitution of Section 150 – For section 150 of the principal Act, the following section shall be substituted, namely:-

"150. Payment before property is knocked down at a sale and thereupon proceeding to be stayed – If proceedings are taken under this Chapter against any person for the recovery of an arrear of land revenue, he may, at any time before the property is knocked down at a sale, pay the amount claimed and there upon the proceedings shall be closed.".

74. Amendment of Section 151 – In section 151 of the principal Act, in sub-section (2) for the words, bracket, letter and figure "clause (c) of section 147", the words, brackets, letter and figures "clause (c) of sub-section (1) of section 147" shall be substituted.

75. Substitution of Section 153 – For section 153 of the principal Act, the following section shall be substituted, namely:-

"153. Purchaser's title – Where immovable property is sold under the provisions of this Chapter and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when full money as specified in the letter of sale is deposited by the purchaser.".

76. Amendment of Section 154-A – In section 154-A of the principal Act, in sub-section (1),-

(i) for the word and figure “section 147”, the words, bracket and figures “sub-section (I) of section 147” shall be substituted;

(ii) the first proviso shall be deleted;

(iii) in the second proviso, the word “further” shall be omitted.

77. Amendment of Section 155 – In section 155 of the principal Act, in proviso to clause (g), for full stop, semicolon shall be substituted and thereafter the following clause shall be added, namely:-

“(h) all moneys becoming payable to such entity owned and controlled by the State Government as may be notified by the State Government in this behalf:

Provided that no action shall be taken ‘on application for recovery of a sum specified in this clause unless such application is accompanied by a certificate signed by the chief executive, by whichever name called, of the said entity that the said sum should be recovered as an arrear of land revenue.”.

78. Amendment of Section 158 – In section 158 of the principal Act, in sub-section (3), for the proviso, the following proviso shall be substituted, namely:-

“Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment and thereafter may transfer such land with the permission obtained under sub-section (7-b) of section 165.”.

79. Amendment of Section 161 – In section 161 of the principal Act, in the marginal heading and in sub-section (1), the words ‘during the currency of settlement” shall be omitted.

80. Deletion of Section 162 – Section 162 of the principal Act shall be deleted.

81. Deletion of Section 163 – Section 163 of the principal Act shall be deleted.

82. Amendment of Section 165 – In section 165 of the principal Act, in sub-section (4), for the second proviso, the following proviso shall be substituted, namely:-

“Provided further that in case of the transfer of land under sub-clause (a) of clause (i) of the preceding proviso for industrial purpose, the land shall be diverted under section 59 prior to such transfer.”.

83. Substitution of Section 168 – For section 168 of the principal Act, the following section shall be substituted, namely:-

“168. Leases – (1) A Bhumiswami may lease any land comprised in his holding which has been assessed for the purpose of agriculture under section 59, for any period not exceeding five years at a time.

(2) The lessee shall hold the land on such terms and conditions as may be agreed upon between him and the Bhumiswami.

(3) Tahsildar on the application of the Bhumiswami on the ground of breach of any material term or condition of the lease or the lease ceasing to be in force may order the lessee to hand over possession of the land to the Bhumiswami.

(4) If a lessee does not hand over the possession of the land to the Bhumiswami on the expiry of the lease or within seven days from the date of the order passed by the Tahsildar under sub-section (3), the Bhumiswami shall be deemed to have been improperly dispossessed from his land by the lessee and shall be entitled to relief under section 250.

Explanation- For the purposes of this section-

(a) "lease" means a transfer of a right to enjoy any land, made for a certain time, expressed or implied in consideration of a price paid or promised or of money or any other thing of value to be given periodically to the transferor by the transferee who accepts the transfer on such terms;

(b) any arrangement where by a person cultivates any land of a Bhumiswami on condition of his giving a specified share of the produce of the land to the Bhumiswami shall be deemed to be a lease;

(c) any lease given under sub-section (I) for a period exceeding five years shall be deemed to have been given for a period of five years;

(d) the grant of a right merely to cut grass or to graze cattle or to grow "singhara" or to propagate or collect lac, or to pluck or collect tendu leaves shall not be deemed to be a lease of the land.".

