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APRIL 2017

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

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Former Chief Justice,
High Court of M.P., Jabalpur

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OSD

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Director Incharge

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FROM EDITOR'S DESK

Sanjeev Kalgaonkar

Director Incharge

Respected Judges,

Judicial Education is an essential element of robust Justice Dispensation System. Judicial competence depends on the willingness of Judiciary to keep itself knowledge enriched and skilled in study of law and its developments. The Judges need to be regularly updated and educated on legal principles and art of judging. Till recent past, Judicial Education has largely been considered to be an in-house matter. It worked on the assumption that imparting education to Judges will make the Judicial System better. Later, with the experience, we understood that Judicial System requires wholesome judicial education to improve the capacity and capability of all the stakeholders.

In adversarial judicial system, we simply cannot afford to enrich ourselves with the legal knowledge and expect other stakeholders to catch up with us without proper training and legal education. Now, the need is felt for "Judge led change", in transforming every aspect of Justice Dispensation System that essentially includes imparting judicial education to all stakeholders i.e. the Prosecutors, Advocates, Penal Lawyers, Investigators, Medical Officers, Forensic Experts, Technology Experts, Support Staff of Court and the Officials discharging quasi-judicial functions.

The State Judicial Academy has taken this concept in strides. We are gradually expanding our role of imparting Judicial Education to other stakeholders also, needless to say within the constraints of manpower and infrastructure. The Academy has organised workshop on – Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 for the Judges of District Judiciary and Workshop on Consumer Protection Act, 1986 for the Presidents of District Consumer Fora in the Academy. In addition, the Academy has also conducted Regional Conference on – Juvenile Justice & Capacity Building to ensure proper implementation of Law relating to Child for all the stakeholders working under the Act and seven workshops on Sensitization towards Wildlife and Forest Crimes for Judicial Magistrates, Prosecution Officers and Forest Officers.

Hon'ble Shri Justice Rajendra Menon has been a constant source of inspiration for the Academy. The Academy stands indebted for His Lordship's benevolent guidance and support. We congratulate Hon'ble Shri Justice Rajendra Menon for his appointment as Chief Justice of Patna High Court. We wish His Lordship a very successful tenure.

The Academy welcomes Hon'ble Shri Justice Hemant Gupta, as the 23rd Chief Justice of the High Court of Madhya Pradesh. We solicit guidance and blessings of our Patron-in-Chief, in all our endeavours towards judicial excellence.

Let us have a glimpse of recent developments in the field of law that are being published in this issue.

The Apex Court in ***Prabhakar Adiga's*** case laid down that when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs of decree holder and against the judgment debtor or his legal representative. Although a decree of injunction normally does not run with the land, however, in view of specific provision contained in section 50 of the Code of Civil Procedure, such decree can be executed against legal representatives.

Explaining the terms "initial investigation", "further investigation", "***de novo*** investigation", "re-investigation" and "fresh investigation", the Apex Court in the case of ***Amrutbhai Shambhubhai Patel*** held that a Magistrate cannot either ***suo motu*** or on an application of complainant direct "further investigation" after taking the cognizance.

In the case of ***Abhijit Pawar***, it was reemphasised that where the accused is residing at a place beyond the territorial jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation under section 202 of the Code of Criminal Procedure before issuing the process.

A three-Judge Bench of the Supreme Court in the case of ***Kishore Bhadke*** held that joint disclosure and simultaneous disclosure ***per se*** are not inadmissible. Discoveries made on the basis of disclosure by two accused separately in quick succession to investigating officer is admissible against both of them.

In case of ***Mohd. Hashim,*** it is laid down that although section 4 of the Dowry Prohibition Act prescribes for minimum jail sentence, but also provides for discretion not to award jail sentence for reasons to be recorded in writing, hence, the Probation of Offenders Act would apply.

In case of ***Hanif Khan v. Shanno Bee***, the High Court of Madhya Pradesh laid down that while deciding a complaint under section 12 of the Protection of Women from Domestic Violence Act, the conduct of the parties even prior to coming into force of the Act can be taken into consideration.

In case of ***Haryana Urban Development Authority,*** it was held that in a suit for declaration and mandatory injunction by the highest bidder against rejection of his bid, proper valuation of the suit should not be less than the bid amount and ad ***valorem*** court fees would be payable.

Relying on an earlier decision in case of ***Maria Margarida,*** the Supreme Court in ***Behram Tejani*** reiterated that person holding possession gratuitously or in capacity as a servant or caretaker does not acquire any right or interest in property. His long possession is immaterial, interim injunction cannot be granted.

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

Keep blessing our pursuit for judicial excellence.

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APPOINTMENT OF HON'BLE SHRI JUSTICE RAJENDRA MENON AS CHIEF JUSTICE OF PATNA HIGH COURT

Hon'ble Shri Justice Rajendra Menon, who occupied the august office of the Judge of the High Court of Madhya Pradesh for approximately fifteen years, has been appointed as Chief Justice of Patna High Court.

Born on 07.06.1957 at Jabalpur. His Lordship obtained Law Degree from NES Law College, Jabalpur and was enrolled as an Advocate with the State Bar Council in August 1981. Was appointed as Additional Central Government Standing Counsel for the Government of India in the High Court of Madhya Pradesh, Jabalpur and was standing Counsel for Rani Durgawati Vishwavidhyalaya, Jabalpur, Hari Singh Gour Vishwavidhyalaya, Sagar. His Lordship was nominated representative of the Vice-Chancellor in the governing bodies of various colleges. Practised on Constitutional, Civil and Revenue side. Besides this, His Lordship has expertise in Service and Labour Laws. His Lordship was elevated as Additional Judge of the High Court of Madhya Pradesh on April, 2002 and as permanent Judge on 21st March, 2003. His Lordship was appointed as Administrative Judge of the High Court of M.P., Principal Seat on 20.03.2015. His Lordship assumed the charge of Office of Acting Chief Justice of the High Court of M.P. on 13.05.2016.

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

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

His Lordship was accorded farewell ovation on 11th March, 2017 in the High Court of Madhya Pradesh, Jabalpur.

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

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MADHYA PRADESH STATE JUDICIAL ACADEMY,
HIGHCOURT OF M.P., JABALPUR

Foundation Course (First Phase) for the District Judges (Entry Level) Directly Appointed from the Bar & Advance Course Training Programme for District Judges (Entry Level) Promoted in the year 2017 (First Batch)

WELCOME HON'BLE THE CHIEF JUSTICE SHRI HEMANT GUPTA

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

Born on 17th October, 1957 and belongs to a family of illustrious lawyers. His Lordship's grandfather was a prominent civil lawyer. His Lordship's father was Chief Justice of Punjab and Haryana High Court.

His Lordship was enrolled as an Advocate in July, 1980, practised at High Court after spending initial few years in the District Court and mainly dealt with civil cases including Labour, Company, Constitutional and Service Law. Appointed as Additional Advocate General, Punjab from 1997 to 1999.

As a Judge in the High Court, His Lordship has had the opportunity to deal with all branches of laws, be it Civil, Revenue, Constitutional, Company, Tax or criminal laws. Some of the noticeable judgments delivered by His Lordship are regarding the grant of professional degrees through distance education made by the Deemed Universities, appointment of the Chairman of the Punjab Public Service Commission; interpretation of section 29 of the State Financial Corporation Act, 1951; interpretation of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; Appeal in the matter arising out of Kandhar Indian Airline plane Hijack case: interpretation of section 427(2) of the Code of Criminal Procedure, and rights of the inmates in the jail in Punjab, Haryan and U.T. Chandigarh.

His Lordship was member of the Computer Committee, Punjab and Haryana High Court, for more than 10 years. This period saw comprehensive computerization of the High Court. Some of the IT initiatives taken during this period were, LCD based display boards for the benefit of litigants and Advocates; establishing a remote location data centre, implementation of Bio-Metric System for on-line attendance of the High Court staff: Digitization of the entire records of judicial files including developing a mechanism to scan even the freshly filed case, introduction of the Case Management System, launching of E-diary, E-filing of the cases, access to paper book module, on-line availability of the judgments and the daily/interim orders, extensive usage of the SMS, dispensing with the manual peshi registers, E-inspection, e-copy of the judgment(s)/order(s) by creating automated centralized copy agency.

His Lordship also remained as Executive Chairman of the Sate Legal Services Authority, U.T., Chandigarh from July, 2012 till January, 2016. During his tenure, a unique scheme was among others, the projects of 'Sakshar Balak-Balika' and 'Saksham Maa' for the underprivileged classes were conceptualized and put

into place in collaboration with an NGO called Hamari Kaksha. The scheme provided adult education to the mothers so as to empower them to take care of themselves and also to motivate them to teach their child and also to make children to enable them to go to school. Another project, namely, 'Hamari Pathshala' was also started for the children belonging to the poor sections of the Society, i.e. rag pickers, street vendors and slum dwellers.

His Lordship was appointed as Judge of Punjab and Haryana High Court on 02-07-2002. His Lordship took over as Judge of Patna High Court on 08-02-2016. His Lordship was appointed as Acting Chief Justice of Patna High Court on 29-10-2016.

On appointment as 23rd Chief Justice of the High Court of Madhya Pradesh, His Lordship was administered oath of office at Raj Bhawan, Bhopal by the Governor of Madhya Pradesh on 18th March, 2017. His Lordship was accorded welcome ovation on 20th March, 2017 in the Conference Hall of South Block of High Court of Madhya Pradesh, Jabalpur.

We on behalf of JOTI Journal, welcome our patron in chief and wish him a healthy, happy and successful tenure.

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HON'BLE SHRI JUSTICE D.K. PALIWAL DEMITS OFFICE

Hon'ble Shri Justice Dharmdhwaj Kumar Paliwal demitted office on His Lordship's attaining superannuation.

Born on 16.03.1955 in Hamirpur, Uttar Pradesh. After obtaining degrees of B.Sc., LL.B and LL.M., joined as Civil Judge Class II on 05.11.1981. Was confirmed as District Judge in Higher Judicial Services in the year 1997. Granted Selection Grade Scale on 04.06.1999 and Super Time Scale on 10.10.2007.

Worked in different capacities as President, District Consumer Forum, Rewa in the year 2001, as Additional Secretary M.P. Law & Legislative Affairs Department, Bhopal, as Legal Remembrancer & Secretary (Law), Law Department, Bhopal in the year 2004, as District & Sesions Judge, Bhind in the year 2005 and Shivpuri in the year 2008, as District Judge (Inspection & Vigilance), High Court of M.P., Bench Gwalior in the year 2009. Was District & Sessions Judge, Gwalior from 01.06.2010 prior to elevation. Took oath as Additional Judge, High Court of Madhya Pradesh on 01.04.2013 and as Permanent Judge on 06.09.2014.

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

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".....The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope"

लॉर्ड एटकिन के अनुसार एकाकीपन न्याय की विशेषता नहीं हैं वरन् यह जन साधारण की समालोचना के अधीन होना चाहिये। यद्यपि न्यायाधीश एवं न्यायालय जनसाधारण एवं अन्य संस्था से अधिक संरक्षण को प्राप्त करने की अपेक्षा नहीं करते हैं, परंतु विधि की अंतर्निहित सर्वोच्चता को प्रश्नगत किये जाने की स्थिति में न्याय की स्वतंत्रता एवं निष्पक्ष प्रशासन बनाये रखने हेतु विशेषाधिकार आवश्यक है। विशेषाधिकार के रूप में न्यायालय के अवमान के क्षेत्राधिकार का प्रयोग व्यक्तिगत रूप से किसी न्यायाधीश की प्रतिष्ठा की रक्षा करने के लिए नहीं बल्कि न्याय के प्रशासन का अहितकर होने से बचाने के लिये होता है। माननीय सर्वोच्च न्यायालय द्वारा भी *fj v:.k/kr/h jk;]* *,-vkb-vkj- 2002 ,l-1/h- 1375* के मामले में यह अभिनिर्धारित किया गया कि विधि का शासन भारतीय संविधान का मूल तत्व है एवं न्यायालय के गरिमा को बनाये रखना, विधि के शासन का प्रमुख सिद्धांत हैं।

न्यायालय अवमान की विधि की उत्पत्ति एवं विकास अन्य विधियों से भिन्न रीति से हुई हैं। इतिहास में सम्राट की अवमानना के क्षेत्राधिकार का सृजन किया गया एवं यह दावा किया गया कि उक्त क्षेत्राधिकार न्याय की पूर्ति के लिए स्वभाविक रूप से आवश्यक हैं। सम्राट की अवमानना का लिखित उल्लेख सर्वप्रथम लगभग 12वीं शताब्दी के लगभग इंग्लैंड के राजा हेनरी – प्रथम की विधियों में पाया जाता हैं। इन्हीं विधियों में अवमान अथवा आदेशों के अनादर हेतु धन संबंधी शास्तियों का उल्लेख था। इंग्लैंड में लगभग 12वीं शताब्दी की समाप्ति के पूर्व न्यायालय अवमान मान्यता प्राप्त अभिव्यक्ति थी और उसका प्रयोग पक्षकारों द्वारा व्यतिक्रम तथा सदोष कृत्यों के लिये किया जाता था। बाद में अवमान विधि में अवमान के दो प्रकार – सिविल एवं दांडिक अवमान को मान्यता प्रदान की गई।

हालांकि भारत में अनादिकाल से सम्राट द्वारा दिये गये आदेश का अपालन राज्य के विरूद्ध अपराध माना जाता रहा है, परंतु भारत में न्यायालय अवमान की नवीन विधि ब्रिट्रिश न्याय प्रशासन पर आधारित होकर प्रारंभ हुई है। ब्रिटिश काल में स्थापित न्यायालयों को 'अभिलेख न्यायालय' माना जाता था एवं उन्हें अवमानना के लिये दंडित करने के लिए शक्तियाँ प्राप्त थी। प्रिवी काउंसिल द्वारा *ljUæ ukFk cuthZ fo:) phQ tfLVl ,.M t tl vkQ gkbZ dkVZ ,V QkVZ fofy;e vkQ cxky] ¼1883½ vkb-,y-vkj- 10 dyd Ükk] 109* में प्रेसीडेंसियों में उच्च न्यायालय को वरिष्ठ

अभिलेख न्यायालय होने से उन्हें अवमान के अपराध हेतु दंडित करने की शक्तियों से युक्त होना एवं उक्त शक्तियाँ इंग्लैंड की सामान्य विधि (Common Law) से प्राप्त होने का मत व्यक्त किया गया था।

अधिनियमित रूप में सर्वप्रथम न्यायालय अवमान अधिनियम, 1926 के अंतर्गत उच्च न्यायालयों को अधीनस्थ न्यायालयों के अवमान के लिये दंडित करने हेतु क्षेत्राधिकार तथा प्राधिकार का प्रयोग करने के लिये सशक्त किया गया था। इसके पश्चात् न्यायालय अवमान अधिनियम, 1952 के द्वारा ज्यूडिशियल कमीशन के न्यायालय को भी अवमान कार्यवाही हेतु शक्ति प्रदान की गई, परंतु उक्त अधिनियम के संतोषजनक न होने एवं न्यायालय के अवमान से संबंधित विधि के अनिश्चित एवं अपरिभाष्य होने के कारण वर्ष 1961 में एच.एन. सनयाल की अध्यक्षता में समिति का गठन किया गया। इस समिति द्वारा दी गई सिफारिशों के आधार पर न्यायालय अवमान अधिनियम, 1971 पारित किया गया। अधिनियम 1971, के पारित किये जाने के पश्चात् से अवमान विधि का विकास निर्णयज विधि के आधार पर ही हुआ है। जहाँ तक उच्च न्यायालय व उच्चतम न्यायालय का प्रश्न है, स्वयं भारतीय संविधान द्वारा उच्चतम न्यायालय को अनुच्छेद 129 एवं उच्च न्यायालयों को अनुच्छेद 215 के अंतर्गत 'अभिलेख न्यायालय' होने से अवमानना हेतु दंडित करने की स्वतंत्र शक्तियाँ प्रदान की गई है।

''अवमान'' की परिभाषा के संबंध में यदि विचार किया जावे तो मूल रूप से अवमान किसी ऐसे के असम्मान को अभिव्यक्त करता है, जिसका सम्मान किया जाना अथवा आदर किया जाना अपेक्षित हैं। सन्याल कमेटी द्वारा अपनी रिपोर्ट में अवमान की वृहद परिधि के संबंध में चर्चा की गई थी। समिति द्वारा यह व्यक्त किया गया था, न्यायालय की कई प्रकार से अवमानना हो सकती हैं। यह न्यायालय के आदेश की अवज्ञा से निजी प्रकृति की हानि/क्षति तक, प्रकरण के पक्षकारों से किसी बाहरी व्यक्ति तक, शारीरिक हिंसा से धमकी तक, बोलने से लिखने तक एवं किसी सामान्य व्यक्ति से स्वयं न्यायाधीश तक को समाविष्ट कर सकती हैं।

न्यायालय अवमान अधिनियम, 1971 द्वारा अवमान को स्वयं में परिभाषित नहीं किया गया है। धारा 2 (क) के अनुसार ''न्यायालय अवमान'' का तात्पर्य सिविल अवमान या दांडिक अवमान से है। धारा 2 (ख) ''सिविल अवमान'' को निम्नानुसार परिभाषित करती हैं :–

''सिविल अवमान'' का अर्थ है, किसी न्यायालय के किसी निर्णय, डिक्री, आदेश, रिट या अन्य आदेशिका की जानबूझकर ***(Wilfull)*** अवज्ञा अथवा किसी न्यायालय से किये गये किसी परिवचन का जानबूझकर ***(Wilfull)*** भंग किया जाना।

धारा 2 (ग) के अंतर्गत ''दांडिक अवमान'' को निम्नानुसार परिभाषित किया गया है :–

''दांडिक अवमान'' का अर्थ है, किसी विषय का प्रकाशन (चाहे बोले गये या अंकित किये गये शब्दों द्वारा, या संकेतों द्वारा, या दृश्यरूपणों द्वारा, अथवा अन्यथा) या किसी प्रकार के अन्य कार्य का किया जाना, जिससे –

(i) किसी न्यायालय के प्राधिकार पर लांछन लगता है या लांछन लगाने को प्रवृत्त होता है या उसको घटाता है, या उसे घटाने को प्रवृत्त होता है; अथवा

(ii) किसी न्यायिक कार्यवाही के सम्यक् अनुक्रम पर प्रतिकूल प्रभाव डालता है, या उसमें हस्तक्षेप पैदा करता है या हस्तक्षेप पैदा करने की प्रवृत्ति रखता है; अथवा