84. Deletion of Section 169 – Section 169 of the principal Act shall be deleted.

85. Deletion of Section 171 – Section 171 of the principal Act shall be deleted.

86. Deletion of Section 172 – Section 172 of the principal Act shall be deleted.

87. Deletion of Section 174 – Section 174 of the principal Act shall be deleted.

88. Deletion of Section 176 – Section 176 of the principal Act shall be deleted.

89. Substitution of Section 178-A – For section 178-A of the principal Act, the following section shall be substituted, namely: -

"178-A.Partition of land in life time of Bhumiswami – (1) If any Bhumiswami wishes to partition his holding assessed for purpose of agriculture under section 59 or any part thereof amongst his legal heirs during his life time, he may apply for partition of such holding or part thereof to the Tahsildar.

(2) The Tahsildar may after hearing the legal heirs divide the holding or part thereof and apportion the assessment in accordance with the rules made under this Code.".

90. Substitution of Section 181A– For Section 181-A of the principal Act, the following section shall be substituted, namely:-

"181A. Person having Free hold right shall be Bhumiswami– Every person, who holds land in free hold right immediately prior to the coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018, shall be the Bhumiswami of such land.".

91. Amendment of Section 182 – In section 182 of the principal Act, in sub-section (2), for the words "a Revenue Officer", the words "the Collector" shall be substituted.

92. Substitution of Section 183 – For section 183 of the principal Act, the following section shall be substituted, namely:-

"183.Service land – (1) Any person holding land on the condition of rendering service as a Kotwar shall cease to be entitled to such land if he diverts such land to non-agricultural purposes.

(2) Any right of a Kotwar in the service land shall not be transferred nor be transferable by way of sale, gift, mortgage, sub-lease or otherwise except by a sub-lease for a period not exceeding one year.

(3) If a Kotwar dies, resigns or is lawfully dismissed, the service land shall pass to his successor-in-office.

(4) The right of a Kotwar in such land shall not be attached or sold in execution of a decree nor shall a receiver be appointed to manage such land under section 51 of the Code of Civil Procedure, 1908.

(5) If a Kotwar contravenes or attempt to contravene the provisions of sub-section (1) and (2), without prejudice to any action that may be taken against him under the provisions of this Code or any other law, such service land may be taken back from him by the order of the Tahsildar and the Kotwar or any other person who unauthorisedly continue to remain in possession of the land may be ejected under section 248.

(6) The service lands situated –

(a) in an urban area:

(b) in such area for which development plan has been approved:

(c) in such area beyond the outer limit of urban area, as notified by the State Government,

shall cease to be service land from the date as notified by State Government and the Tahsildar shall cause necessary changes in the land records."

93. Deletion of Section 184 – Section 184 of the principal Act shall be deleted.

94. Deletion of Chapter XIV and Saving – Chapter XIV of the principal Act regarding Occupancy Tenants, containing sections 185 to 202 (both inclusive) shall be deleted:

Notwithstanding the deletion of the said chapter, any case or proceeding regarding occupancy tenant pending before the Board or any Revenue Officer or any authority before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 shall be heard and decided by the Board or such Revenue Officer or authority, as if the said Amendment Act had not been passed.".

95. Substitution of Section 203 – For section 203 of the principal Act, the following section shall be substituted, namely:-

"203. Alluvion and diluvion – (1) Alluvial land formed on any bank shall vest in the State Government but the Bhumiswami, if any, of the land adjoining such bank shall be entitled to the use of the alluvial land so added to his holding free from the payment of land revenue till the land survey is undertaken, unless the area added to his holding exceeds half hectare.

(2) Where any holding is diminished in area by diluvion to an extent greater than half hectare, the land revenue payable on such holding shall be reduced.".

96. Amendment of Section 210 – In Section 210 of the principal Act, for the words "Settlement Commissioner" the word 'Commissioner" shall be substituted.

97. Amendment of Section 224 – In section 224 of the principal Act, for clause (a), the following clause shall be substituted, namely:- .

"(a) to collect land revenue and other related taxes and cesses payable through him and such other government dues ordered to be collected through him after deducting the collection charges, as may be determined by the State Government time to time, and pay into the Government treasury;".

98. Deletion of Section 225 – Section 225 of the principal Act shall be deleted.

99. Amendment of Section 227 – In section 227 of the principal Act, the word and figure "or 225" shall be deleted.

100. Amendment of Section 229 – In section 229 of the principal Act, the word and figure "constituted in accordance with the provisions of section 232" shall be omitted.