(iii) किसी अन्य रीति से न्याय प्रशासन में हस्तक्षेप पैदा करता हैं या हस्तक्षेप पैदा करने की प्रवृत्ति रखता हैं।

''सिविल अवमान'' सारतः किसी ऐसे व्यक्ति, जो कि न्यायालय के आदेश का लाभ प्राप्त करने का अधिकारी हैं, को की गई क्षति/हानि एवं मुख्य रूप से आदेश का अनुपालन कराये जाने से संबंधित हैं। ''सिविल अवमान'' पूर्ण रूप से निजी पक्षकारों के मध्य विवाद से संबंधित हैं एवं उसका न्याय प्रशासन में हस्तक्षेप से संबंध नहीं होता है।

हालांकि ''सिविल अवमान'' हेतु अधीनस्थ न्यायालय कार्यवाही अग्रेषित कर सकता है, परंतु यह ध्यातव्य है कि साधारण रूप से सिविल कार्यवाही के किसी आदेश, निर्णय एवं डिक्री की अवज्ञा के लिये तब तक न्यायालय अवमान अधिनियम, 1971 के अंतर्गत कार्यवाही नहीं की जा सकती है, जब तक कि विधि के अंतर्गत समानतः प्रभावकारी अनुतोष अन्य प्रायिक ढंग द्वारा निश्चित तौर पर अभिप्राप्त किया जा सकता है। उदाहरण के लिये समान्यतः किसी डिक्री के अपालन के लिये तब तक न्यायालय अवमान अधिनियम के अंतर्गत आवेदन प्रचलन योग्य नहीं होता है जब तक की डिक्री का पालन सामान्य निष्पादन कार्यवाही द्वारा नहीं कराया जा सकता है। ऐसी विरलतम परिस्थितियों में जबकि न्यायालय के आदेश, निर्णय व डिक्री का अनुपालन सामान्य प्रायिक ढंग द्वारा नहीं कराया जा सकता है, मात्र उन्हीं परिस्थितियों में न्यायालय अवमान अधिनियम के अतंर्गत सिविल अवमान हेतु कार्यवाही की जा सकती है। इस संबंध में सर्वोच्च न्यायालय का न्याय दृष्टांत *vkj-,u- M fo:) HkkX;orh ieklf.kd] 2000 ¼4½ ,l-lh-lh- 400* एवं माननीय मध्यप्रदेश उच्च न्यायालय का न्याय दृष्टांत, *gkjh yky fo:) Hkktu yky] ,-vkb-vkj- 2010 ,e-ih- 144* अवलोकनीय हैं। इसी प्रकार साधारणतः यथास्थिति आदेश के भंग होने की दशा में भी न्यायालय अवमान अधिनियम, 1971 के अंतर्गत कार्यवाही न कर आदेश 39 नियम 2 क व्य.प्र.सं. के अंतर्गत कार्यवाही किया जाना अपेक्षित हैं।

जहाँ तक न्यायालय से किये गये परिवचन (Undertaking) का प्रश्न है, उचित परिस्थितियों में परिवचन का जानबूझकर उल्लंघन किया जाना सिविल अवमान की परिधि में आता है। साथ ही न्यायालय को असत्य रूप से भ्रमित कर किसी प्रकार की कार्यवाही करवाया जाना अथवा कार्यवाही करने से रोका जाना भी सिविल अवमान की श्रेणी में आ सकता है, इस संबंध में *fjrk ekjdM; fo:) lqjsanz flag vjkjk] 1996 ¼6½ ,l-lh-lh- 14* अवलोकनीय हैं। इसके अतिरिक्त ''सिविल अवमान'' हेतु धारा 2 (ख) के अंतर्गत ''जानबूझकर'' शब्द होने से संबंधित व्यक्ति का कृत्य दुर्घटनावश, आकस्मिक, सद्भाविक या बिना आशय के या वास्तविक अनुपालन करने में असमर्थता के परिणामस्वरूप नहीं होना भी आवश्यक है।

''सिविल अवमान'' से भिन्न ''दांडिक अवमान'' के अंतर्गत प्रश्नगत् आचरण की प्रकृति के कारण विवाद पक्षकार के हित से बढ़कर न्याय प्रशासन में हस्तक्षेप होकर लोकहित से संबंधित हो जाता है। अधिनियम की धारा 2 (ग) के अंतर्गत ''दांडिक अवमान'' गठित होने के लिये प्रथमतः प्रकाशन या अन्य कार्य का किया जाना एवं द्वितियतः प्रावधान में उल्लेखित तीन में से किसी परिणाम का होना आवश्यक हैं। ''दांडिक अवमान'' के संबंध में माननीय सर्वोच्च न्यायालय द्वारा *fnYyh T;fMf'k;y lfo/l fo:) xtjkr jkT;] ,-vkb-vkj- 1991 ,l-lh- 2176* में निम्नानुसार अभिनिर्धारित किया गया हैं :–

> *"The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice. The Court has the duty of protecting the interest of the community in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but, to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with.*

तीन प्रकार के दांडिक अवमान में सर्वप्रथम धारा 2 (ग) (i) के अंतर्गत न्यायालय के प्राधिकार पर लांछन लगाना या लांछन लगाने हेतु प्रवृत्त होना, या उसको घटाना या उसे घटाने को प्रवृत्त होना दांडिक अवमान का गठन करता है। माननीय सर्वोच्च न्यायालय द्वारा *cEg idk'k 'ekZ ,o vU; fo:) mRrjin'k jkT;] ,-vkb-vkj- 1954 ,l-lh- 10* के संवैधानिक पीठ के मामले में यह अभिनिर्धारित किया गया था कि लांछन लगाना स्वयं में कई प्रकार से हो सकता है, परंतु सारतः यह किसी एक न्यायाधीश या पूर्ण न्यायालय या किसी विनिर्दिष्ट मामले का उल्लेख किये बिना, न्यायाधीश के चरित्र या सक्षमता पर अवांछनीय व मानहानिकारक कलंक लगाना होता है। उक्त आचरण को अवमान के रूप में इसलिए दंडित किया जाता है क्योंकि वह लोगों में अविश्वास पैदा करता है एवं लोगों की न्यायालय में आस्था को भी विचलित करता है। लांछन लगाना अक्षम होने के आक्षेप, अनुचित उद्देश्य के आक्षेप, पक्षपातपूर्ण रवैये के आक्षेप, अपमानजनक अपशब्दों के उपयोग या अन्य प्रकार से भी हो सकता है।

लांछन लगाकर अवमान कारित किये जाने के संबंध में *ykMh fMiykd }kjk pkdkfyxk fo:) ,-th-vkQ f=uhnkn ,.M Vkcxk] ¼1981½ 1 vkWy bZyhM fjikVZ 244* में निम्नानुसार व्यक्त किया गया हैः–

> *"Scandalising the Court is a convenient way of describing a publication which, although it does not relate to any*

specific case either part of pending or any specific Judge, is a scurrilous attack on the ***judiciary as a whole*** *which is calculated to undermine the authority of the Courts and public confidence in the administration of justice. Thus, before coming to the conclusion as to whether or not the publication amounts to a contempt, what will have to be seen is, whether the criticism is fair, temperate and made in good faith or whether it is something directed to the personal character of a Judge or to the impartiality of a Judge or court. A finding, one way of the other, will determine whether or nor the act complained of amounted to contempt."*

उल्लेखनीय है, यदि मात्र न्यायाधीश के संबंध में ऐसा मानहानिकारक प्रकाशन किया जाता है जो कि न्याय के प्रशासन को प्रभावित नहीं करता है, तब ऐसी स्थिति में न्यायाधीश को मानहानि के साधारण उपचार उपलब्ध होते हैं एवं न्यायालय का अवमान गठित नहीं होता है। साधारण रूप से की गई टीका टिप्पणी भी अवमान की परिधि में नहीं आती हैं। लांछन लगाना, अशिष्टता से भी पूर्णतः भिन्न है एवं अशिष्ट व्यवहार जब तक कि न्यायिक कार्यवाही के सम्यक् अनुक्रम में हस्तक्षेप न कर दे तब तक अवमान की परिधि में नहीं आता हैं। जब किसी व्यक्ति के द्वारा किसी विनिर्दिष्ट अधीनस्थ न्यायालय या न्यायाधीश पर लांछन न लगाया जा कर सामान्य रूप से एक से अधिक या कई न्यायालयों पर ऐसा लांछन लगाया जाता हैं, जो कि न्याय प्रशासन के लिये घातक हैं, तब उनमें से कोई भी न्यायालय अवमानना की कार्यवाही अग्रसर कर सकता है। इस परिप्रेक्ष्य में न्याय दृष्टांत *Vk1 ijh1h bVju'ky bfM;k ,o vU; fo:) tEe d'ehj jkT;] ,-vkb-vkj- 2017 ,l-1h- 1333* भी अवलोकनीय हैं।

लांछन के आधार पर अवमान की कार्यवाही किये जाते समय न्यायालय को पूर्ण सर्तकता बरतते हुये अभिव्यक्ति की स्वतत्रंता के मूलभूत अधिकार के साथ संतुलन बनाये रखना आवश्यक हैं। न्यायाधीश को समीक्षा के संबंध में अतिसंवेदनशील नहीं होना चाहिये। प्रत्येक नागरिक को भारतीय संविधान के अनुच्छेद 19 के अंतर्गत अभिव्यक्ति की स्वतंत्रता का मौलिक अधिकार प्राप्त है। न्यायालय की अवमानना उक्त अधिकार पर एक प्रकार का निर्बंधन है अतः अधिनियम के अंतर्गत प्राप्त शक्तियों को साधारण रूप से उपयोग न कर मात्र आपवादिक रूप से प्रयोग किया जाना चाहिये। (कृपया देखें – न्याय दृष्टांत *grjke cuhoky ,o vU; fo:) j?kohj f1g] 2017 1h-vkj-,y-t-*) माननीय सर्वोच्च न्यायालय के न्यायदृष्टांत *bu fj % ,l-eyxkodj] ,-vkb-vkj- 178 ,l-1h- 727* में विवेक का उपयोग किये जाने के संदर्भ में न्यायमूर्ति कृष्णा अय्यर द्वारा सारगर्भित रूप से दिशा निर्देश भी दिये गये हैं जो कि संक्षिप्तः निम्नानुसार हैंः–

"The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process. The court is willing to ignore, by a majestic liberalism, trifling and venial offences- ***the dogs may bark, the caravan will pass.***

The second principle must be to harmonise the constitutional ***values of free criticism,*** *the fourth estate included, and the need for a fearless curial process and its presiding functionary, the judge.*

The third principle is to avoid confusion between ***personal protection of a libeled judge and prevention of obstruction of public justice*** *and the community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound.*

The fourth functional canon which channels discretionary exercise of the contempt power is that the ***Fourth Estate*** *which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given* ***free play within responsible limits*** *even when the focus of its critical attention is the court, including the highest Court.*

The fifth normative guideline for the judges to observe in this jurisdiction is ***not to be hypersensitive*** *even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing, condescending indifference and repudiation: by judicial rectitude.*

The sixth consideration is that, after evaluating the totality of factors, if the court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious ***beyond condonable limits,*** *the strong arm of the law must, in the name of public interest and public justice, strike, a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."*

अधिनियम की धारा 2 (ग) के अंतर्गत लांछन लगाने के अतिरिक्त किसी न्यायिक कार्यवाही के सम्यक् अनुक्रम पर प्रतिकूल प्रभाव डालना या उसमें हस्तक्षेप करना या किसी अन्य रीति से न्याय प्रशासन में हस्तक्षेप करना या हस्तक्षेप करने की प्रवृत्ति रखना भी दांडिक अवमान की परिधि में आता हैं। धारा 2 (ग) (ii) व (iii) के अंतर्गत कृत्य या आचरण के परिणामस्वरूप वास्तविक रूप से हस्तक्षेप होना आवश्यक नहीं हैं, परंतु यदि अवमानकर्ता का कृत्य हस्तक्षेप करने की प्रवृत्ति रखता है तो भी दांडिक अवमान गठित होता है। यह याद रखना आवश्यक है कि न्याय मात्र होना ही नहीं चाहिये अपितु होते हुये दिखना भी चाहिये। सर्वोच्च न्यायालय द्वारा *ghjk yky nhf{kr fo:) mRrj izn'k jkT;] ,-vkb-vkj- 1954 ,l-lh- 743* की (संवैधानिक पीठ) के निर्णय में यह अभिनिर्धारित किया गया है कि यह आवश्यक नहीं है कि वास्तविक रूप से न्याय प्रशासन में किसी प्रकार से अड़चन पैदा हो अपितु यदि प्रश्नगत् प्रकाशन अड़चन पैदा करने का रूख रखता है अथवा अड़चन पैदा होना संभाव्य है तो यह स्वयं में पर्याप्त है। सर्वोच्च न्यायालय द्वारा *dydRrk mPp U;k;ky; fo:) ih-lh- tku] ,-vkb-vkj- 1970 ,l-lh- 1821* के मामले में भी यह अभिनिर्धारित किया गया है कि प्रश्न यह नहीं हैं कि क्या लंबित कार्यवाही में प्रकाशन हस्तक्षेप करता है, परंतु यह है कि क्या वह न्याय की सम्यक् प्रक्रिया में हस्तक्षेप करने की प्रवृत्ति रखता है। अवमानकर्ता का आशय इतना महत्वपूर्ण नहीं है, अपितु यह देखा जाना है कि क्या प्रश्नगत् कृत्य को न्याय प्रशासन में हस्तक्षेप करने के उद्देश्य से किया गया है। धमकी दिया जाना, दबाव बनाना, प्रेस में प्रकाशन किया जाना, किसी मामले से संबंधित साक्ष्य का पूर्व में खुलासा किया जाना, रिश्वत दिये जाने का प्रयास किया जाना, निष्पक्ष विचारण एवं न्याय के प्रशासन में हस्तक्षेप करने की प्रवृत्ति रख सकते हैं।

जहां तक अधिवक्ता द्वारा अवमानना का प्रश्न है, माननीय सर्वोच्च न्यायालय द्वारा *,e-ok;- 'kjhQ fo:) t tsl vkQ ukxiqj mPp U;k;ky;] ,-vkb-vkj- 1955 ,l-lh- 19* के संवैधानिक पीठ वाले मामले में अभिनिर्धारित किया गया था कि यह सुस्थापित सिद्धांत हैं कि अधिवक्तागण किसी मामले का संचालन करते समय न्यायालय के अधिकारी के रूप में कार्य करते हैं। किसी अधिवक्ता द्वारा लांछन लगाने अथवा हस्तक्षेप करने का कृत्य भी निश्चित रूप से अवमानना की श्रेणी में आ सकता है। उक्त मामले में एक अधिवक्ता द्वारा उसके पक्षकार की ओर से प्रस्तुत आवेदन को हस्ताक्षरित कर प्रस्तुत किया गया था। आवेदन में उल्लेखित तथ्यों के अवमानपूर्ण होना पाये जाने पर यह अभिनिर्धारित किया गया था कि मात्र पक्षकार की ओर से आवेदन प्रस्तुत किये जाने के आधार पर अधिवक्ता अवमानना के दायित्व से नहीं बच सकता है। न्यायालय का अधिकारी होने के पश्चात् भी यदि उसके द्वारा लांछन लगाने वाले आवेदन या अभिवचन को हस्ताक्षरित किया जाता हैं, तब वह अवमानना का दोषी पाया जा सकता है।

माननीय सर्वोच्च न्यायालय द्वारा *bu fj % unyky cyokuh] ,-vkb-vkj- 1999 ,l-lh- 1300* में यह अभिनिर्धारित किया गया कि प्रकरण के परिणाम से असंतुष्ट किसी अधिवक्ता को विधि न्यायालय का असम्मान करने या उसकी प्रतिष्ठा को किसी प्रकार से गिराने का प्रयास करने

की अनुज्ञप्ति (लायसेंस) नहीं देती हैं। यदि अधिवक्ता द्वारा किया गया कृत्य घोर अवमानना की श्रेणी में आता है तो उन्हें न्यायालय अवमान अधिनियम के अंतर्गत किसी प्रकार का संरक्षण प्राप्त नहीं हैं।

इन *fj % fou; p[n feJk] ,-vkb-vkj- 1995 ,l-1h- 2348* के मामले में अधिवक्ता द्वारा न्यायालयीन कार्यवाही में व्यवधान उत्पन्न करना एवं रूकावट पैदा करना अवमान की श्रेणी में पाया गया था। उक्त मामले में सर्वोच्च न्यायालय द्वारा यह प्रकट किया गया था कि सामान्यतः कोई भी न्यायाधीश किसी अधिवक्ता के विरूद्ध अवमान की कार्यवाही नहीं करता है जब तक कि उसे ऐसा करने हेतु विवश न कर दिया जाये।

> *"Normally, no Judge takes action for in **facie curiae** contempt against the lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which it is expressed and the intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the court and to threaten and obstruct the course of justice."*

सिविल अवमान एवं दांडिक अवमान परिभाषित किये जाने के पश्चात् न्यायालय अवमान अधिनियम के द्वारा अवमान के अपवाद एवं बचाव के रूप में प्रतिरक्षा भी प्रावधानित किये गये हैं। उक्त परिस्थितियाँ निम्नानुसार हैंः–

1. विषय का निर्दोश प्रकाशन तथा वितरण (धारा 3)।
2. न्यायिक कार्यवाही का उचित एवं सही प्रतिवेदन (धारा 4 एवं 7)।
3. न्यायिक कार्य की उचित अलोचना (धारा 5)।
4. अधीनस्थ न्यायालयों के पीठासीन अधिकारियों के प्रति सद्भाविक रूप से किये गये कथन (धारा 6)।
5. कथन सत्य होकर लोकहित में हैं एवं उक्त बचाव का निवेदन सद्भाविक हैं (धारा 13 (ख)।

यह उल्लेखनीय है कि अधिनियम में बताई गई प्रतिरक्षा स्वयं में संपूर्ण नहीं है एवं सामान्य विधि मान्य प्रतिरक्षा भी प्राप्त की जा सकती है।