101. Amendment of Section 230 – In section 230 of the principal Act, the proviso to sub-section (1) shall be deleted.

102. Substitutions of Section 231 – For section 231 of the principal Act, the following section shall be substituted, namely: -

"231. Remuneration of kotwars– The State Government may, by general order, subject to such restrictions, terms and conditions as may be mentioned therein, from time to time, fix the norms for providing service land or remuneration or both to Kotwars for their services.".

103. Deletion of Section 232 – In Chapter XVII of the principal Act, subheading "C- Gram Sabha" and section 232 shall be deleted.

104. Substitutions of Section 233 – For section 233 of the principal Act, the following section shall be substituted, namely:-

"233. Record of unoccupied land – A record of all unoccupied land shall be prepared for every village and urban area in accordance with rules made in this behalf.".

105. Insertion of Section 233-A – After section 233 of the principal Act, the following section shall be inserted, namely:-

"233-A. Land to be set apart for public purposes in urban area – The Collector may, in accordance with the directions issued by the State Government in this behalf, from time to time,-

(a) set apart unoccupied lands in an urban area for public purposes;

(b) change the public purpose for which any such land is set apart; or

(c) rescind the action taken under clause (a) in respect of any such land:

Provided that no land shall be set apart for public purposes under this section which is inconsistent with the approved development plan.".

106. Substitutions of Section 234 – For section 234 of the principal Act, the following section shall be substituted, namely:-

"234. Preparation of Nistar Patrak – The Sub-Divisional Officer shall, in accordance with the provisions of this Code and the rules made thereunder, prepare a Nistar Patrak for every village embodying a scheme of management of all unoccupied land in the village and all matters incidental thereto and more particularly matters specified in section 235.".

107. Amendment of Section 239 – In section 239 of the principal Act,

(i) sub-sections (2), (3) and (4) shall be deleted;

(ii) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:-

"(5) If any of the terms and conditions of tree planting permit or tree patta granted under this section prior to the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 is breached, the Tahsildar may, after giving reasonable opportunity of being heard to the holder thereof, cancel the tree planting permit or tree patta and if such person unauthorisedly continues to remain in possession of the unoccupied land the Tahsildar shall proceed to take action against him under
section 248.

(6) The unoccupied land on which any tree planting permit or tree patta has been given prior to the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018 may be used for any public purpose by the order of the Collector. If any interest of the holder of such tree planting permit or tree patta is adversely affected due to such use, the holder shall be entitled for such compensation which shall be calculated in such manner as may be prescribed.".

108. Amendment of Section 240- In Section 240 of the principal Act, –

(i) for the existing marginal heading, the following marginal heading shall be substituted, namely:-

"Prohibition of cutting of certain trees in villages";

(ii) for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) The State Government may by rules made in this behalf, prohibit or regulate cutting of trees in villages standing on the land belonging to Bhumiswami or State Government, if it is satisfied that such prohibition or regulation is in the public interest or required for preventing erosion of soil.".

109. Amendment of Section 243 – In section 243 of the principal Act, in sub-section (3), for the words, figures and bracket "The Land Acquisition Act, 1894 (No. 1 of 1894)", the words, figures and bracket "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No. 30 of 2013)" shall be substituted.

110. Substitution of Section 244 – For section 244 of the principal Act, the following section shall be substituted, namely:-

"244. Allotment of abadi sites– Subject to rules made in this behalf: the Tahsildar shall allot abadi sites on lease in the abadi area.".

111. Substitution of Section 245 – For section 245 of the principal Act, the following section shall be substituted, namely:-

"245. Rights to hold house site free of land revenue – Any building site of reasonable dimensions in the abadi, which is held by a kotwar or by a person who holds land or who works as an agricultural artisan or an agricultural labourer in such village or in a village usually cultivated from such village, as on the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018, shall not be liable to the payment of land revenue"."

112. Amendment of Section 246 – For section 246 of the principal Act, the following section shall be substituted, namely:-

"246. Rights of persons holding house site in abadi – Every person who lawfully holds any land as a house site in the abadi immediately prior to coming into force of the Madhya Pradesh Land Revenue Code (Amendment) Act, 2018, shall be a Bhumiswami.".