उपरोक्त अधिनियमित विधि के अतिरिक्त यह सुस्थापित सिद्धांत है कि अवमान के संबंध में विशेषाधिकार का प्रयोग मात्र आपवादिक परिस्थितियों में किया जाना चाहिये। लॉर्ड डेनिंग द्वारा *vkj- fo:) deh'uj vkQ ifyl] ¼1968½ 2 Dohu l c[p] 150* में यह कहा गया था कि हमारे द्वारा अवमान क्षेत्राधिकार का उपयोग कभी भी स्वयं की गरिमा अर्थात् न्यायाधीश की गरिमा को संभालने के लिये नहीं किया जावेगा एवं न ही इसका उपयोग उन्हें दबाने के लिये किया जावेगा, जो

कि हमारे विरूद्ध बोलते हैं। हम अलोचना से नहीं डरते एवं ना ही उसे नापसंद करते हैं, क्योंकि हमें उससे कतई ज्यादा महत्वपूर्ण परिणाम प्राप्त करने हैं।

परन्तु साथ ही यह भी ध्यातव्य है कि मध्यप्रदेश उच्च न्यायालय के न्याय दृष्टांत *bu fj yfor jorkuh] voeku i\dj.k Øekd 350@2016]* आदेश दिनांक 06/07/2017 के अनुसार यह भी ध्यान रखना महत्वपूर्ण हैं कि न्यायालय की गरिमा एवं प्राधिकार का सम्मान किया जाना एवं हर कीमत पर बचाव किया जाना आवश्यक है, जिससे कि न्यायपालिका स्वयं के कर्तव्य एवं कार्य का निष्पादन प्रभावी रूप से बिना किसी भय के एवं सत्य भावना से कर सके।

voeku l\c/kh izfØ;k %

न्यायालय अवमान अधिनियम, 1971 के अंतर्गत अधीनस्थ न्यायालयों को स्वयं की अवमानना हेतु दंडित करने का क्षेत्राधिकार प्रदान नहीं किया गया है एवं धारा 15 (2) के अंतर्गत उच्च न्यायालय किसी अधीनस्थ न्यायालय की दांडिक अवमानना के मामले में, अधीनस्थ न्यायालय द्वारा उसको निर्देश (रिफरेंस) भेजे जाने पर, कार्यवाही कर सकता है। धारा 10 के अनुसार प्रत्येक उच्च न्यायालय अपने अधीनस्थ न्यायालयों की अवमानना के संबंध में वही अधिकारिता, शक्तियाँ तथा प्राधिकार का प्रयोग कर सकता हैं, जिसका प्रयोग वह स्वयं अपनी अवमानना के संबंध में कर सकता है। धारा 10 के अलोक में अधीनस्थ न्यायालयों के अवमानना की दशा में विचारण एवं दण्ड दिये जाने हेतु उच्च न्यायालय को क्षेत्राधिकार प्राप्त हैं। धारा 12 के अंतर्गत उच्च न्यायालय को अवमान की कार्यवाही करने हेतु शक्तियाँ प्रदान की गई हैं, जिसके अधीन उच्च न्यायालय, अवमान के लिये अवमानकर्ता को 6 माह तक की अवधि के साधारण कारावास अथवा 2000/– रूपये के जुर्माना अथवा दोनों से दंडित कर सकता हैं। साथ ही परंतुक अनुसार उच्च न्यायालय के समाधान परक पर क्षमा याचना पर अवमानकर्ता को उन्मुक्त किया जा सकता है अथवा दिये गये दण्ड में छूट दी जा सकती है।

उपरोक्त प्रावधानों के अतिरिक्त धारा 23 के अंतर्गत उच्च न्यायालय को अधिनियम की प्रक्रिया के संबंध में किसी विषय का उपबंध करते हुये नियम बनाये जाने की शक्तियाँ प्रदान की गई हैं। उक्त शक्तियों का प्रयोग कर मध्यप्रदेश उच्च न्यायालय द्वारा मध्यप्रदेश उच्च न्यायालय (न्यायालय अवमान की कार्यवाही) नियम, 1980 बनाये गये हैं। अधीनस्थ न्यायालय द्वारा अवमान की कार्यवाही किये जाने हेतु न्यायालय अवमान अधिनियम, 1971 के प्रावधानों के अतिरिक्त मध्यप्रदेश उच्च न्यायालय (न्यायालय अवमान की कार्यवाही) नियम, 1980 की पालना भी किया जाना आवश्यक हैं। अधीनस्थ न्यायालय द्वारा अवमानना के संबंध में कार्यवाही किये जाने हेतु सुसंगत नियम निम्नानुसार हैं :–

fu;e 5 ¼d½ % अधिनियम की धारा 15 (2) के अधीन निर्देश (रिफरेंस) को अधीनस्थ न्यायालयों द्वारा स्वप्रेरणा एवं उसके द्वारा प्राप्त आवेदन पर किया जा सकेगा।

¼[k½ : निर्देश (रिफरेंस) को करने के पूर्व अधीनस्थ न्यायालय अवमानकर्ता को सुसंगत दस्तावेज, यदि कोई हो, की प्रतियों के साथ संलग्न करके कारण बताओ नोटिस जारी करके प्रारंभिक जांच करेगा। कारण बताओ नोटिस के उत्तर, यदि कोई हो, को प्राप्त

करने के पश्चात् अधीनस्थ न्यायालय यह बताते हुये, अवमान क्यों कारित किया जाना प्रकट होता है, संदर्भ के संबंध में संक्षिप्त तर्क युक्त आदेश लिखेगा।

fu;e 13 % नियम 5 तथा 7 में विनिर्दिष्ट दस्तावेजों को सम्मिलित करते हुये प्रपत्र पुस्तिका याचिका द्वारा दाखिल किया जायेगा अथवा उसे, जैसा विषय हो, चार प्रतियों में निर्देश (रिफरेंस) करते हुये न्यायालय द्वारा अग्रेषित किया जायेगा।

किसी भी अवमानना के संबंध में उच्च न्यायालय के समक्ष निर्देश (रिफरेंस) प्रस्तुत किये जाते समय अधीनस्थ न्यायालय द्वारा समस्त प्रावधानों का पालन किये जाने के संबंध में अत्याधिक सावधानी बरतनी चाहिये। माननीय मध्यप्रदेश उच्च न्यायालय द्वारा *bu fj % b[nknRr uk;d] 1994 ,e-ih-,y-t- 126* में यह अभिनिर्धारित किया गया हैं कि अवमान की कार्यवाही किये जाते समय नियम 5 के अंतर्गत प्रारंभिक जांच का किया जाना आवश्यक हैं। उक्त मामले में नियम 5 के अंतर्गत उल्लेखित प्रारंभिक जांच का अभाव होने से माननीय उच्च न्यायालय द्वारा अवमान कार्यवाही समाप्त कर दी गई थी। इसी प्रकार माननीय मध्यप्रदेश उच्च न्यायालय की खण्डपीठ द्वारा इन रि : विजय दुबे, दांडिक अवमान क्रमांक 10/2012 आदेश दिनांक 12/08/2013 वाले मामले में भी यह अभिनिर्धारित किया गया था कि अवमान के मामलों में प्रक्रिया का कड़ाई रूप से पालन किया जाना चाहिये एवं आज्ञापक प्रावधानों की पालना न किये जाने की दशा में अवमान की कार्यवाही समाप्त की जानी चाहिये।

अवमान के कार्यवाही के प्रथम चरण अर्थात प्रारंभिक जाँच किये जाने के पूर्व न्यायालय द्वारा अवमानना के तथ्यों अथवा घटनाक्रम को स्पष्ट रूप से आदेश पत्रिका अथवा अभिकथन के दौरान साक्ष्य पत्रिका में लेखबद्ध किया जाना चाहिये। यदि अवमानना का कृत्य न्यायाधीश की उपस्थिति में न्यायालयीन कार्यवाही के दौरान हो तो न्यायाधीश को आवश्यक रूप से संबंधित प्रकरण अथवा उस समय कार्यवाही से संबंधित प्रकरण की आदेश पत्रिका या साक्ष्य पत्रिका में संपूर्ण घटनाक्रम एवं उच्चारित शब्द (यदि कोई हो) को स्पष्ट रूप से अभिलिखित करना चाहिये। न्यायालय को इस प्रक्रम पर उपस्थित पक्षकार, कर्मचारी एवं अन्य व्यक्तियों का भी आदेश पत्रिका में उल्लेख कर कार्यवाही पर हस्ताक्षरित करवाया जाना चाहिये। न्यायालय प्रश्नगत् कथन या आचरण के अवमान की श्रेणी में आने के प्रथम दृष्ट्या निष्कर्ष के पश्चात् पृथक से पत्रावली प्रारंभ कर प्रारंभिक जाँच हेतु अग्रसर हो सकता है।

न्यायालय अवमान अधिनियम, 1971, नियम 1980 एवं उनके संबंध में सर्वोच्च न्यायालय व उच्च न्यायालय के द्वारा प्रतिपादित सिद्धांतों के आलोक में अधीनस्थ न्यायालय द्वारा प्रारंभिक जाँच में सर्वप्रथम समस्त सुसंगत दस्तावेजों के साथ अवमानकर्ता को 'कारण बताओ' सूचना पत्र (अंतर्गत धारा 12 न्यायालय अवमान अधिनियम, 1971) प्रेषित किया जाना चाहिये। उक्त 'कारण बताओ' सूचना पत्र में प्रथम दृष्ट्या अवमान गठित किये जाने के तथ्य एवं कारकों का उल्लेख कर युक्तियुक्त नियत दिनांक एवं समय पर न्यायालय के समक्ष सूचना पत्र का लिखित अथवा मौखिक उत्तर अपेक्षित किया

जाना चाहिये। सूचना पत्र प्रस्तावित अवमानकर्ता को संबोधित होना चाहिये एवं सूचना पत्र में अवमानकर्ता से यह प्रश्न किया जाना चाहिये कि उल्लेखित तथ्यों के आधार पर क्यों न उसके विरूद्ध न्यायालय की अवमानना के संबंध में कार्यवाही अग्रेषित की जावे? उक्त सूचना पत्र दो प्रतियों में प्रेषित होना चाहिये जिससे कि द्वितीय प्रति पर प्राप्तकर्ता की स्पष्ट हस्ताक्षरित प्राप्ति अभिस्वीकृति प्राप्त की जा सके। प्रारंभिक जाँच के स्तर पर न्यायालय को ''श्रवण किये जाने के'' प्राकृतिक न्याय के सिद्धांत की पालना किया जाना आवश्यक हैं। उक्त कारण बताओ सूचना पत्र का निर्वहन सुनिश्चित हो जाने के पश्चात् नियत दिनांक पर अवमानकर्ता का मौखिक अथवा लिखित उत्तर प्राप्त कर लेखबद्ध किया जाना चाहिये। इस स्तर पर न्यायालय जाँच हेतु अन्य आवश्यक कार्यवाही, जैसे कि संबंधित व्यक्तियों के कथन लेखबद्ध किया जाना, दस्तावेज आहूत किया जाना कर सकता है। अवमानकर्ता के जवाब एवं अन्य आवश्यक प्रारंभिक जांच के उपरांत न्यायालय द्वारा यह बताते हुये कि अवमान क्यों कारित किया जाना प्रकट होता है, सारतः तर्क युक्त आदेश पारित किया जाना आवश्यक है। अवमानकर्ता को सूचना पत्र देने के पश्चात् सूचना पत्र सम्यक निर्वहित होने एवं पर्याप्त अवसर प्रदान करने के पश्चात् अवमानकर्ता की अनुपस्थिति में प्रारंभिक जांच संपन्न कर निष्कर्ष दिया जा सकता है। इस स्तर पर अधीनस्थ न्यायालय को अवमान गठन के समय में पूर्व उल्लेखित पूर्व की विधि को ध्यान में रखना चाहिये एवं इस संबंध में स्पष्ट आदेश होना चाहिये कि किस प्रकार प्रश्नगत् कृत्य या आचरण अवमानना की श्रेणी में आता हैं। ''सिविल अवमान'' के मामले में न्यायालय द्वारा कृत्य के ''जानबूझकर'' होने से संबंधित निष्कर्ष लिया जाना भी आवश्यक है।

न्यायालय द्वारा प्रारंभिक जांच हेतु अवमानकर्ता को कारण बताओ सूचना पत्र देकर मात्र जवाब अपेक्षित किया जाना आवश्यक हैं, परंतु इस स्तर पर अवमानकर्ता को उपस्थित होने एवं जवाब दिये जाने हेतु विवश नहीं किया जा सकता है। अवमानकर्ता स्वयं अथवा अपने अधिवक्ता द्वारा उपस्थित हो सकता है। ऐसी परिस्थितियों में अधीनस्थ न्यायालय द्वारा अवमानकर्ता की उपस्थिति सुनिश्चित कराये जाने हेतु गिरफ्तारी वारंट जारी किया जाना उचित नहीं माना गया है। इस संबंध में न्याय दृष्टांत *Vkl ijh bVju 'ky bfM;k* (यथा पूर्वोक्त) अवलोकनीय हैं।

अवमानकर्ता का उत्तर एवं प्रारंभिक जांच करने के उपरांत यदि न्यायालय को अवमान हेतु आधार प्रतीत नहीं होते हैं, तो न्यायालय कार्यवाही समाप्त कर सकता हैं। इसके अतिरिक्त अवमानकर्ता द्वारा सद्भावनापूर्वक क्षमा याचना किये जाने की दशा में न्यायालय कार्यवाही समाप्त कर सकता है। इस स्तर पर यह ध्यान रखा जाना आवश्यक हैं कि किसी व्यक्ति की क्षमायाचना मात्र ऐसी दशा में स्वीकार की जा सकती हैं जबकि वह ईमानदार एवं सद्भाविक हो एवं अवमानकर्ता को वास्तविकता में उसकी भूल का पश्चाताप् हो। यह भी ध्यान रखा जाना चाहिये कि क्षमायाचना मात्र दंड से बचने का उपाय होकर मात्र कागजी क्षमा न हो। सर्वोच्च न्यायालय द्वारा *,y-Mh- t;doky fo:) mRrj in'k jkT;] ¼1984½ 3 ,l-lh-lh- 405* में यह अभिनिर्धारित किया गया है कि न्यायालय को "Slap, Say sorry and Forget" अर्थात तमाचा मार कर माफी मांग लेने एवं भूल जाने की परिकल्पना के बहकावे में नहीं आना चाहिये।

प्रारंभिक जांच उपरांत अवमान गठन होना पाये जाने के पश्चात् अधीनस्थ न्यायालय द्वारा धारा 15 (2) के अलोक में उच्च न्यायालय को निर्देश (रिफरेंस) प्रेषित किया जाना आवश्यक है। रिफरेंस के शीर्ष पर उच्च न्यायालय का शीर्षक (title) होकर रिफरेंस की भाषा को याचिका के समान होना चाहिये। रिफरेंस की प्रत्येक कंडिका ''यह कि'' से प्रारंभ होना चाहिये एवं समस्त तथ्यों को क्रमानुसार वर्णन कर रिफरेंस प्रेषित किये जाने का उल्लेख किया जाना चाहिये। रिफरेंस की अंर्तवस्तु प्रारंभ करने के पूर्व विषय में ''(रिफरेंस अंतर्गत धारा 15 (2), न्यायालय अवमान अधिनियम, 1971)'' लेख किया जा सकता हैं।

उक्त निर्देश (रिफरेंस) को प्रपत्र पुस्तिका (पेपर बुक) के साथ चार प्रतियों में प्रेषित किया जाना आवश्यक है। पेपर बुक बनाये जाने के संबंध में मध्यप्रदेश उच्च न्यायालय की नियमावली, 2008 के अध्याय 16 की सहायता प्राप्त की जा सकती है। उक्त प्रपत्र पुस्तिका (पेपर बुक) में समस्त सुसंगत दस्तावेज, प्रारंभिक जाँच से संबंधित पत्रावली, सूचना पत्र व तामील संबंधी दस्तावेज, जवाब एवं जाँच के दौरान लेखबद्ध कथन संलग्न किया जाना आवश्यक हैं। उक्त सभी दस्तावेजों को क्रमानुसार जमाकर पृष्ठ क्रमांक दिये जाने चाहिये। पेपर बुक के प्रथम पृष्ठ पर विषय सूची (Table of Contents) लगाया जाना चाहिये, जिसमें दस्तावेज का नाम एवं पृष्ठ का उल्लेख होना चाहिये। रिफरेंस को हस्ताक्षरित किये जाने के पश्चात् प्रपत्र पुस्तिका सहित जिला एवं सत्र न्यायाधीश के माध्यम से रजिस्ट्रार जनरल अथवा प्रिंसिपल रजिस्ट्रार, (न्यायिक) को संबोधित कर उच्च न्यायालय, मुख्य पीठ, जबलपुर को प्रेषित किया जाना चाहिये। प्रेषित करने हेतु रिफरेंस एवं प्रपत्र पुस्तिका के साथ इस संबंध में पत्र लेखबद्ध किया जाना चाहिये। यह भी उल्लेखनीय हैं कि धारा 20 न्यायालय अवमान अधिनियम के अंतर्गत पूर्वोक्त कार्यवाही अवमान किये जाने के एक वर्ष के भीतर की जा सकती है।

यद्यपि न्यायालय अवमान अधिनियम, 1971 के अंतर्गत अधीनस्थ न्यायालयों को स्वयं की अवमान हेतु दंडित करने की शक्तियाँ प्रदान नहीं की गई हैं, परंतु न्याय की हानि होने से रोकने हेतु उच्च न्यायालय को अधीनस्थ न्यायालय के अवमान के संबंध में कार्यवाही करने के संबंध में शक्तियाँ प्रदान की गई हैं। वर्तमान परिपेक्ष्य में, जबकि न्यायालय की अवमानना किया जाना एक सामान्य एवं नित्य कार्य बन चुका हैं, तब उचित मामलों में अधीनस्थ न्यायालय का यह कर्तव्य है कि वह न्यायालय की गरिमा एवं प्राधिकार को संरक्षित करने हेतु अपेक्षित कार्यवाही करें। कार्यवाही किये जाने के पूर्व न्यायालय को हमेशा माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित सिद्धांतों एवं विशेष रूप से इन रि : एस. मुलगॉवकर में न्यायमूर्ति कृष्णा अय्यर द्वारा प्रतिपादित छः सिद्धांतों का ध्यान में रखा जाना चाहिये एवं अवमान की कार्यवाही मात्र अपवादिक मामलों में ही की जानी चाहिये।

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¼lkdfrd i:i½

न्यायालयः— ..... (म.प्र.)

जावक क्रमांक..... दिनांक .....

प्रति,

1. ..... पिता/पति .....,

   निवासी .....,

   .....।

2. ..... पिता/पति .....,

   निवासी .....,

   .....।

(सूचना पत्र अंतर्गत धारा 12 न्यायालय अवमान अधिनियम, 1971)

1. इस न्यायालय में प्रकरण क्रमांक ..... विरूद्ध .... लंबित हैं। उक्त प्रकरण में दिनांक .....को ..... न्यायालयीन कार्यवाही संपादित हो रही थी।
2. (अवमानकारी कृत्य का विवरण)।
3. .....।
4. .....।
5. उपरोक्त कृत्य प्रथम दृष्ट्या न्यायालय अवमान अधिनियम, 1972 के अधीन अवमान की श्रेणी में आता है। आपको सूचित किया जाता है कि आप दिनांक ..... को स्वयं अथवा अभिकर्ता के माध्यम से इस न्यायालय के समक्ष उपस्थित होकर तत्संबंध में स्पष्टीकरण/ उत्तर प्रस्तुत करें कि क्यों न आपके विरूद्ध न्यायालय अवमान अधिनियम, 1972 की धारा 15 (2) के अधीन उच्च न्यायालय को रिफरेंस प्रेषित कर कार्यवाही हेतु लेख किया जावे। आपकी अनुपस्थिति अथवा स्पष्टीकरण/ उत्तर के अप्रस्तुतिकरण की स्थिति में यह न्यायालय एकपक्षीय कार्यवाही हेतु अग्रसर हो सकेगा।

हस्ताक्षर

न्यायालय का नाम एवं मुद्रा

¼lkdfrd iz:i½

ekuuh; e/;izn'k mPp U;k;ky;] tcyiqj

विरूद्ध :

..... पिता/पति .....,

निवासी .....,

..... अवमानकर्ता

(अवमान निर्देश अंतर्गत धारा 15 (2) न्यायालय अवमान अधिनियम, 1971)

1. यह कि (न्यायालयीन कार्यवाही का विवरण)।
2. यह कि (अवमाननाकारी कृत्य का विवरण)।
3. यह कि अवमान कार्यवाही का संक्षिप्त विवरण।
4. यह कि अवमानकर्ता के उत्तर, सुनवाई व निष्कर्ष का विवरण।
5. यह कि इस निर्देश के साथ नियमानुसार पेपर बुक चार प्रतियों में (एक मूल सहित 3 प्रति) संलग्न किये गये हैं।
6. यह कि वर्तमान निर्देश अवमानकर्ता के विरूद्ध कार्यवाही किये जाने एवं धारा 12, न्यायालय अवमान अधिनियम के अंतर्गत दंडित किये जाने के अनुरोध सह प्रेषित हैं।

हस्ताक्षर

न्यायालय का नाम एवं मुद्रा

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PART - II

NOTES ON IMPORTANT JUDGMENTS

51. CIVIL PROCEDURE CODE, 1908 – Sections 50, 146 and Order 21 Rules 16 and 32

Maintainability of execution of decree of injunction against legal representatives – Decree of permanent injunction in favour of the plaintiff against the defendant – Decree was based upon the registered partition deed and it was held that the defendant had no right, title or interest in the disputed land – Interference by the legal representatives of the defendant – Held, execution of a decree is maintainable against the legal representatives as well – The maxim *"action personalise moritur cum persona"* does not apply in all cases.

flfoy izfØ;k lfgrk] 1908 & /kkjk 50] 146 ,oa vkns'k 21 fu;e 16 ,oa 32

*0;kns'k dh vkKfIr dk fof/kd ifrfuf/kx.k dk fo:) fu"iknu &oknh dk i{k ,oa Ikfroknh dk fo:) LFkk;h fu"k/kkKk dh fMØh & fMØh dk ifrhÑr foHkkt u y[k ij vk/kkfjr fd;k x;k ,oa ;g vfHkfu/kkfjr fd;k x;k fd ifroknh dk oknxLr Hkfe e dkbZ vf/kdkj] LoRo vFkok fgr ugha gS & izfroknh dk fof/kd ifrfuf/k;ksa }kjk gLr{ksi & vfHkfu/kkfjr] fMØh dk fu"iknu fof/kd ifrfuf/k;ksa dk fo:) Hkh ik"k.kh; gS & **dk;kZokgh 0;fDr dh eR;q dk lkFk lekIr gks tkrh gS** dh mfDr lHkh ekeyksa e ykxw ugha gksrh gSA*

Prabhakara Adiga v. Gowri and others

Judgment dated 20.02.2017 passed by the Supreme Court in Civil Appeal No. 3007 of 2017, reported in AIR 2017 SC 1061

Relevant extracts from the judgment:

The views of the High Courts which are relied upon are by and large in favour of excitability of decree. Of course it would depend on the right litigated, findings recorded and the nature of decree granted. In ***D'souza J. v. Mr. A. Joseph, AIR 1993 Karnataka 68***, a Single Bench of the Karnataka High Court held that when a decree for injunction against a person can be enforced even against his son, it is obvious that a similar logic should hold good even in the case of the death of the plaintiff who has obtained a decree. There should not be any legal impediment for a heir of a decree-holder to enforce the decree for injunction against the judgment-debtor. There is no such legal impediment on the principle that injunction does not run with the land. Yet another Division Bench of the Kerala High Court in ***Rajappan and Ors. v. Sankaran Sudhakaran, AIR 1997 Kerala 315***, also considered the question of violation of decree by the legal representatives of judgment-debtor and has laid down that a decree for permanent injunction can be executed against them. It was observed that if a decree

for injunction compels personal obedience, it in appropriate cases would not be enforced against the legal representatives. However, if subject matter of the suit and the act complained of was on the basis of ownership of an adjacent property of the other side, then such a decree for injunction would be binding not only against the judgment-debtor personally but all those who claim through him. A decree for perpetual injunction was passed restraining the judgment-debtors from trespassing into the decree schedule property destroying the boundaries thereof and from interfering with the rights of the decree-holder. The legal representatives of the judgment-debtor violated the injunction. The Court, in our opinion, rightly held that the executing court could execute the decree of perpetual injunction against the legal representatives of the judgment-debtor.

xxx xxx xxx

In our considered opinion the right which had been adjudicated in the suit in the present matter and the findings which have been recorded as basis for grant of injunction as to the disputed property which is heritable and portable would ensure not only to the benefit of the legal heir of decree-holders but also would bind the legal representatives of the judgment-debtor. It is apparent from section 50 CPC that when a judgment-debtor dies before the decree has been satisfied, it can be executed against legal representatives. Section 50 is not confined to a particular kind of decree. Decree for injunction can also be executed against legal representatives of the deceased judgment–debtor. The maxim "action personalise moritur cum persona" is limited to certain class of cases as indicated by this Court in ***Girijanandini Devi v. Bijendra Narain Choudhary, AIR 1967 SC 1124*** and when the right litigated upon is heritable, the decree would not normally abate and can be enforced by LRs. of decree-holder and against the judgment-debtor or his legal representatives. It would be against the public policy to ask the decree-holder to litigate once over again against the legal representatives of the judgment-debtor when the cause and injunction survives. No doubt, it is true that a decree for injunction normally does not run with the land. In the absence of statutory provisions it cannot be enforced. However, in view of the specific provisions contained in section 50 CPC, such a decree can be executed against legal representatives.

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52. CIVIL PROCEDURE CODE, 1908 – Order 21, Rules 64, 68 and 90

(i) Sale of property in execution of a decree; setting aside of –The sale cannot be set aside on material irregularity or fraud alone – The affected person has further to establish that the material irregularity or fraud has resulted in substantial injury to the judgment debtor in conducting the sale – In this case judgment debtor did not adduce any evidence nor brought any bidder to purchase the property for a higher price than the purchase bid except to say in the application that value of the property was between 12 lakhs to 14 lakhs – Held, this objection has no substance for want of any evidence.

(ii) Notice period regarding auction sale; commencement of – 15 days notice for sale is to be counted from the date of order for proclamation of sale.

flfoy izfØ;k lfgrk] 1908 & vkn'k 21] fu;e 64] 68 ,oa 90

¼i½ fMØh dh fu"iknu esa laifRr dh foØ; dk vikLr fd;k tkuk & foØ; dk ek= egRoiw.kZ vfu;ferrk ;k diV dh vk/kkj ij vikLr ugha fd;k tk ldrk & 0;fFkr 0;fDr dks vkxs ;g LFkkfir djuk gksxk fd egRoiw.kZ vfu;ferrk ;k diV dh ifj.kkeLo:i fu.kZ; _.kh dk foØ; lpkfyr djus esa lkjHkwr {kfr gqbZ gS & orZeku ekeys esa fu.kZ; _.kh }kjk ,slh dkbZ lk{; izLrqr ugha dh xbZ vFkok uk gh fdlh ckyhnkrk dk vf/kd eYy; ij Ø; djus dh laHkkouk esa yk;k x;k & ek= vkosnu esa 12 yk[k ls 14 yk[k dh laifRr dk eYy; gksuk dgk x;k & vfHkfu/kkfjr] mDr vkifRr dk lk{; dh vHkko esa dkbZ lkj ugha gSA

¼ii½ uhykeh foØ; gsrq lpuk vof/k ikjHk & dh iUnzg fnu foØ; gsrq lpuk i= dh x.kuk foØ; dh mn?kks"k.kk dh fnukad ls dh tkuh gSA

Chilamkurti Bala Subrahmanyam v. Samanthapudi Vijaya Lakshmi & ors.

Judgment dated 02.05.2017 passed by the Supreme Court in Civil Appeal No. 5988 of 2007, reported in (2017) 6 SCC 770

Relevant extracts from the judgment:

The law which governs the controversy involved in this appeal is laid down in the case of ***Saheb Khan v. Mohd. Yousufuddin & Ors., 2006(4) SCC 476*** (Three Judge Bench). While examining the scope of Order 21, Rule 90 of the Code, Justice Ruma Pal speaking for the Bench held as under:

> "12. We are unable to sustain the reasoning of the High Court. Order 21, Rule 90 of the Code of Civil Procedure allows, inter alia, any person whose interests are affected by the sale to apply to the court to set aside a sale of immovable property sold in execution of a decree on the ground of "a material irregularity or fraud in publishing or conducting" the sale. Sub-rule (2) of Order 21, Rule 90 however places a further condition on the setting aside of a court sale in the following language:
>
> > "90. (2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud."

13. Therefore before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale. (See ***Dhirendra Nath Gorai v. Sudhir Chandra Ghosh, (1964) 6 SCR 1001, Jaswantlal Natvarlal Thakkar v. Sushilaben Manilal Dangarwala, 1991(1) S.C.T. 760 : 1991 Supp(2) SCC 691 and Kadiyala Rama Rao v. Gutala Kahna Rao,(2000) 3 SCC 87***)

14. A charge of fraud or material irregularity under Order 21, Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction–purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with Order 21, Rule 67 (1) read with Order 21, Rule 54 (2). No doubt, the trial court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21, Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of the court to that effect. In the absence of such direction, the proclamation of sale has to be made under Order 21, Rule 67 (1) "as nearly as may be, in the manner prescribed by Rule 54 sub–rule (2)". Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:

> "54. (2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the courthouse, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village."

After examining the facts of this case in the light of the law laid down in the case of ***Saheb Khan*** (supra), we are of the considered opinion that the reasoning and the conclusion arrived at by the executing Court deserves to be restored as against that of the High Court in the impugned order. In other words, no case was made out by the judgment debtor for setting aside of the sale of the property in question on the ground of committing any material irregularity or fraud in publishing or in conducting the sale so as to enable the Court to invoke its powers under Order 21, Rule 90 (2) of the Code.

It is noticed that respondent No. 1, in her application for setting aside the sale, had mainly raised four objections. Firstly, clear 15 days' notice was not given for sale of the properties as required under the Rules. Secondly, the valuation of the property was not properly mentioned in the concerned documents so as to enable the parties to know its proper valuation prevailing on the date of sale. Thirdly, the market value of the property on the date of auction was more than the price actually fetched in the auction, and fourthly, no proper publication including beating of drum was made before the date of auction due to which there was less participation of the bidders in the auction sale.

The executing Court dealt with all the four objections with reference to the record of the proceedings and found as a fact that none of the objections had any merit. The High Court, however, found fault in the same though not in all but essentially in the matter relating to giving of clear 15 days' notice and the manner in which it was issued and finding merit in the objection, set aside the sale on imposing certain conditions enumerated above.

In our considered opinion, as mentioned above, the executing Court was justified in overruling the objections and we concur with the reasoning and the conclusion of the executing Court.

We also find on facts that firstly, the proper publicity was given for auction sale in papers so also by beat of drums pursuant to which as many as seven bidders including the appellant herein participated in the auction sale. Had there been no publicity, it would not have been possible for seven persons to participate in the auction proceedings.

Secondly, the details of the valuation of the property were duly mentioned, namely, decree holder's valuation at Rs. 2,75,000/– likewise, Amin's valuation at L 4 lacs whereas the property was sold in auction for Rs. 7,50,000/–. In this view of the matter, it could not be said that the bidders did not know the valuation or/and that it was not mentioned in the auction papers.

Thirdly, judgment debtor did not adduce any evidence nor brought any bidder to purchase the property for a higher price than the purchase bid (Rs. 7,50,000/–) except to say in the application that value of the property was between 12 lakhs to 14 lakhs. In our view, this objection has no substance for want of any evidence.

Fourthly, there was adequate publicity given with the aid of beat of drums in the locality. It was proved with the record of the executing Court as was rightly held by the executing Court and lastly, in our view, a clear 15 days' notice was given for auction sale fixed for 17.11.1999 when counted from 05.10.1999. In other words, 15 days have to be counted from 05.10.1999 because it is on this date the order was issued as contemplated under Order 21, Rule 64 for proclamation of sale fixing the date of sale as 17.11.1999.

The executing Court, therefore, substantially and in letter and spirit followed the procedure prescribed under Order 21 Rules 64 and 66 of the Code while conducting the sale of the property in question.

The law on the question involved herein is clear. It is not the material irregularity that alone is sufficient for setting aside of the sale. The judgment debtor has to go further and establish to the satisfaction of the Court that the material irregularity or fraud, as the case may be, has resulted in causing substantial injury to the judgment–debtor in conducting the sale. It is only then the sale so conducted could be set aside under Order 21, Rule 90 (2) of the Code. Such is not the case here.

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53. CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 1

Withdrawal of suit with permission to bring a fresh suit – Formal defect – It is a defect of form prescribed by rules of procedure – Interpretation of the words "sufficient ground" in Order 23 Rule 1(3)(b) – Wider discretion to allow withdrawal in interest of justice where such prayer is not covered by clause (a).

flfoy izfØ;k lafgrk] 1908 & vkn'k 23 fu;e 1

u;k okn ykus dh vuqefr ds lkFk okn dk izR;kgj.k & izk:fid =fV & ;g izfØ;k ds fu;e }kjk mYyf[kr izk:i dh =fV gS & vkn'k 23 fu;e 1 ¼3½¼[k½ ds ^^izkIr vk/kkj^^ 'kCnksa dk fuoZpu & izR;kgj.k djus gsrq ;kid fooknd dk iz;kx tgk¡ fd izkFkuk [k.M ¼d½ dh ifjf/k esa ugha vkrh gSA

V. Rajendran and anr. v. Annasamy Pandian (d) thr. LRs. Karthyayani Natchiar

Judgment dated 24.01.2017 passed by the Supreme Court in Civil Appeal No. 861 of 2017, reported in AIR 2017 SC 685

Relevant extracts from the judgment:

In ***K.S. Bhoopathy and ors. v. Kokila and ors., (2000) 5 SCC 458,*** it has been held that it is the duty of the Court to be satisfied about the existence of "formal defect" or "sufficient grounds" before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the "formal defect" or "sufficient grounds", such right cannot be considered to be so absolute as to permit or encourage abuse of

process of Court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order XXIII Rule 1(3) CPC, the Court must be satisfied about the "formal defect" or "sufficient grounds".

> "Formal defect" is a defect of form prescribed by the Rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, mis–joinder of parties, failure to disclose a cause of action etc. "Formal defect" must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.
>
> In terms of Order XXIII Rule 1(3) (b) where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit, the Court may permit the plaintiff to withdraw the suit. In interpretation of the word "sufficient grounds", there are two views: One view is that these grounds in clause (b) must be "ejusdem generis" with those in clause (a), that is, it must be of the same nature as the ground in clause (a) that is formal defect or atleast analogous to them; and the other view was that the words "other sufficient grounds" in clause(b) should be read independent of the words a 'formal defect' and clause (a). Court has been given a wider discretion to allow withdrawal from suit in the interest of justice in cases where such a prayer is not covered by clause (a). Since in the present case, we are only concerned with "formal defect" envisaged under clause (a) of Rule (1) sub-rule (3), we choose not to elaborate any further on the ground contemplated under clause (b) that is "sufficient grounds".

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***54. CONSTITUTION OF INDIA – Article 226**

Compensation, grant of – Victim aged eight year of age – Suffered 100% disability and amputation of both hands due to electrocution – State vicariously liable to compensate the victim for losses sustained due to the negligent incident – Considering victim's family background, age, nature of permanent disability, performance in studies and other relevant factors – Compensation of ` 90,00,000/– with 6% per annum interest from the date of filing of the Writ Petition granted.

Hkkjr dk lfo/kku & vuPNn 226

ifrdj dk inku fd;k tkuk & ihfMr dh vk;q vkB o"k & fo|Uekj.k dq dkj.k 100 ifr'kr v{kerk ,oa nkuk gkFkk dk vx foPNnu & jkT; mi{kkiz.k ?kVuk dq ifj.kke Lo:i ihfMr dk gq;h gkfu dh {kfrifr dju gqr] ifrfuf/kd :i ls nkf;Rok/khu gS & ihfMr dq ifjokj dh i"BHkfe] vk;]LFkk;h v{kerk dh iÑfr] f'k{kk esa in'ku ,oa vU; lqlxr dkjd & :i;q 90]00]000@& dk ifrdj ;kfpdk iLrqr fd;q tkus dh fnukd ls 6 ifr'kr ifro"k dh nj ls C;kt lfgr inku fd;k x;kA

State of Himachal Pradesh and others v. Naval Kumar alias Rohit Kumar.

Judgment dated 02.02.2017 passed by the Supreme Court in Civil Appeal No. 1339 of 2017, reported in AIR 2017 SC 718.