113. Amendment of Section 248 – In section 248 of the principal Act, in sub-section (1), for the words "to pay the rent of the land for the period of unauthorised occupation at twice the rate admissible for such land in locality and to pay fine which may extend to twenty per centum of the market value of such encroached land", the words "to a fine with may extend to one lakh rupees" shall be substituted.

114. Substitution of Section 250 – For section 250 of the principal Act, the following section shall be substituted, namely :–

"250. Reinstatement of Bhumiswami improperly dispossessed – (1) The Tahsildar shall,-

(a) on application of a Bhumiswami or his successor-in-interest who has been improperly dispossessed, issue a show cause notice to the person occupying Bhumiswami's land to explain the grounds of his possession and make such enquiry as he thinks fit; or

(b) on coming to know that a Bhumiswami has been improperly dispossessed, on his own motion start proceedings under clause (a).

(2) If after the enquiry the Tahsildar finds that the Bhumiswami has been improperly dispossessed, he shall order the restoration of the possession to the Bhumiswarni and also put him in possession of the land,

(3) The Tahsildar may, at any stage of the enquiry, pass an interim order to the person occupying the land to hand-over its possession to the Bhumiswami, if he finds that the Bhumiswami was dispossessed by opposite party within six months prior to the submission of the application or commencement of suomotu proceedings under this section.

(4) The person against whom an interim order has been passed under sub-seciton (3) may be required by the Tahsildar to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of land until the final order is passed by the Tahsildar and if the person executing a bond is found to have entered into or taken possession of the land in contravention of the bond, the Tahsildar may forfeit the bond in whole or in part and may recover such amount as an arrear of land revenue.

(5) Where the Tahsildar orders restoration of possession of land to the Bhumiswami under sub-section (2), the Tahsildar shall also award

compensation to be paid to the Bhumiswami by the opposite party for the period of his unauthorised possession and such compensation shall be calculated at the pro rata rate of ten thousand rupees per hectare per year. The compensation awarded under this section shall be recoverable as an arrear of land revenue.

(6) When an order has been passed under sub-section (2) for the restoration of possession of land to the Bhumiswami, the Tahsildar may require the opposite party to execute a bond for such sum as the Tahsildar may deem fit for abstaining from taking possession of the land in contravention of the order.

(7) Where an order has been passed under sub-section (2) for the restoration of the possession of land to the Bhumiswami, the opposite party shall also be liable to fine which may extend to fifty thousand rupees.

(8) If any person continues in unauthorised occupation or possession of land for more than seven days after the date of order for restoration of possession under subsection (2) or sub-section (3), then without prejudice to the compensation payable under sub-section (5) or the fine under sub-section (7), the Sub-Divisional Officer shall cause him to be apprehended and shall send him with a warrant to be confined in a civil prison for a period of fifteen days in case of first order for restoration of possession and shall cause him to be apprehended and shall send him with a warrant to be confined in such prison for a period of three months in case of second or subsequent orders for restoration of the possession to such Bhumiswami:

Provided that no action under this section shall be taken unless a notice is issued calling upon such person to appear before the Sub-Divisional Officer on a day to be specified in the notice and to showcause why he should not be committed to the civil prison:

Provided further that the Sub-Divisional Officer may order the release of such person from detention before the expiry of the period mentioned in the warrant if he is satisfied that the unauthorized possession has been vacated.

Explanation I.– For the purpose of this section, the Bhumiswami includes government lessee.

Explanation II.– For the purpose of this Section "improperly dispossessed" means a Bhumiswami who is dispossessed of his land otherwise than in due course of law or if any person continues unauthorisedly in possession of land of the Bhumiswami to the use of which such person has ceased to be entitled.".

115. Deletion of Section 250A – Section 250A of the principal Act shall be deleted.

116. Deletion of Section 252 – Section 252 of the principal Act shall be deleted.

117. Amendment of Section 253 – In section 253 of the principal Act, sub-section (2) shall be deleted.

118. Deletion of Section 254 – Section 254 of the principal Act shall be deleted.

119. Deletion of Section 255 – Section 255 of the principal Act shall be deleted.

120. Amendment of Section 257 – In section 257 of the principal Act, –

(i) clauses (n) (0), (p), (q), (r), (s), (t) and (u) shall be deleted;

(ii) for clause (x), the following clause shall be substituted, namely:–

"(x) any decision regarding reinstatement of a Bhumiswami improperly dispossessed and confinement in civil prison under section 250;":

(iii) clause (x-i) shall be deleted;

(iv) clause (z-l) shall be deleted.