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***55. COURT FEES ACT, 1870 – Section 7 (vi)**
SUITS VALUATION ACT, 1887 – Section 3

Court fees for enforcing right of pre-emption – Plaintiff required to value relief in respect of property wherein right is claimed – If the subject matter is agricultural land – Section 3 of the Suits Valuation Act empowers the State Government to frame rules to determine the valuation of land for jurisdictional purpose – By virtue of rules 2 & 3 framed under Suits Valuation Act, plaintiff rightly valued the relief 20 times the land revenue – Petition allowed and the order of the trial court quased with regard to directing the plaintiff to pay *ad-valorem* court fees.

U;k;ky; 'kYd vf/kfu;e] 1870 & /kkjk 7 ¼vi½

okn eY;kdu vf/kfu;e] 1887 & /kkjk 3

vx&Ø;kf/kdkj dk iorZr djkus dq fy;q U;k;ky; 'kYd & oknh }kjk lgk;rk dk eY;kdu ,slh lqifRr dq lEc/k esa fd;k tkuk gS] ftle vf/kdkj pkgk x;k gS & ;fn fo"k;oLrq Ñf"k Hkfe gS & /kkjk 3 okn eY;kdu vf/kfu;e jkT; ljdkj dk {k=kf/kdkj dq iz;ktu ls Hkfe dk eY;kdu dk fu/kkZfjr djus gqr fu;e cukus dh 'kfDr;k inku djrh gS & okn eY;kdu vf/kfu;e dq vrxZr fufeZr fu;e 2 ,oa 3 dq vk/kkj ij oknh }kjk lgh :i ls lgk;rk dk eY;kdu Hk&jktLo dq 20 xquk fd;k x;k & ;kfpdk Lohdkj dh xbZ ,oa fopkj.k U;k;ky; dq okn dk eY; vuqlkj U;k;ky; 'kYd vnk djus dq vkn'k dk vikLr fd;k x;kA

Radhey Shyam & ors v. Bhure Singh & ors.

Order dated 16.12.2015 passed by the High Court of Madhya Pradesh in Writ Petition No. 4031 of 2014 (Gwalior Bench), reported in ILR (2016) MP 2214

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56. CRIMINAL PROCEDURE CODE, 1973 – Sections 156 and 173

Whether magistrate can direct to file challan or charge-sheet under section 156 (3) of the Code? Held, No – Registration of FIR and filing of charge-sheet are two different things – Magistrate can direct police for registration of FIR but cannot direct to file charge-sheet – Direction as to filing of charge-sheet is beyond magistrate's jurisdiction.

n.M izfØ;k lafgrk] 1973 & /kkjk,a 156 ,oa 173

D;k eftLVªV }kjk lafgrk dh /kkjk 156 ¼3½ d varxZr pkyku vFkok vfHk;kx i= izLrqr djus gsrq funsZ'k fn;s tk ldrs gSa\ vfHkfu/kkfjr] ugha & izFke lwpuk izfrosnu nt fd;k tkuk ,oa vfHk;kx i= izLrqr fd;k tkuk nks fHkUu phtsa gSa & eftLVªV izFke lwpuk fjikVZ nt djus gsrq vkns'k ns ldrk gS] ijarq og vfHk;kx i= izLrqr djus gsrq funsZ'k ugha ns ldrk gS & vfHk;kx i= izLrqr djus gsrq funsZ'k eftLVªV d {ks=kf/kdkj d ckgj gSA

Rajendra Singh Yadav & ors. v. State of M.P. & anr.

Order dated 07.02.2017 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 9573 of 2014 (Gwalior Bench), reported in 2017 (1) MPWN 77

Relevant extracts from the order:

From the order dated 11.9.2014, it is apparent that the Magistrate had directed the police to register the FIR. So far as this part of the order is concerned, it is well within the jurisdiction of the Magistrate and this part of the order is perfectly in accordance with law. However, the latter part of the order by which the Magistrate has directed the police to file the charge sheet appears to be beyond his jurisdiction. Registration of the FIR and filing of the charge sheet are two different things. Merely a FIR has been registered would not ipso facto mean that in all the circumstances the police has to file the charge sheet. After the FIR is lodged, it is for the police to investigate the matter and if after completing the investigation if the police comes to a conclusion that no offence is made out then the police is well within its right to file the closure report subject to approval by the Court concerned after hearing the complainant. In the present case, the Court has not taken the report of the police as a final report. The Magistrate has also directed the police to conclude the necessary investigation. Thus, it is clear that even the Magistrate was of the view that the report which has been submitted by the police is not based on the complete investigation and it is required to be completed. Under these circumstances directing the police to file the charge sheet only, necessarily means that the Magistrate by passing this order has taken away the jurisdiction of the police not to file the closure report, if circumstances so warranted. Under these circumstance this Court is the view that the latter part of the order by which a direction was given

to the police to file the charge sheet was not in accordance with law, therefore, the second part of the order is hereby set aside.

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57. CRIMINAL PROCEDURE CODE, 1973 – Sections 156, 173, 190, 200, 202 and 204

(i) Further investigation at post cognizance stage – Investigation of an offence by Police completed and final report (Challan) was submitted under section 173(2) before Magistrate – Magistrate took cognizance – Afterwards the Magistrate can neither suo motu nor on an application filed by the complainant/informant direct further investigation under section 173(8) –Such a course would be open only on the request of the investigating agency – Further held that direction for investigation under section 202 of the Code at post cognizance stage is in the nature of inquiry and not of further investigation under section 173 (8).

(ii) Whether further investigation at post cognizance stage can be directed under section 156(3) of the Code? Held, No.

(iii) Terms "Initial investigation", "Further investigation" and "Fresh or De novo or Re-investigation" explained.

n.M ifØ;k lafgrk] 1973 & /kkjk,a 156] 173] 190] 200] 202 ,oa 204

¼i½ laKku i'pkr~ Lrj ij vfxe vUo"k.k & vijk/k dk vUo"k.k ifyl }kjk n.k fd;k x;k ,oa vfre ifjorn ¼pkyku½ /kkjk 173 ¼2½ d varxZr eftLVªsV }kjk laKku fy;k x;k & i'pkr~ e eftLVªsV uk rk Lo;a ,oa u gh f'kdk;rdrkZ@vkosnd }kjk iLrqr vkosnu d vk/kkj ij /kkjk 173 ¼8½ d varxZr vfxe vUo"k.k vkns'kr dj ldrk g & mDr ekx ek= vUo"k.k laLFkk d fuosnu ij [kyk jgxk & vkx vfHkfu/kkfjr fd;k x;k fd laKku i'pkr~ lafgrk dh /kkjk 202 d varxZr fun'k ek= tkp dh izÑfr dk gkrk g ,oa /kkjk 173 ¼8½ d varxZr vfxe vUo"k.k gqr ughA

¼ii½ D;k lafgrk dh /kkjk 156 ¼3½ n-iz-la- d varxZr laKku i'pkr~ Lrj ij vfxe vUo"k.k vkns'kr fd;k tk ldrk g\ vfHkfu/kkfjr & ughA

*¼iii½ 'kCnkoyh **ikjfHkd vUo"k.k**] **vfxe vUo"k.k** ,oa **uohu vUo"k.k ;k iqu% vUo"k.k** Li"V fd;a x;aA*

Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel & ors.

Judgment dated 02.02.2017 passed by the Supreme Court in Criminal Appeal No. 1171 of 2016, reported in 2017 CriLJ 1344

Relevant extracts from the judgment:

Chapter XIV of the Code delineates the conditions requisite for initiation of proceedings before a Magistrate. Section 190, which deals with cognizance

of offences by Magistrate, sets out that any Magistrate of the first Class and any Magistrate of the second class specially empowered, as contemplated, may take cognizance of any offence either upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon information received from any person other than the police officer, or upon his own knowledge that such offence had been committed. Section 156, which equips a police officer with the power to investigate a cognisable case mandates vide sub– section 3 thereof that any Magistrate empowered under Section 190 may order such an investigation. The procedure for dealing with complaints to Magistrate is lodged under Chapter XV of the Code. Section 202 appearing therein predicates that any Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance or which had been made over to him under Section 192, may, if he thinks fit and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. The contents of this text of Section 202(1) of the Code unmistakeably attest that the investigation that can be directed by the Magistrate, to be undertaken by a police officer would essentially be in the form of an enquiry for the singular purpose of enabling him to decide whether or another there is sufficient ground for proceeding with the complaint of an offence, of which he is authorised to take cognizance. This irrefutably is at the pre-cognizance stage and thus logically before the issuance of process to the accused and his attendance in response thereto. As adverted to herein above, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons.

On an overall survey of the pronouncements of this Court on the scope and purport of Section 173 (8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the

learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

The un-amended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorised to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge–sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post–cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated herein above. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in ***Bhagwant Singh v. Commissioner of Police, (1985) 2 SCC 537*** the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, where after though the investigating agency may for

good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., where under any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertain able as has been rightly held by the High Court.

Additionally, this Court also dwelt upon the three facets of investigation in succession i.e. (i) initial investigation (ii) further investigation and (iii) fresh or de novo or reinvestigation. Whereas initial investigation was alluded to be one conducted in furtherance of registration of an FIR leading to a final report under Section 173(2) of the Code, further investigation was a phenomenon where the investigating officer would obtain further oral or documentary evidence after the final report had already been submitted, so much so that the report on the basis of the subsequent disclosures/discoveries by way of such evidence would be in consolidation and in continuation of the previous investigation and the report yielded thereby. “Fresh investigation” “reinvestigation” “de novo investigation”, however is an exercise, which it was held, could neither be undertaken by the investigating agency suo motu nor could be ordered by the Magistrate and that it was essentially within the domain of the higher judiciary to direct the same and that too under limited compelling circumstances warranting such probe to ensure a just and fair investigation and trial. Adverting to Section 173 of the Code again, this Court recalled its observations in ***State of Punjab v. CBI and others, (2011) 9 SCC 182*** that not only the police had the power to conduct further investigation in terms of Section 173(8) of the Code, even the Trial Court could direct further investigation in contradistinction to fresh investigation even where the report had been filed.

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58. CRIMINAL PROCEDURE CODE, 1973 – Sections 156(3) and 482

(i) Power of Magistrate to direct investigation of offence exclusively triable by the Court of Session under section 156(3) Cr.P.C – Held, Magistrate is not debarred from sending the same to the police for investigation under section 156 (3) of the Code, in purview of first proviso of section 202 (1) Cr.P.C.

(ii) Power to order investigation, stage and nature of order under section 156 (3) and 202(1) Cr.P.C. differentiated (Relied on *Devarapally Lakshminarayana Reddy v. V. Narayana Reddy, AIR 1976 SC 1672*)

n.M ifØ;k lfgrk] 1973 & /kkjk,a 156 ¼3½ ,oa 482

¼i½ /kkjk 156 ¼3½ n-i-l- dh varxZr vuUr% l= U;k;ky ;k }kjk fopkj.kh; ekeyksa ls lacf/kr vijk/k dh vuUlU/kku gsrq funsZf'kr dju dh eftLVsV dh 'kfDr & vfHkfu/kkZfjr eftLVsV lfgrk dh /kkjk 156 ¼3½ dh varxZr ,sls ekeyksa dk ifyl dk vuUlU/kku gsrq ifjf'kr dju dh fy;s /kkjk 202 ¼1½ n-i-l- dh ijrsd }kjk oftZr ugha gSA

¼ii½ /kkjk 156 ¼3½ ,oa /kkjk 202 ¼1½ n-i-l- dh varxZr vuUlU/kku gsrq vkn'k dh 'kfDr] Lrj ,oa izÑfr dk foHkkfnr fd;k x;kA ¼nojkiYyh y{eh ukjk;.k jeMh fo:) ukjk;.k jeMh] ,vkbZvkj 1976 ,l lh 1672 voyfcr fd;k x;k½

Rasid Ali v. Vishnu Bain and others

Order dated 18.02.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 3367 of 2014 (Jabalpur Bench), reported in ILR (2016) MP 2402

Relevant extracts from the Order:

…in the case of ***Devarapally Lakshminarayana Reddy v. V. Narayan Reddy, AIR 1976 SC 1972***, it has held that in view of first proviso to section 202(1) of the Criminal P.C. a Magistrate who receives a complaint disclosing offences exclusively triable by the Court of Session, is not debarred from sending the same to the police for investigation under Section 156(3) of the Code. The power to order police investigation under Section 156 (3) is different from the power to direct investigation conferred by Section 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post–cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190 (1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Sect. 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156 (1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section, an investigation "for the purpose

of deciding whether or not there is sufficient ground for proceeding." Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

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59. CRIMINAL PROCEDURE CODE, 1973 – Section 173

***"De novo"* investigation, permissibility for – Prayer of the petitioner is that the entire video footage of toll plaza in relation to vehicle in question must be made part of the investigation/trial in order to ensure as to who was driving the vehicle and whether blue flasher light and police mono were used in the said vehicle – Held that if it is established that investigation ex facie unfair or tainted with mala fide and smacks of foul play – Courts can issue directions for de novo investigation – Investigating Agency not empowered to conduct *de novo* investigation in relation to offence for which report already filed – Further held, only upon orders of higher courts, such investigation to be conducted.**

(*Vinay Tyagi v. Irshad Ali @ Deepak & others, (2013) 5 SCC 762, Pooja Pal v. Union of India & others,(2016) 3 SCC 135* and *State of West Bengal & others v. Committee for Protection of Democratic Rights & others, (2010) 3 SCC 571* relied on)

n.M izfØ;k lafgrk] 1973 & /kkjk 173

uohu vUo"k.k] vuqK;k & ;kfpdkdrk }kjk ;g ikFkuk dh x;h fd Vksy Iykt dh okgu ls lacf/kr lhlh.k fofM;ks QqVst dk vUo"k.k@fopkj.k dk Hkkx cuk;k tkos ftl ls fd dkSu okgu pyk jgk ,oa okgu ij uhyh jks dh cRrh o ifyl dh fpUg dk gkuk lfuf'pr fd;k tk ldsa & vfHkfu/kkfjr] ;fn ;g LFkkfir fd;k tkrk gS fd vUo"k.k izFke n"V;k vufpr ;k nHkkouk ls dyfdr gS ,oa xMcMh fd;s tkus dh x/k vkrh gS & U;k;ky; uohu vUo"k.k gsrq funsZ'k tkjh dj ldrh gS & pfd vfre ifronu iLrqr gks tkus ls vuqlwpukdrk lLFkk uohu vUo"k.k gsrq l'kDr ugha gS & vfHkfu/kkfjr] ek= mPprj vuqlwpuk lLFkk ifronu iLrqr gks tkus ls uohu vUo"k.k dju gsrq l'kDr ugha gS & vfHkfu/kkfjr] ek= mPprj U;k;ky;ksa dks vkns'k ls ,sls vUo"k.k fd;s tk ldrs gSaA

¼विनय R;kxh fo:) bjln vyh mQZ nhid ,oa vU;] ¼2013½ 5 ,l-ch-ih- 762] ifjdk iky fo:) Hkkjr ljdkj ,oa vU;] ¼2016½ 3 ,l-ch-ih- 135 ,oa if'pe cxky jkT; fo:) eyHkwj vf/kdkj lqj{kk lfefr ,oa vU;] ¼2010½ 3 ,l-ch-ih- 571 dk voyksdu fy;k x;k½

Sunil Patel v. State of M P & others

Order dated 05.12.2016 passed by the High Court of Madhya Pradesh in Writ Petition No. 14071 of 2015 Jabalpur Bench), reported in 2016 Law Suit (MP) 1242

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***60. CRIMINAL PROCEDURE CODE, 1973 – Sections 190, 200, 202 and 204**

(i) **Criminal complaint – Issue of process; duty of magistrate as to – Where the complainant, who instituted the prosecution, has no personal knowledge of the allegations made in the complaint, the magistrate should satisfy himself upon proper materials that a case is made out for the issue of process – The only condition requisite for the issue of process is that the complainant's deposition statement must show some sufficient ground for proceedings – Further held, when a person files a complaint and supports it on oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed unless there is some apparent reason for disbelieving him, and he is entitled to have the persons, against whom he complaints, brought before the Court and tried.**

(ii) ***Corporate criminal liability*** **– A corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. – If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy – An individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company.**

¼**i**½ *vkijkf/kd ifjokn & vknf'kdk dk tkjh fd;k tkuk(eftLVsªV dk drZO; & tgk¡ ifjokn lfLFkr djus okys ifjoknh dks ifjokn ds vk{ksiksa ds laca/k esa O;fDrxr tkudkjh u gks] eftLVsªV dks lefpr lkexzh ds vk/kkj ij vknf'kdk tkjh djus dk ekeyk cuus dh larqf"V djuk pkfg;s & vknf'kdk tkjh djus ds fy, ,dek= iwoZ 'krZ ;g gS fd ifjoknh ds dFku }kjk dk;Zokgh gsrq i;kZIr vk/kkj crk;s tkus pkfg;s & vkxs vfHkfu/kkZfjr] tc fdlh O;fDr }kjk ifjokn izLrqr fd;k tkrk gS ,oa 'kiFk ij lefFkZr fd;k tkrk gS] tks fd ;fn vlR; gks rks mls vfHk;kstu ,oa dkjkokl ds fy;s nkf;Rok/khu dj ldrk gS] og fo'okl fd;s tkus ;ksX; gS tc rd fd vfo'okl fd;s tkus dk iznV dkj.k u gks ,oa og ftu O;fDr;ksa ds fo:) f'kdk;r dj jgk gS] mUgsa U;k;ky; ds le{k ykus ,oa fopkj.k djkus dk vf/kdkjh gSA*

¼**ii**½ *dkiksZjsV vkijkf/kd nkf;Ro & ,d dkiksZjsV laLFkk Ñf=e O;fDr gS tks vius vf/kdkfj;ksa] funs'kdksa] izca/kd funs'kd] v/;{k bR;kfn ds }kjk dk;Z djrh gS & ;fn mDr dEiuh vkijkf/kd dks lfEefyr djus okys dkbZ vijk/k dkfjr djrh gS rks og mu O;fDr;ksa dk vk'k; ,oa ÑR; gksrk gS tks fd dEiuh dh vksj ls dk;Z djrs gSa Hkys gh og vkijkf/kd ÑR; "kM;a= gks & O;fDr ftlds }kjk dEiuh dh vksj ls vijk/k dkfjr djk x;k gS] dEiuh ds lkFk vfHk;qDr cuk;k tk ldrk gSA*

K. Sitaram v. CFL Capital Financial Service Ltd.

Judgment dated 21.03.2017 passed by the Supreme Court in Criminal Appeal No. 2285 of 2011, reported in (2017) 5 SCC 725

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61. CRIMINAL PROCEDURE CODE, 1973 – Section 202

Complaint against the accused residing outside the jurisdiction – Mandatory for the magistrate to conduct inquiry under section 202 – Object is to save the person residing far off from unnecessary harassment – Also, the inquiry is not an empty formality, but application of mind is necessary.

n.M i|fØ;k l|fgrk] 1973 & /kkjk 202

{k=kf/kdkj l| ckgj fuokljr vfHk;qDr d| fo:) ifjokn & eftLVªV d| fy;s /kkjk 202 d| vrxZr tkp djus dk mn~n'; nwj jgus okys 0;fDr dks vuko';d mRihMu l| cpk;k tkuk gS & lkFk gh tkp ek= vkipkfjdrk ugha gS] vfir| efLr"d dk iz;ksx vko';d gSA

Abhijit Pawar v. Hemant Madhukar Nimbalkar & anr.

Judgment dated 14.12.2016 passed by the Supreme Court in Criminal Appeal No.1225 of 2016, reported in AIR 2017 SC 299

Relevant extracts from the judgment:

Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 of the Cr.P.C. was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a faroff places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment. The essence and purpose of this amendment has been captured by this Court in ***Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638 :AIR 2014 SC (Supp) 756*** the following words:

> "11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he

thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

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The requirement of conducting enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of 'enquiry' is needed under this provision has also been explained in ***Vijay Dhanuka*** (supra) case, which is reproduced hereunder:

"14. In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:

> "2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;"

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."

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***62. CRIMINAL PROCEDURE CODE, 1973 – Section 340**

INDIAN PENAL CODE, 1860 – Sections 199 and 200

Whether non-supporting of prosecution case by a prosecution witness is a sole ground to proceed against him under sections 199 and 200 of IPC? Held, No – Merely because a person has not supported the prosecution case, cannot be *ipso facto* sufficient to proceed against him under sections 199 and 200 of IPC – It must be shown that he has given an entire false statement at any stage of judicial proceedings or has fabricated false evidence for the purposes of using the same at any stage of juidical proceedings – Further held that the Court must record its satisfaction that an inquiry under section 340 is necessary in the interest of justice – The opinion can be formed even without conducting an inquiry.

n.M ifØ;k lfgrk] 1973 & /kkjk 340

Hkkjrh; n.M lfgrk] 1860 & /kkjk,a 199 ,oa 200

D;k vfHk;kstu lk{kh }kjk vfHk;kstu ekeyk dk leFkZu u fd;k tkuk mldk fo:) /kkjk 199 o 200 Hkk-n-l- dk vrxZr dk;Zokgh djus dk ,dek= dkj.k gks ldrk gS\ vfHkfu/kkZfjr] ugha] ek= blfy;s dh ,d 0;fDr }kjk vfHk;kstu ekeyk dk leFkZu ugha fd;k x;k gS] Lo;a eldk fo:) /kkjk 199 o 200 Hkk-n-l- dk vrxZr dk;Zokgh djus gsrq i;kZIr ugha gS & ;g nf'kZr fd;k tkuk pkfg;s fd mldk }kjk U;kf;d dk;Zokgh dk fdlh Lrj ij i.k :i ls vlR; dFku fd;k x;k gS vFkok mldk }kjk feF;k lk{; dk U;kf;d dk;Zokgh dk fdlh Lrj ij mi;ksx djus gsrq dVjfpr fd;k x;k gS & vkx vfHkfu/kkZfjr fd;k x;k fd U;k;ky; }kjk ;g lqfuf'pr dj yuk pkfg, fd /kkjk 340 dk vrxZr U;k;fgr esa tkp vko';d gS & mDr vfHkfer fcuk tkp fd;s Hkh cuk;k tk ldrk gSA

Jagdish Singh Namdhari v. State of M.P.

Judgment dated 19.04.2017 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 396 of 2015 (Gwalior Bench), reported in 2017 (2) MPWN 36

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63. CRIMINAL PROCEDURE CODE, 1973 – Section 386

Power of the appellate court to order for retrial – To be ordered only in exceptional cases, where it is the last resort and desperately indispensable – Circumstances must exist to show that trial was undertaken without jurisdiction or trial was vitiated by serious illegality or irregularity on account of misconception of nature of proceedings or that irregularity has resulted in miscarriage of justice – May also be passed in case of wrong admission or rejection of evidence and refusal to hear essential witness.

nM ifØ;k lfgrk] 1973 & /kkjk 386

vihyh; U;k;ky; dh iqufoZpkj.k vknf'kZr djus dh 'kfDr;k & ek= vkiokfnd ekeyksa esa vknf'kZr fd;k tkuk pkfg;s] tcfd ;g vfre fodYi ,oa vifjgk;Z gks & ifjfLFkfr;ksa ls ;g vko';d :i ls nf'kZr gksuk pkfg;s fd fopkj.k fcuk {k=kf/kdkj dk fd;k x;k ;k ifØ;k dh iqÑfr dk Hkse dk dkj.k fopkj.k xHkhj :i ls vo/kkfud ;k vfu;fer gkdj nf"kr gS ;k vfu;ferrk dk dkj.k U;k; dh gkfu gksrh gS & lk{; dk xyr :i ls Lohdkj djus ;k [kkfjt djus ,oa vko';d lkf{;ksa dk lquus ls euk fd;s tkus dh n'kk esa Hkh ikfjr fd;k tk ldrk gSA

Ajay Kumar Ghoshal etc. v. State of Bihar and anr.

Judgment dated 31.01.2017 passed by the Supreme Court in Criminal Appeal No. 119 of 2017, reported in AIR 2017 SC 804

Relevant extracts from the judgment:

The High Court is para (29) of its judgment, pointed out certain lapses; but has not stated as to how such alleged lapses has resulted in miscarriage of justice necessitating retrial. Certain lapses either in the investigation or in the 'conduct of trial' are not sufficient to direct retrial. The High Court being the First Appellate Court is duty bound to examine the evidence and arrive at an independent finding based on appraisal of such evidence and examine whether such lapses actually affect the prosecution case; or such lapses have actually resulted in failure of justice. The circumstances that should exist for warranting retrial must be such that whether the trial was undertaken by the court having no jurisdiction or trial was vitiated by serious illegality or irregularity on account of misconception of nature of proceedings or that irregularity has resulted in miscarriage of justice.

The High Court copiously extracted the judgment in case of ***Nar Singh v. State of Haryana, (2015) 1 SCC 496*** to remit the matter to the trial court for proceeding afresh. In Nar Singh's case, some of the important questions like Ballistic Report and certain other incriminating evidence were not put to the accused and the same was not raised in the trial court or in the High Court. It was felt that the accused should have been questioned on those incriminating evidence and circumstances; or otherwise prejudice would be caused to the accused. In such peculiar facts and circumstances, ***Nar Singh's case*** (supra) was remitted to the trial court for proceeding afresh from the stage of Section 313 Cr.P.C. Be it noted that in ***Nar Singh's case*** (supra) this Court has referred to a catena of other judgments holding that omission to put certain questions to the accused under Section 313 Cr.P.C. would not cause prejudice to the accused. It depends upon facts and circumstances of each case and the nature of prejudice caused to the accused. In our view, the High Court has not properly appreciated ***Nar Singh's case*** (supra) where this Court laid down that the appellate court can order for fresh trial from the stage of examination under Section 313 Cr.P.C., only in cases where failure to question the accused on certain incriminating evidence has resulted in serious prejudice to the accused. The High Court, in our view, has not properly appreciated the ratio laid down in ***Nar Singh's case*** (supra) and erred in applying the same to the present case.

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Though the word "retrial" is used under Section 386 (b) (i) Cr.P.C., the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the Court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the Court refused to hear certain witnesses who were supposed to be heard.

'De novo' trial means a "new trial" ordered by an appellate court in exceptional cases when the original trial failed to make a determination in a manner dictated by law. The trial is conducted afresh by the court as if there had not been a trial in first instance. Undoubtedly, the appellate court has power to direct the lower court to hold 'de novo' trial. But the question is when such power should be exercised. As stated in ***Pandit Ukha Kolhe v. State of Maharashtra, (1964) SCR 926,*** the Court held that:

> "An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate Court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re–trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons."
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> xxx xxx xxx

After considering the question a "speedy trial" and "fair trial" to a person accused of a crime and after referring to a catena of decisions and observing that guiding factor for retrial must always be demand of justice, in ***Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), (2012) 9 SCC 408,*** this Court held as under:–

> "41. 'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the

discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of an accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered.

The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A 'de novo trial' or retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no strait jacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked."

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64. CRIMINAL PROCEDURE CODE, 1973 – Sections 397, 401 and 207

Whether criminal revision against order of rejection for supplying of copy of charge-sheet under section 207 is maintainable?, Held, No – As the order is interlocutory, hence the revision is not maintainable.

(*Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551, Sethuraman v. Rajamanickam, (2009) 5 SCC 153* and *V.C. Shukla v. State through CBI, 1980 SCC (Cri) 695* followed)

n.M ifØ;k lfgrk] 1973 & /kkjk,a 397] 401 ,oa 207

D;k /kkjk 207 n-i-l- dh vkrxr ifrfyfi fn;s tkus ls bUdkj fd;s tkus dh vkn'k dh fo:) iqujh{k.k iqpyu'kh;y gS\ vfHkfu/kkfjr] ugha] pfd vkn'k vrorhZ gS] Qyr% iqujh{k.k iqpyu ;kX; ugha gSA

¼e/k fyek, fo:) egkjk"V jkT;] ¼1977½ 4 ,l-lh-lh- 551] lq/jkeu fo:) jkt ekf.kDde] ¼2009½ 5 ,l-lh-lh- 153 ,oa oh-lh- 'kDyk fo:) jkT; cuke lh-ch-vkbZ-] 1980 ,l-lh-lh- ¼vijkf/kd½ 695 dk voyksdu fy;k x;k½

Naval Singh v. State of Madhya Pradesh

Order dated 03.01.2017 passed by the High Court of M.P. in Criminal Revision No. 1104 of 2016 (Gwalior Bench), reported in 2017 Law Suit (MP) 40

Relevant extracts from the order:

The first question for determination is that whether any order declining supply of copy of police report and other documents to the accused persons is interlocutory in nature. In ***Madhu Limaye v. State of Maharashtra, 1977 (4) SCC 551 : 1978 SCC (Cri) 10,*** it was held as under:

> "Before we conclude we may point out an obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in ***S. Kuppuswami Rao v. King, AIR 1949 FC 1*** case and in holding that an order of the kind under consideration being not a final order must necessarily be an interlocutory one. If a complaint is dismissed under Section 203 or under Section 204 (4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make Section 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it? The legislature left the power to order further inquiry intact in 'section 398. Is it not, then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court for setting aside the order adversely made against him in similar circumstances and to quash the proceeding? The answer must be given in favour of the just and reasonable view expressed by us above."

In my view, supply of documents is one of the most important rights of the accused and denial of such rights in an unreasonable manner would invariably lead to failure of justice. However, the Hon'ble Supreme Court in ***Sethuraman v. Rajamanickam, (2009) 5 SCC 153 : 2009 (2) SCC (Cri) 27***, with respect to Section 91 and Section 311 of Cr.P.C, held that :

> "Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were

> interlocutory orders and as such, the revision against those orders was clearly barred under Section 397 (2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 of Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397 (2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."

An important thing to note is that the power is vested with the Magistrate to direct the supply of documents under Section 207 of Cr.P.C. but as per the provisions of Section 207 of Cr.P.C., in certain cases, the Magistrate may restrict this right of the accused and in ***Sethuraman*** (supra) the Hon'ble Supreme court considered the distinction between the revisable and non–revisable order and took into consideration the fact that whether the order in any manner decided anything finally. In the instant case as well, the order under Section 207 of Cr.P.C. is not deciding anything finally and thus, it may be termed as interlocutory order for the purpose of bringing the jurisdiction of High Court under Section 397 of Cr.P.C. With respect to the above mentioned proposition, the observation of the Hon'ble Supreme Court in ***V.C. Shukla v. State through CBI, 1980 supplementary SCC 92 = 1980 SCC (Cri) 695*** may be reproduced as under:

> "To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter. in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia J. in the case of ***Madhu Limaye*** (supra) clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in Corpus Juris Secundum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Secundum. It is obvious that an order framing of the charge being an intermediate order falls squarely with in the ordinary and natural meaning

of the term 'interlocutory order' as used in section 11 (1) of the Act. Wharton's Law Lexicon (14th Edition, p. 529) defines interlocutory order thus:

> "An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."

Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial A at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. 'I hat is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in section 11(1) of the Act.

Having said this can it be said that framing of a charge is an order which would be something other than interlocutory. For that purpose, it is necessary to keep in view the procedure prescribed for trial of warrant cases instituted on a police report as contained in Part A of Chapter XIX of the Code. Section 238 provides that when in a warrant case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207 which casts an obligation on the Magistrate to furnish to the accused, free of cost, copies of the document therein set out. This is to be done at the commencement of the trial which would mean that when this statutory duty cast by Section 207 is performed by the Magistrate, the trial commences. The trial cannot commence unless the accused is furnished with copies of requisite documents. And the duty is cast on the Magistrate to ascertain at the commencement of the trial that Section 207 is complied with and if it is not done, as part of trial furnish the requisite copies. Then follow Section 239 and 240. Under section 239 the court after considering the police report and the accompanying documents submitted to the court u/s 173 and after giving the prosecution and the accused an

opportunity of being heard if the Magistrate is of the opinion that the charge against the accused is groundless, he must discharge the accused by a speaking reasoned order. If on the other hand after proceeding with the trial as prescribed in Section 239, if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused. This is to be done after the trial commences at the stage of Section 238. Indisputably, therefore, it is an order made in the course of proceeding conducted according to procedure prescribed in Chapter XIX. Without anything more it would be an interlocutory order."

The above mentioned judgment clearly sums up the position in relation to any interlocutory order with respect to Section 207 of Cr.P.C., the Hon'ble Supreme Court is of the opinion that "the trial can not commence unless the accused is furnished with requisite documents".

I am of the considered opinion that Section 207 of Cr.P.C. though of paramount importance, neither terminates the proceeding or concludes the trial. It mere decides "particular aspect of a particular issue or a particular matter in a proceeding".

On the issue/matter/aspect pertaining to the supply of documents nothing less, nothing more, hence, in order of exercising the powers under Section 207 is nothing more intermediate order which is as per the above mentioned judgment clearly falls within the meaning of "interlocutory order". Therefore, the revision petition under Section 397 of Cr.P.C. must fail on this account only.

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***65 CRIMINAL PROCEDURE CODE, 1973 – Section 439**

Claim for bail on the ground that the examination of prosecution witness is over – Prosecution witnesses were attacked during the trial – Investigating Officer was recalled 104 times for cross-examination – Accused himself responsible for delay of trial – Document filed earlier in support of the plea for bail found to be fake – Hence, bail rejected.

n.M izfØ;k lafgrk] 1973 & /kkjk 439

vfHk;kstu lk{; lekIr gks tkus ds vk/kkj ij izfrHkkfr gsrq eksx & fopkj.k ds nkjku vfHk;kstu lk{khx.k ij gesyk fd;k x;k & vuqlaku vf/kdkjh dks izfrijh{k.k gsrq 104 ckj iqu% cqyk;k x;k & vfHk;qDr fopkj.k esa foyac gsrq Lo;a ftEesnkj gksus esa izfrHkkfr vkosnu ds lkFk iLrqr nLrkost feF;k ik;s x;s & vr% izfrHkkfr lacdkj fd;k x;kA

Saint Asha Ram v. State of Rajasthan

Order dated 30.01.2017 passed by the Supreme Court in Special Leave Petition (Criminal) No. 7946 of 2016, reported in AIR 2017 SC 726

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***66. CRIMINAL PROCEDURE CODE, 1973 – Section 451**

GOVANSH VADH PRATISHEDH ADHINIYAM, 2004 (M.P.) – Section 9

Seizure of a vehicle in connection with offence relating to Prevention of Cruelty to Animals Act, M.P. Govansh Vadh Pratishedh Adhiniyam and section 429 of IPC – Allegation that cow progeny were being transported in cruel conditions for slaughter – Arguement that proceedings for confiscation of vehicle in progress – Held, no benefit in keeping the vehicle in custody – Vehicle may be released on interim custody even though the confiscation proceedings have started.

n.M ifØ;k lfgrk] 1973 & /kkjk 451

xkoa'k o/k ifr"ks/k vf/kfu;e] 2004 ¼e-i-½ & /kkjk 9

okgu dk i'q Øjrk fuokj.k vf/kfu;e] e/; inn'k xkoa'k o/k ifr"ks/k vf/kfu;e ,oa /kkjk 429 Hkk-n-l- dh vijk/k dh lapk/k esa tIr fd;k x;k & xkoa'k dk Øj ifjfLFkfr;k esa ifjogu fd;s tkus dk vkns'k & okgu dh vf/kgj.k dh dk;kZokgh izxfr ij gkus dk rdZ &vfHkfu/kkfjr] okgu dk vfHkj{kk esa j[k tkus ij dkbZ Qk;nk ykHk ugha &okgu dk vrfje vfHkj{kk esa NkMk tk ldrk gS Hkys gh vf/kgj.k dk;kZokgh izkjEHk gks pqdh gSA

Moin Mohammad Khan v. State of Madhya Pradesh

Order dated 11.08.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 5507 of 2016 (Indore Bench), reported in 2017 CRI.L.J. 798

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67. DRUGS AND COSMETICS ACT, 1940 – Sections 36AB and 32

CRIMINAL PROCEDURE CODE, 1973 – Section 193

Whether Special Court designated by the State Government in exercise of powers conferred under Section 36AB of the Act of 1940 can take direct cognizance without accused being committed to it for trial? Held, No.