121. Amendment of Section 258 – In section 258 of the principal Act,–

(i) in sub-section (2),–

(a) after clause (i), the following clause shall be inserted, namely:

"(i-a) prescription of Form for publishing proposal under section 13(2);";

(b) for clause (ii), the following clause shall be substituted, namely:

"(ii) the prescription of the duties of Superintendents of Land Records and Assistant Superintendents of Land Records under section 20(2);";

(c) for clause (iii), the following clause shall be substituted, namely

"(iii) rates for assessment, imposition of premium and assessment and reassessment of land revenue and manner for intimation of diversion under section 59;";

(d) after clause (iv), the following clause shall be inserted, namely:-

"(iv-a) prescription of other record under section 61 (e);

(iv-b) powers to be exercised and duties shall be discharged under section 63 (2);";

(e) for clause (v), the following clause shall be substituted, namely:

"(v) formation of survey numbers, block numbers, plot numbers and their grouping into villages in non-urban areas or into sectors in urban areas under section 67;

(v-a) division or amalgamation of any survey number, block number, plot number and assessment thereof under sub-section (3) of section 68;";

(f) for clause (vi), the following clause shall be substituted, namely:
"(vi) entry of survey numbers, block numbers and plot numbers and their sub-divisions in land record under section 69;";

(g) for clause (vii) the following clause shall be substituted, namely:
"(vii)division and alteration of village or sector by dividing or uniting the villages or sectors under section 71 ;";

(h) for clause (viii), the following clause shall be substituted, namely:
"(viii) rates of fixation of assessment on holding under section 72 ;";

(i) clauses (ix), (x) and (xi) shall be deleted;

(j) for clause (xii), the following clause shall be substituted, namely:-
"(xii)the regulation of the conduct of land survey under section 77;";

(k) clauses (xv), (xvi), (xvii) and (xviii) shall be deleted;

(1) for clause (xix), the following clause shall be substituted, namely:-
"(xix) prescription of other duties of patwaris and Nagar Sarvekshaks under section 104 (2);";

(m) for clause (xxi), the following clause shall be substituted, namely:
"(xxi) prescription of other particulars and scale of map under section 107;";

(n) for clause (xxiii), the following clause shall be substituted, namely:
"(xxiii)prescription of Forms of, and manner for-
(a) reporting of acquisition of right, intimation;
(b) pre-mutation sketch, if any;
(c) acknowledgement,
(d) registers,
(e) writing, intimation or displaying of notice;
(f) supply of copy;
(g) information of pending cases; and
(h) prescription of fees, under sections 109, and 110;";

(o) clause (xxiv) shall be deleted;

(p) for clause (xxv), the following clause shall be substituted, namely:
"(xxv) preparation and prescription of land records under section 114;";

(q) after clause (xxv), the following clause shall be inserted, namely:
"(xxv-a) prescription of fee on the payment of which BhooAdhikar Pustika shall be provided and details of particulars entered into under section 114-A;";

(r) for clause (xxviii), the following clause shall be substituted, namely:-;

"(xxviii)specification of and manner of, construction and maintenance of boundary marks of villages, sectors and survey numbers or plot numbers under section 124;";

(s) for clause (xxix), the following clause shall be substituted, namely:-

"(xxix)the manner of demarcating boundary marks between a village road, village waste or land reserved for community purposes and the land adjoining it and the manner in which they shall be kept in repair and renewed under section 127;";

(t) for clause (xxxi), the following clause shall be substituted, namely

"(xxxi) manner, persons to whom and the places where, the land revenue shall be paid under section 140;";

(u) in clause (xxxvi), the words "during the currency of settlement" shall be omitted;

(v) clause (xxxvii) shall be deleted;

(w) clause (xli) shall be deleted;

(x) clause (xliii) shall be deleted;

(y) after clause (xliv), the following clause shall be inserted, namely:

"(xliv-a)regulation of partition in life time of a Bhumswami and apportionment of assessment under section I78-A;";

(z) clauses (xlvii) to (li) shall be deleted;

(z-a) clause (lvi) shall be deleted;

(z-b) after clause (lvii) the following clause shall be inserted, namely:

"(lvii-a) prescription of the record to be maintained under section 233-A;";

(z-c)for clause (lx), the following clause shall be substituted, namely:

"(lx) manner for calculation of compensation under section 239 (6);";

(z-d) after clause (lxv), the following clause shall be inserted, namely:

"(lxv-a) for the purpose of carrying into effect the provisions of section 250;";

(z-e) clause (lxvii) shall be deleted;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely: -

"(2A) The State Government may, from time to time, make rules consistent with the provisions of this Code regulating the practice, and procedure of the Board and the procedure to be followed by

other Revenue Courts and may by such rules annul, alter or add to all or any of the rules in Schedule I.