(*Gangula Ashok &anr v. State of A.P.,AIR 2000 SC 740* relied on)

vkS"kf/k vkSj izlk/ku lkexzh vf/kfu;e] 1940 & /kkjk 36,ch ,oa 32

n.M ifØ;k lfgrk] 1973 & /kkjk 193

D;k o"kZ 1940 dh vf/kfu;e dh vrxZr jkT; ljdkj }kjk inRr 'kfDr;ksa dk iz;ksx dj fufn"V fo'ks"k U;k;ky; fcuk vfHk;qDr dk fopkj.k grq mikl.k fd;s x;s lh/ks lqiqnZ ldrh gS\ vfHkfu/kkfjr & ughaA

¼xxyk v'kksd ,oa vU; fo:) LVV vkQ vk/kzin'k] ,-vkbZ-vkj- 2000 ,l-lh- 740 voyfcr½

M/s. Kalptaru Medicose Thru. Narayan Prasad Sahu v. Food and Drug Administration Thru. Ashok Goyal

Order dated 10.01.2017 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 11940 of 2016 (Indore Bench), reported in 2017 CriLJ 1699

Relevant extracts from the order:

A Perusal of Section 32 of 'The Act of 1940' will reveal that no Court inferior to a Court of Sessions can try an offence punishable under the Chapter–IV of 'The Act of 1940'. Section 36AB, which was inserted by Amending Act No.26 of 2008, further says that the trial of offences enumerated therein can only be before the special Court constituted in this regard.

The State Government in exercise of powers conferred under Section 36AB of 'The Act of 1940', vide notification dated 01/05/2010 (copy annexure–P/5), has designated Sessions Judge of each district as special Court for trying specified offences under 'The Act of 1940'. Section 36AC of 'The Act of 1940' provides that certain offences under 'The Act of 1940' enumerated therein shall be cognisable and non–bailable. Section 36AD of 'The Act of 1940' further says that – Save as otherwise provided under 'The Act of 1940', the provisions of 'The Code', shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session.

In 'The Act of 1940', no where expressly or by necessary implication provides that either the special Court can take cognizance without the case being committed to it by the competent Magistrate, nor any such provisions is there in 'The Act of 1940' that the Magistrate or for that matter, Chief Judicial Magistrate has no jurisdiction to take cognizance and to pass a committal order.

Section 193 of 'The Code', which deals with cognizance of offence by Court of Sessions. It provides, in no uncertain terms, that a Court of Sessions will not take cognizance of an offence as a Court of original jurisdiction, unless the case has been committed to it, except otherwise expressly provided in that regard.

Hon'ble the apex Court, while considering Section 14 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (as it stood prior to amendment of 2015), in the context of taking cognizance by the Special Court constituted under that Act had an occassion to consider the ambit and scope of Section 193 of 'The Code' Relevant observations made in this regard, which are apposite here and cover the contraversy at hand, run as under :–

> "Section 14 of the Act says that "for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act". So it is for trial of the offences under the Act that a particular Court of Session in each district is

sought to be specified as a Special Court. Though the word “trial” is not defined either in the Code or in the Act it is dearly distinguishable from inquiry. The word “inquiry” is defined in Section 2(g) of the Code as. “every inquiry, other than trial, conducted under this Code by a magistrate or court”. So the trial is distinct from inquiry and inquiry must always be a forerunner to the trial. The Act contemplates only the trial to be conducted by the Special Court. The added reason for specifying a Court of Session as special Court is to ensure speed for such trial. “Special Court” is defined in the Act as “a Court of Session specified as a Special Court in Section 14”, [vide Section 2(l)(d)] Thus the Court of Session is specified to conduct a trial and no other court can conduct the trial of offences under the Act. Why the Parliament provided that only a Court of session can be specified as a Special Court? Evidently the legislature wanted the Special Court to be Court of Session. Hence the particular Court of Session, even after being specified as a Special Court, would continue to be essentially a Court of Session and designation of it as a Special Court would not denude it of its character or even powers as a Court of Session. The trial in such a court can be conducted only in the manner provided in Chapter XVIII of the Code which contains a fasciculus of provisions for ‘Trial before a Court of Session’.”

“Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if “the case has been committed to it by a magistrate”, as provided in the Code, Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word “expressly” which is employed in Section 193 denoting to those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a magistrate.”

Here it is noticeable that Section 5 of the Prevention of Corruption Act, 1988 specifically provides that Special Judge under the Act can take cognizance of offence(s) without the accused being committed to him for trial.

Likewise, under the SC/ST (PA) Act, 1989 (prior to amendment by Amending Act of 2015), a case triable by Special Court constituted under Section 14 of this Act was required to be committed to the Special Court as held by the apex Court in ***Gangula Ashok's case*** (Supra). After the amendment of 2015, a provision has been added in Section 14 of SC/ST (PA) Act, 1989, conferring power on the Special Court to take cognizance of the case without the same being committed to it for trial. A provision identical to one in Sec. 5 of the Prevention of Corruption Act, 1988 or Sec. 14 of the SC/ST (PA) Act, 1989 is not there in 'The Act of 1940', therefore, Special Court, constituted under this Act, which is a Sessions Court, cannot take cognizance without the accused being committed to it for trial.

In view of Section 193 of 'The Code' as interpreted by Hon'ble the Apex Court in ***Gangula Ashok's case*** (Supra), relied upon by the learned counsel for the petitioner have no application in the present case. The special Court constituted under 'The Act of 1940' cannot take direct cognizance, because no enabling provision is there in 'The Act of 1940' in that regard, hence, no fault can be found with the order passed by the learned Chief Judicial Magistrate, committing the case to the special Court.

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***68. EVIDENCE ACT, 1872 – Section 24**

Delay in recording of Extra Judicial Confession – Accused was not a suspect initially – Extra Judicial Confession made to Village Administrative Officer who had no relationship with accused or the victim – He was unbiased and unconnected with the controversy – Not inimical to the accused – His testimony remained unshaken in cross-examination – Held, delay is inconsequential – Extra Judicial Confession can be relied upon.

Hkkjrh; lk{; vf/kfu;e]1872 & /kkjk 24

U;kf;dRrj lLohÑfr y[kc) fd;s tkus esa foyac & vfHk;qDr ikjHk ls lfnX/k ugha Fkk & U;kf;dRrj lLohÑfr xkeh.k i'kklfud vf/kdkjh dk nh xbZ ftldk vfHk;qDr ;k ihfMr ls dkbZ lEc/k ugha Fkk & og fu"i{k ,oa fookn ls vlEcf/kr Fkk & vfHk;qDr dk fojks/kh ugha Fkk & mldh ifrijh{k.k esa vfHkdFku fLFkj jgk Fkk & vfHkfu/kkfjr] foyac egRogghu gS & U;kf;dRrj lLohÑfr ij fo'okl fd;k tk ldrk gSA

Kadamanian alias Manikandan v. State Represented by Inspector of Police

Judgment dated 31.08.2016 passed by the Supreme Court in Criminal Appeal No. 2341 of 2010, reported in 2017 CriLJ 1068 (SC)

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69. EVIDENCE ACT, 1872 – Section 27

Statement of co-accused, admissibility of – Confessional statement made by co-accused under section 27 of Evidence Act, which does not lead to discovery of a fact, is inadmissible in evidence – Conviction cannot be recorded on the basis of inadmissible evidence.

lk{; vf/kfu;e] 1872 & /kkjk 27

lg&vfHk;qDr dk dFku dh xkg;rk & lg&vfHk;qDr }kjk /kkjk 27 lk{; vf/kfu;e dk vkrxZr fd;k x;k lLoh—fr dFku lk{; esa vxkg; gS & vxkg; lk{; dk vk/kkj ij nk"kfl) ntZ ugha dh tk ldrhA

Badri Singh v. State of Madhya Pradesh

Order dated 10.01.2017 passed by the High court of Madhya Pradesh in M.Cr.C. No. 12652 of 2016 (Indore Bench), reported in 2017 CriLJ 1390 (M.P.)

Relevant extracts from the order:

In ***Prakash Singh v. State of M.P., 1994 (II) MPWN 72,*** a case under Section 302, 201 and 109 of IPC relating to the murder of a child, the co-accused in his disclosure statement under Section 27 of the Evidence Act had revealed that he had disposed of the dead body of the child with the help of the applicant by burring the same. Though, a skeleton was recovered on the basis of this statement from the place pointed out by making of the statement, however, this Court held that the statement implicating the co-accused (applicant in that case) was inadmissible because that part of the statement had no corelation with the discovery of fact. The relevant observations are as under –

> "The statement admissible under Section 27 of the Evidence Act are the statements which could be used as evidence against the maker and not against any other person. Under Section 27 only portions of information given by an accused which are admissible are those which relate distinctly to the facts discovered thereby. Consequently, statements by an accused which do not relate to aforesaid facts but involved other accused are inadmissible under Section 27 against the later."

In ***Bhoorelal v. State of M.P., 2008(4) MPHT 163 (DB),*** again a case under Section 302 of IPC, the Division Bench of this Court referring to Section 30 of the Evidence Act held that when more persons than one are being tried jointly for the same offence, and a confession made by any one such person affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person, who makes such confession. Referring to ***Kashmira Singh v. State of M.P., 1952 Cri.L.J. 839,*** it was held that as regards co–accused, the evidence based on confession made under Section 27 of the Evidence Act can be used only in aid of other evidence which in the opinion of this Court is safe for conviction.

In ***Sushil Kumar Sharma v. State of M.P., 1995 JLJ 444,*** dealing with the issue it was held that the only piece of evidence taken into consideration by the Magistrate for taking cognizance against the petitioner was mention of the petitioner's name in the memorandum of co–accused recorded under Section 27 of the Evidence Act; being inadmissible in evidences, the same cannot be proved against the petitioner at the trial.

In ***Ashok Nanda & anr.v. State of M.P. & anr., I.L.R. (2011) M.P. 300,*** a co-ordinate Bench of this Court has observed as under:

> "12. As far as the evidence of memoranda given by the co–accused persons under Section 27 of the Evidence Act is concerned, their confessional statements to police cannot be accepted as legal evidence against petitioners in the absence of any other incriminating piece of evidence. Except the above circumstances, absolutely no other evidence has been collected and produced by the prosecution prima facie to indicate that petitioners hatched conspiracy with other accused persons to commit murder of complainant Rajendra Agal".

Again in ***Raghu Thakur v. State of M.P., 2012(4) M.P.H.T. 116,*** this Court explaining the applicability ambit and scope of Section 27 of the Evidence Act observed as under:

> "A plain reading of Section 27 of Indian Evidence Act indicates that the statement under Section 27 of Indian Evidence Act is an exception to the ban imposed upon the Courts to utilize the confessional statement made under Sections 25 & 27 of Indian Evidence Act, so as to protect a person making disclosure from being falsely implicated by the police in whose custody that person remains at the time of making disclosure. The provision of Section 27 of Indian Evidence Act further indicates that the facts disclosed under Section 27 of Indian Evidence Act can be used only against the person making disclosure and not against any other person."

From the aforesaid pronouncements, it can well be gathered that confessional statement made by co–accused under Section 27 of the Evidence Act which does not lead to discovery of a fact is inadmissible in evidence and, therefore, the fact that such statement was made before Panch witnesses will not make any difference in the situation. The law is settled that conviction cannot be recorded on the basis of inadmissible evidence. Section 27 of the Evidence Act permits confessional statement admissible in evidence only to the extent which relates distinctly to the discovery of the fact.

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70. EVIDENCE ACT, 1872 – Section 27

CRIMINAL PROCEDURE CODE, 1973 – Section 313

(i) Disclosure by two accused separately in quick succession to investigating officer and joint discovery at the instance of both the accused – Joint disclosure and simultaneous disclosure *per se* are not inadmissible – Discovery made at their instance is admissible against both of them.

(ii) Absence of signature of accused on recovery Panchnama – No mandatory provision for signature – Would not make it inadmissible.

(iii) Recovery of bloodstained clothes of the accused at his instance – No explanation by the accused as to the presence of human blood on his shirt – Mere absence of evidence regarding blood group cannot be fatal to the prosecution.

(iv) Statements under Section 313 Cr.P.C. recorded in part on different dates – No illegality – Separate statements on different dates are substantial compliance.

Hkkjrh; lk{; vf/kfu;e] 1872 & /kkjk 27

nM izfØ;k lafgrk] 1973 & /kkjk 313

¼i½ nks vfHk;qDrx.k }kjk rjar ,d dh i'pkr ,d iFkd&iFkd vuqlwpukdrk dk izdVu fd;k x;k ,oa nksuksa vfHk;qDrx.k dh [kqykls ij lq;Dr izdVhdj.k gqvk & lq;Dr izdVhdj.k ;k lekuksrj izdVhdj.k Lo;a esa vxkg; ugha gS & crkuq ij gqvk izdVhdj.k nksuksa dh fo:) xkg; gSA

¼ii½ tIrh iapukek ij vfHk;Dr dh gLrk{kj dh vuqifLFkfr & gLrk{kj gqr dkbZ vkKkid iko/kku ugha gS & lk{; esa vxkg; ugha cukrk gSA

¼iii½ vfHk;Dr dh crkuq ij mlds jDrjafjr diMksa dh cjkenxh vfHk;Dr }kjk mlds deht ij ekuo jDr dh mifLFkfr dh lqc/k esa dkbZ Li"Vhdj.k ugha fn;k x;k & ek= jDr leg dh lqc/k esa lk{; dk vHkko vfHk;kstu dh fy;s ?kkrd ugha gks ldrk gSA

¼iv½ /kkjk 313 n-i-l- dh vuqrxZr dFkuksa dk fHkUu fnukdksa ij Hkkx esa nt fd;k x;k & vo/kkfud ugha & fHkUu fnukdksa ij iFkd dFku ;kIr vuqikyu gSA

Kishore Bhadke v. State of Maharashtra

Judgment dated 03.01.2017 passed by the Supreme Court in Criminal Appeal No. 467 of 2010, reported in AIR 2017 SC 279 (Three Judge)

Relevant extracts from the judgment:

It was contended by the counsel for the accused No.3 that the evidence regarding discovery of the dead body of Raman cannot be used against accused No.3. Inasmuch as, when accused No.3 gave his statement and recorded in the form of Memorandum under Section 27 of the Evidence Act, the Police already knew about the spot where the dead body was thrown as it was disclosed by

accused No.2. It was contended that the statement made by accused No.2 can be used only against accused No.2. This argument has been negative by the Trial Court after analyzing the decisions which were brought to its notice, as can be discerned from para 46 to para 53 of the judgment. The Trial Court found that in the present case the accused Nos.2 and 3 made disclosure (about the spot where dead body of Raman was thrown by them) one after another in quick succession and that their statement came to be recorded separately. The only thing that had happened was a joint discovery made at the instance of both the accused Nos.2 and 3, on proceeding to the spot along with the police. Section 27 of the Evidence Act is an exception to Section 25 of the Act. Section 25 mandates that no confession to a Police Officer while in police custody shall be proved as against a person accused of any offence. Section 27, however, provides that any fact deposed to and discovered in consequence of information received from a person accused of any offence, in the custody of a Police Officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The fact where the dead body of deceased Raman was disposed, was disclosed by both the accused Nos.2 and 3 to the Investigating Officer in the presence of SK Idris (PW 2) one after another on 12th May 2003 at 3.05 hrs and 3.25 hrs. respectively. The discovery was made only after accused Nos.2 and 3 were taken together by the police to the spot in the neighbouring State (Madhya Pradesh), where the recovery Panchnama was recorded bearing Exh.76A. In other words, the disclosure of the relevant fact by accused No.3 to the Investigating Officer preceded the discovery of dead body from the disclosed spot at the instance of both the accused Nos. 2 and 3. It was not a case of recording of statement of accused No.3 after discovery nor a joint statement of accused Nos.2 and 3, but disclosure made by them separately in quick succession to the Investigating Officer, preceding the discovery of the fact so stated. The fact disclosed by them, therefore, and the discovery made at their instance, was admissible against both the accused in terms of Section 27 of the Evidence Act.

In the case of ***State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600*** this Court has held that a joint disclosure or simultaneous disclosures, per se, are not inadmissible under Section 27. A person accused need not necessarily be a single person, but it could be a plurality of the accused. The Court held that a joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in chorus. When two persons in custody are interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact which was reduced into writing, such disclosure by two or more persons in police custody do not go out of the purview of Section 27 altogether. What is relevant is that information given by one after the other without any break, almost simultaneously, as in the present case and such information is followed up by pointing out the material things by both of them then there is no good reason to eschew such evidence from the regime of Section 27.

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It was then argued that the recovery Panchnama (Exh.76A) did not contain signature of the accused and for which reason the same was inadmissible. Even this submission does not commend to us. In that, no provision has been brought to our notice which mandates taking signature of the accused on the recovery Panchnama. Admittedly, signature of accused was taken on the statement recorded under Section 27 of the Evidence Act (Exh.76 and 77 respectively). The statement of accused No.3 (Exh.77) bears his signature. Therefore, even this argument does not take the matter any further.

In the case of the ***Jackaran Singh v. State of Punjab, (AIR 1995 SC 2345),*** the Court opined that the disclosure statement given by the accused regarding conscious possession of the weapon did not inspire confidence. One of the reason was that disclosure statement did not bear the signature or the thumb impression of the appellant. The Court found that even, the recovery memo of the revolver and the cartridges did not bear either the signatures or the thumb impression of the accused. In the present case, the disclosure statement bears the signature of accused Nos. 2 and 3 respectively. The absence of signatures on the recovery memo (Exhibit 76–A) would not make it inadmissible and it has been rightly taken into account because of the other evidence regarding its authenticity and genuineness.

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It was then contended that the circumstance of blood stained clothes recovered at the instance of accused No.3 was questionable because no evidence regarding the blood group or the fact that the blood stains belonged to the blood group of deceased Raman is forthcoming. Further, the recovery itself was doubtful. Even this aspect has been considered by both the courts below and negatived. The absence of evidence regarding blood group cannot be fatal to the prosecution. The finding recorded by the courts below about the presence of human blood on the clothes recovered at the instance of accused No.3 has not been questioned. The Courts have also found that no explanation was offered by the accused No.3 in respect of presence of human blood on his clothes. Accordingly, we affirm the concurrent finding recorded by the courts below in that behalf including about the legality of such recovery at the instance of accused No.3.

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According to the learned counsel for the accused No.3, a joint statement of all the accused was recorded by the Trial Court under Section 313,Cr.P.C. This contention, in our opinion, is ill-founded. We have examined the record and found that separate statement under Section 313 of each accused has been recorded. It is a different matter that their statements have been recorded in part on different dates. That, in our opinion, does not vitiate the trial. Had it been a case of all questions put to all the accused jointly and one statement recorded by the Trial Court, it may have become necessary for us to consider this argument. In the present case, we find that separate statement of each accused under Section 313, has been recorded on different dates. That is substantial compliance of Section 313, Cr.P.C.