(2B) In particular and without prejudice to the generality of the powers conferred by sub-section (2A), such rules may provide for all or any of the following matters, namely, -

(a) the service of summons, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(b) the regulation of power of Revenue Officers to summon parties and witnesses and the grant of expenses to witnesses;

(c) the regulation of recognised agents with regard to appearances, applications and acts done by them in proceedings under this Code;

(d) procedure to be observed in effecting attachment of movable and immovable properties;

(e) procedure for publishing, conducting, setting aside and confirming sales and all ancillary matters connected with such proceedings;.

(f) the maintenance and custody, while under attachment, of livestock and other movable property, the fees payable for such live stock and property and the proceeds of such sale:

(g) consolidation of appeals and others proceedings:

(h) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Revenue Courts:

(i) the time within which, in the absence of any express provision, appeals or applications for revision may be filed;

(j) the cost of and incidental to any proceedings:

(k) examination of witnesses on commission and payment of expenses incidental to such examination:

(l) licensing of petition-writers and the regulation of their conduct.

(2c) Such rules shall from the date of publication or from such other date as may be specified, have the same force and effect as if they were contained in Schedule I"

122. Amendment of Schedule I. – In Schedule I to the principal Act, in the heading, for bracket, words and figure "(See Section 41)", the brackets, words, figures and letters "[see section 258(2A) and (2C)]" shall be substituted.

•

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018

NO. 20 OF 2018

[2nd August, 2018.]

(The following Act of Parliament received the assent of the President on the 2nd August, 2018, and is hereby published for general information:)

An Act further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. **Short title and commencement. –** (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2018.

   (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. **Insertion of new section 143A. –** In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), after section 143, the following section shall be inserted, namely:—

   ''143A. Power to direct interim compensation.– (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

   (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

   (b) in any other case, upon framing of charge.

   (2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.

   (3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

   (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

   (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.''.

3. Insertion of new section 148 – In the principal Act, after section 147, the following section shall be inserted, namely:—

''148. Power of Appellate Court to order payment pending appeal against conviction – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.''.

•

YOUR ORDER SHOULD NOT BE JUSTICE, RATHER IT SHOULD BE OUT COME OF JUSTICE.

THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

No. 18 of 2018

[1st August, 2018.]

(The following Act of Parliament received the assent of the President on the 1st August, 2018, and is hereby published for general information)

An Act further to amend the Specific Relief Act, 1963.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. Short title and commencement. – (1) This Act may be called the Specific Relief (Amendment) Act, 2018.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Amendment of section 6. – In section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the principal Act), in sub-section (1), after the words "he or any person", the words "through whom he has been in possession or any person" shall be inserted.

3. Substitution of new section for section 10. – For section 10 of the principal Act, the following section shall be substituted,namely:—

"**10. Specific performance in respect of contracts. –** The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16.".

4. Amendment of section 11. – In section 11 of the principal Act, in sub-section (1), for the words "contract may, in the discretion of the court", the words "contract shall" shall be substituted.

5. Substitution of new sections for section 14. – For section 14 of the principal Act, the following sections shall be substituted, namely:—

"**14. Contracts not specifically enforceable. –**The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.

14A. Power of court to engage experts. – (1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908, in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.

(2) The court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(3) The opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to himor mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection.

(4) The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.".

6. Amendment of section 15. – In section 15 of the principal Act, after clause *(f)*, the following clause shall be inserted, namely:—

"*(fa)* when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.".

7. Amendment of section 16. – In section 16 of the principal Act,—

(i) for clause (a), the following clause shall be substituted, namely:—

"(a) who has obtained substituted performance of contract under section 20; or";

(ii) in clause (c),—

(I) for the words "who fails to aver and prove", the words "who fails to prove" shall be substituted;

(II) in the Explanation, in clause (ii), for the words "must aver", the words "must prove" shall be substituted.

8. Amendment of section 19. – In section 19 of the principal Act, after clause (c), the following clause shall be inserted, namely:—

"(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.".

9. Amendment of sub-heading under Chapter II. – For sub-heading *"Discretion and powers of Court"* occurring after section 19, the sub-heading *"Substituted performance of contracts, etc."* shall be substituted.

10. Substitution of new sections for section 20. – For section 20 of the principal Act, the following sections shall be substituted, namely:—

"20. Substituted performance of contract. – (1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

(2) No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency:

Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

20A. Special provisions for contract relating to infrastructure project. – (1) No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

***Explanation.*—** For the purposes of this section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule.

(2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

(3) Every notification issued under this Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

20B. Special Courts. – The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects.

20C. Expeditious disposal of suits. – Notwithstanding anything contained in the Code of Civil Procedure, 1908,a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant:

Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.".

11. Amendment of section 21. – In section 21 of the principal Act, in sub-section (1), for the words ", either in addition to, or in substitution of," the words "in addition to" shall be substituted.

12. Amendment of section 25. – In section 25 of the principal Act, for the words and figures "the Arbitration Act, 1940", the words and figures "the Arbitration and Conciliation Act, 1996" shall be substituted.

13. Amendment of section 41. – In section 41 of the principal Act, after clause (h), the following clause shall be inserted, namely:—

"*(ha)* if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.".

14. Insertion of Schedule. After Part III of the principal Act, the following Schedule shall be inserted, namely:—

'THE SCHEDULE

[See sections 20A and 41 (ha)]

Category of projects and Infrastructure Sub-Sectors

Sl. No.	Category	Infrastructure Sub-Sectors
1	2	3
1	Transport	(a) Road and bridges (b) Ports (including Capital Dredging) (c) Shipyards (including a floating or land-based facility with the essential features of waterfront, turning basin, berthing and docking facility, slipways or ship lifts, and which is self-sufficient for carrying on shipbuilding/repair/breaking activities) (d) Inland Waterways (e) Airports (f) Railway Track, tunnels, via ducts, bridges, terminal infrastructure including stations and adjoining commercial infrastructure (g) Urban Public Transport (except rolling stock in case of urban road transport)
2	Water and Sanitation	(a) Electricity Generation (b) Electricity Transmission (c) Electricity Distribution (d) Oil pipelines (e) Oil/Gas/Liquefied Natural Gas (LNG) storage facility (including strategic storage of crude oil)(f) Gas pipelines (including city gas distribution network)
3	Energy	a) Solid Waste Management (b) Water supply pipelines (c) Water treatment plants (d) Sewage collection, treatment and disposal system (e) Irrigation (dams, channels, embankments, etc.) (f) Storm Water Drainage System (g) Slurry pipelines

4	Communication	(a) Telecommunication (Fixed network including optic fibre/wire/cable networks which provide broadband/ internet) (b) Telecommunication towers (c) Telecommunications and Telecom Services
5	Social and Commercial Infrastructure	(a) Education Institutions (capital stock) (b) Sports infrastructure (including provision of Sports Stadia and Infrastructure for Academies for Training/Research in Sports and Sports-relating activities) (c) Hospitals (capital stock including Medical Colleges, Para Medical Training Institutes and Diagnostic Centres) (d) Tourism infrastructure viz. (i) three-star or higher category classified hotels located outside cities with population of more than one million; (ii) ropeways and cable cars (e) Common infrastructure for industrial parks and other parks with industrial activity such as food parks, textile parks, Special Economic Zones, tourism facilities and agriculture markets (f) Post-harvest storage infrastructure for agriculture and horticulture produce including cold storage (g) Terminal markets (h) Soil-testing laboratories (i) Cold chain (including cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat) (j) Affordable Housing (including a housing project using at least 50% of the Floor Area Ratio (FAR)/ Floor Space Index (FSI) for dwelling units with carpet area of not more than 60 square meters ***Explanation.***— For the purposes of this sub-clause,the term "carpet area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.


मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्य प्रदेश राज्य न्यायिक अकादमी

मध्यप्रदेश उच्च न्यायालय, जबलपुर - 482 007