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71. EVIDENCE ACT, 1872 – Sections 32, 137 and 154

(i) Dying Declaration – Can be acted upon if shown to be made in fit state of mind, voluntarily, on the basis of personal knowledge, without influence and reliable – In case of burn injuries, percentage of burn alone would not determine the probability of making a dying declaration – Recording by the Magistrate in presence of doctor, maker can be said to be in fit state of mind.

(ii) Common phenomenon of witness turning hostile – May be because of various reasons – Threat and intimidation are major causes – Another significant reason is 'culture of compromise'.

Hkkjrh; lk{; vf/kfu;e] 1872 & /kkjk 32] 137 ,oa 154

¼i½ eR;qdfyd dFku & ;fn mlus efLr"d dh LoLFk; voLFkk] LoPNkiwoZd] fuft Kku dh vk/kkj ij] fcuk izHkko dk ,oa fo'oluh; gksuk nf'kZr fd;k tkrk gS rks mlds vk/kkj ij dk;Zokgh dh tk ldrh gS & tyus ls vk;h pkVksa ds ekeys esa tyus dk ifr'kr Lo;a eR;qdkyhu dFku fd;s tkus dh lHkkouk dk fu/kkZfjr ugha djxk & fpfdRld dh mifLFkfr esa eftLVªsV }kjk dFku yqdc) fd;k tkuk] dFku djus okyk LoLFk; efLr"d voLFkk esa gksuk dgk tk ldrk gSA

¼ii½ lk{kh dh i{kn'kZgh gksus dh lkekU; ?kVuk & lHkor% dbZ dkj.kksa ls gks ldrh gS & /kedh ,oa lzkl esqa[; dkj.k gS & bldh vfrfjDr ,d egRoiw.kZ dkj.k **jkthuke dh lLÑfr** Hkh gSA

Ramesh and others v. State of Haryana

Judgment dated 22.11.2016 passed by the Supreme Court in Criminal Appeal No. 2526 of 2014, reported in AIR 2016 SC 5554

Relevant extracts from the judgment:

Law on the admissibility of the dying declarations is well-settled. In ***Jai Karan v. State of N.C.T., Delhi, (1999) 8 SCC 161,*** this Court explained that a dying declaration is admissible in evidence on the principle of necessity and can form the basis of conviction if it is found to be reliable. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence, neither extra strong or weak, and

can be acted upon without corroboration if it is found to be otherwise true and reliable. There is no hard and fast rule of universal application as to whether percentage of burns suffered is determinative factor to affect credibility of dying declaration and improbability of its recording. Much depends upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making dying declaration. Physical state or injuries on the declarant do not by themselves become determinative of mental fitness of the declarant to make the statement [See : ***Rambai v. State of Chhatisgarh, (2002) 8 SCC 83***].

It is immaterial to whom the declaration is made. The declaration may be made to a Magistrate, to a Police Officer, a public servant or a private person. It may be made before the doctor; indeed, he would be the best person to opine about the fitness of the dying man to make the statement, and to record the statement, where he found that life was fast ebbing out of the dying man and there was no time to call the Police or the Magistrate. In such a situation the Doctor would be justified, rather duty bound, to record the dying declaration of the dying man. At the same time, it also needs to be emphasised that in the instant case, dying declaration is recorded by a competent Magistrate who was having no animus with the accused persons. As held in ***Kushal Rao v. State of Bombay, 1958 SCR 552,*** this kind of dying declaration would stand on a much higher footing. After all, a competent.

Magistrate has no axe to grind against the person named in the dying declaration of the victim and in the absence of circumstances showing anything to the contrary, he should not be disbelieved by the Court (See : ***Vikas and ors. v. State of Maharashtra, (2008) 2 SCC 516***).

No doubt, the victim has been brought with 100% burn injuries. Notwithstanding, the doctor found that she was in a conscious state of mind and was competent to give her statement. Thus, the Magistrate had taken due precautions and, in fact, Medical Officer remained present when the dying declaration was being recorded. Therefore, this dying declaration cannot be discarded merely going by the extent of burns with which she was suffering, particularly, when the defence has not been able to elicit anything from the cross–examination of the doctor that her mental faculties had totally impaired rendering her incapable of giving a statement.

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We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in ***Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 :(AIR 2010 SC 2352)*** and in ***Zahira Habibullah Shaikh v. State of Gujarat, AIR 2006 SC 1367,*** had highlighted the glaring defects in the system like non–recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other

methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the IPC imposes punishment for giving false evidence but is seldom invoked."

On the analysis of various cases, following reasons can be discerned which make witnesses retracting their statements before the Court and turning hostile:

"(i) Threat/intimidation.

(ii) Inducement by various means.

(iii) Use of muscle and money power by the accused.

(iv) Use of Stock Witnesses.

(v) Protracted Trials.

(vi) Hassles faced by the witnesses during investigation and trial.

(vii) Non–existence of any clear–cut legislation to check hostility of witness."

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Apart from the above, another significant reason for witnesses turning hostile may be what is described as 'culture of compromise'. Commenting upon such culture in rape trials, Pratiksha Bakshi has highlighted this problem in the following manner:

> In Justice is a Secret : Compromise in Rape Trials". "During the trial, compromise acts as a tool in the hands of defence lawyers and the accused to pressurise complainants and victims to change their testimonies in a courtroom. Let us turn to a recent case from Agra wherein a young Dalit woman was gang–raped and the rapist let off on bail. The accused threatened to rape the victim again if she did not compromise. Nearly a year after she was raped, she committed suicide. While we find that the judgment records that the victim committed suicide following the pressure to compromise, the judgment does not criminalise the pressure to compromise as criminal intimidation of the victim and her family. The normalising function of the socio–legal category of compromise converts terror into a bargain in a context where there is no witness protection programme. This often accounts for why prosecution witnesses routinely turn hostile by the time the case comes on trial, if the victim does not lose the will to live.

In other words, I have shown how legality is actually perceived as disruptive of sociality; in this instance, a sociality that is marked by caste based patriarchies,

such that compromise is actively perceived, to put it in the words of a woman Judge of a district court, as a mechanism for 'restoring social relations in society'."

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***72. EVIDENCE ACT, 1872 – Section 68**

SUCCESSION ACT, 1925 – Section 63

(i) Proof of Will in favour of stranger– Will executed in favor of person other than family members – Propounder is under obligation to establish beyond reasonable doubt and in clear terms that testator has executed the Will in his favour– Propounder also need to establish, why existing family members have been excluded from the benefit.

(ii) Suspicious circumstances of Will – Attesting witness deposed in examination-in-chief that the testator signed the Will, whereas in cross-examination deposed contradictory that testator had put thumb impression – Further, also improved the version by stating that thumb impression was identified by 'A'– 'A' not examined – Such circumstances create doubt as to genuineness of Will.

lk{; vf/kfu;e] 1872 & /kkjk 68

mRrjkf/kdkj vf/kfu;e] 1925 & /kkjk 63

¼i½ vifjfpr 0;fDr d i{k e olh;r dk iekd.k & ikfjokfjd lnL;k l vU; 0;fDr d i{k e olh;r fu"ikfnr dh xb & ikIrdrkZ ij ;fDr;Dr lnxg l ij ,o Li"V :i l ;g LFkkfir dju dk nkf;Ro g fd olh;rdrkZ }kjk mld i{k e olh;r fu"ikfnr dh xb & ikIrdrkZ dk ;g Hkh LFkkfir djuk vko';d g fd D;k ekt nk ikfjokfjd lnL;k dk ykHk fn;s tku l ofpr fd;k x;kA

*¼ii½ olh;r dh lnxkLin ifjfLFkfr;k & vuiekd.ku lk{kh }kjk viu e[; ijh{k.k e olh;rdrkZ }kjk olh;r ij gLrk{kj dju d vfHkdFku fd;s x;s] tcfd ifrijh{k.k e fojk/khHkklh :i l olh;rdrkZ }kjk vxBk fu'kku yxk;k tkuk vfHkdfFkr fd;k x;k & bld vfrfjDr oRrkUr dk l/kkjr g;s ;g dgk x;k fd vxBk fu'kku dk *,* }kjk igpkuk x;k Fkk & *,* dk ijh{k.k ugh djk;k x;k & mDr ifjfLFkfr;k olh;r dh okLrfodrk dk lfnX/k cukrh gA*

Latoreram v. Kunji Singh & anr.

Order dated 28.08.2015 passed by the High Court of Madhya Pradesh in Second Appeal No. 148 of 2009 (Jabalpur Bench), reported in ILR (2016) MP 2313

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73. GUARDIANS AND WARDS ACT, 1890 – Section 7

Custody of child living with the father for long time – Paramount consideration is welfare of the child – Special bond between mother and child – Presumption in favour of maternal custody as sound child welfare policy may be rebutted by father – Both the parents must be given chance so as to make an assessment – Order for custody to mother for a period of one year.

l|j{kdrk ,o| ifrikY; vf/kfu;e] 1890 & /kkjk 7

y|c| le; l| firk d| lkFk fuokljr cPp| dh vfHkj{kk & cPp| dk dY;k.k lokifj dkjd g| & ekrk ,o| cPp| d| e/; fo'k"k yxko & ekrRo vfHkj{kk d| i{k e| dh tku| okyh mi/kkj.kk mfpr cky dY;k.k uhfr g] ftl| firk }kjk [kf.Mr fd;k tk ldrk g| & nkuk| vfHkHkkod dk volj fn;k tkuk pkfg;| ftll| fd vkdyu fd;k tk ld| & ekrk dk ,d o"k d| fy;| vfHkj{kk inku fd;| tku| dk vkn'k fd;k x;kA

Vivek Singh v. Romani Singh

Judgment dated 13.02.2017 passed by the Supreme Court in Civil Appeal No. 3962 of 2016, reported in AIR 2017 SC 929

Relevant extracts from the judgment:

It may also be underlying that the notion that a child's primary need is for the care and love of its mother, where she has been its primary care giving parent, is supported by a vast body of psychological literature. Empirical studies show that mother infant "bonding" begins at the child's birth and that infants as young as two months old frequently show signs of distress when the mother is replaced by a substitute caregiver. An infant typically responds preferentially to the sound of its mother's voice by four weeks, actively demands her presence and protests her absence by eight months and within the first year has formed a profound and enduring attachment to her. Psychological theory hypothesizes that the mother is the centre of an infant's small world, his psychological home base, and that she "must continue to be so for some years to come." Developmental psychologists believe that the quality and strength of this original bond largely determines the child's later capacity to fulfil her individual potential and to form attachments to other individuals and to the human community.

No doubt, this presumption in favour of maternal custody as sound child welfare policy, is rebuttable and in a given case, it can be shown that father is better suited to have the custody of the child. Such an assessment, however, can be only after level playing field is granted to both the parents. That has not happened in the instant case so far.

It is also to be emphasised that her mother is a teacher in a prestigious Kendriya Vidyala school. Saesha is herself a school going child at primary level. If Saesha is admitted in the same school where her mother is teaching, not only Saesha would be under full care and protection of the mother, she would also

be in a position to get better education and better guidance of a mother who herself is a teacher.

We, thus, find that the factors in favour of respondent are weightier than those in favour of the appellant which have been noted above. It is a fit case where respondent deserves a chance to have the custody of child Saesha for the time being, i.e., at least for one year, and not merely visitation rights.

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74. HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 – Section 12
HINDU SUCCESSION ACT, 1956 – Section 15

(i) Effect of Adoption – Sole male member died intestate – Disputed property inherited by widow and three daughters of the deceased – Subsequent adoption by widow would not disturb the property inherited by widow and three daughters by virtue of proviso to Section 12.

(ii) Succession in case of female dying intestate – Disputed property inherited by widow and three daughters of the deceased – Subsequently, widow adopted a son and thereafter died intestate – Property of the widow would be inherited by her adopted son and heirs of the three daughters who had predeceased her.

fgUnw nRrd xzg.k vkj Hkj.k&ik"k.k vf/kfu;e] 1956 & /kkjk 12

fgUnw mRrjkf/kdkj vf/kfu;e] 1956 & /kkjk 15

¼i½ nRrd dk iHkko & ,d ek= ik:"k lnL; dh fuo‚lh;r e`R;q & fookfnr laifRr e`rd dh fo/kok ,oa rhu iq=;ksa }kjk ikIr dh xbZ & fo/kok }kjk i'pkrorhZ Øe ij nRrd fy;k tkuk laifRr dk U;kxeu dk /kkjk 12 dk ijarqd lq ckf/kr ugha djrkA

¼ii½ L=h dh fuo‚lh;r e`R;q dh n'kk esa mRrjkf/kdkj & okLrfod laifRr dk fo/kok ,oa rhu iq=;ksa }kjk ikIr fd;k x;k & i'pkrorhZ Øe ij fo/kok }kjk iq= dk nRrd fy;k x;k ,oa mlds i'pkr~ fuo‚lh;r e`R;q & fo/kok dh laifRr dk U;kxeu mlds nRrd iq= ,oa mlds rhu iq=;ksa dks mÙkjkf/kdkfj;ksa esa gkxkA

Saheb Reddy v. Sharanappa and others.

Judgment dated 16.11.2016 passed by the Supreme Court in Civil Appeal No. 901 of 2014, reported in AIR 2016 SC 5253.

Relevant extracts from the judgment:

It is undisputed that late Shri Sharnappa died intestate in the year 1957 leaving behind him his wife Smt. Sharnappa and three daughters namely Smt. Kydigamma, Smt. Nagamma and Smt. Sarojamma. In the instant case, there was no coparcenary, as Late Shri Sharnappa was the sole male member in the

family. In the circumstances, upon his death his properties were inherited by his widow and three daughters.

At the time when Shri Sharnappa died in 1957, defendant no.1 was not in the picture as he was adopted by Smt. Sharnappa on 9th February, 1971. By virtue of proviso to Section 12 of the Adoption Act, an adopted child cannot divest any person of any estate which vested in him or her before the adoption. Thus, the property of late Shri Sharnappa which, upon his death in 1957, had vested in his widow and three daughters, would not be disturbed by virtue of subsequent adoption of defendant no.1.

So far as inheritance of the suit property in favour of the plaintiff is concerned, in our opinion, the first appellate Court was correct to the effect that the plaintiff would inherit not only property of his mother, Smt. Nagamma along with his three sisters, but he would also have share in the properties of his grandmother, late Smt. Sharnappa. Smt. Sharnappa had also not prepared any Will and as she had died intestate, her property would be divided among her adopted son i.e. defendant no.1 and heirs of her three daughters, who had predeceased Smt. Sharnappa. Smt. Sharnappa was having ¼thshare in the entire property, which she had inherited from her husband late Shri Sharnappa. One of the daughters being Nagamma, heirs of Nagamma would inherit ¼th share of property of Smt. Sharnappa and the plaintiff being one of the four heirs of late Smt. Nagamma, would get 1/64 th share from the property of his grandmother Smt. Sharnappa.

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Looking at the aforestated provisions of Section 12 of the Adoption Act, it is crystal clear that the property which had been vested in the widow and three daughters of late Shri Sharnappa Gaded in 1957 would not be disturbed because of adoption of defendant no.1, which had taken place on 9 th February, 1971. Thus, Smt. Sharnappa had become absolute owner of 1/4th share and Smt. Nagamma, the mother of the plaintiff had alsobecome an owner of 1/4th share of the property belonging to late Shri Sharnappa Gaded.

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75. HINDU SUCCESSION ACT, 1956 – Section 6
EVIDENCE ACT, 1872 – Section 68

(i) Death of a Hindu male after the commencement of Act of 1956 – Survived by wife, daughter and son – Proviso to Section 6 operates where the deceased has left any female as specified in Class I of the Schedule – Devolution of property would only by succession and not by survivorship.

(ii) Will – Satisfactory evidence must be shown – Interested witness and contradictions in their statements – Will could not have been executed in the manner alleged by witnesses – Rightly rejected.

fgUn mRrjkf/kdkj vf/kfu;e] 1956 & /kkjk 6

lk{; vf/kfu;e] 1872 & /kkjk 68

¼i½ *o"k 1956 d vf/kfu;e d ioRr gku d i'pkr ,d fgUn i:"k dh eR; & iRuh] i=h ,o i= 'k"k thfor & /kkjk 6 dk ijr|d e'rd d }kjk vu|lph dh d{kk I dh fdlh L=h dk NkM tku ij ykx gkrk g & lifRr dk U;kxeu dsoy mRrjkf/kdkj d vk/kkj ij gkxk] mRrjk thfork d vk/kkj ij ugh gkxkA*

¼ii½ *olh;r & lr"Vhin lk{; nf'kr fd;k tkuk vko';d g & fgrc) lk{khx.k ,o mud dFkuk e fojk/kkHkkl &olh;r dk lk{khx.k d crk; x; rjhd l fu"ikfnr ugh fd;k tk ldrk g & mfpr [kkfjt fd;k x;kA*

Ramesh Verma (D) thr. Lrs. v. Lajesh Saxena (D) by Lrs. and another

Judgment dated 24.11.2016 passed by the Supreme Court in Civil Appeal No. 8665 of 2010, reported in AIR 2017 SC 494

Relevant extracts from the judgment:

On the death of Bhagwan Das in 1952, a notional partition Civil Appeal Nos.8665–8668 of 2010 has taken place and as per Section 82 of Madhya Bharat Land Code, his son Jagan Verma, grandson–Ramesh Verma and wife–Jaydevi are each entitled to get 1/3rd share in the property of Bhagwan Das. On such partition when a share has fallen to Jagan Verma, it became his separate property and no longer a Mitakshara property. After the Hindu Succession Act, 1956 devolution of Jagan Verma's property is only by succession and not by survivorship.

We are not impressed with the submission that Section 6 of the Hindu Succession Act, 1956 is not applicable for the devolution of property of Jagan Verma. Section 6 deals with the question of coparcener in a Mitakshara coparcener dying after coming into operation of the Hindu Succession Act, without making any testamentary disposition of his undivided share in the joint family property. The initial part of Section 6 stresses that the Act does not interfere with the special rights of those who are members of Mitakshara property except to the extent that it seeks to ensure the female heirs as specified in Class I of the Schedule, a share in the interest of a coparcener in the event of his death, by introducing the concept of a notional partition immediately before his death. Proviso to Section 6 operates where the deceased has left surviving him, a daughter, or any female as specified in Class I of the Schedule. In the case at hand, Jagan Verma has left the female heirs namely his wife Prabhavati and daughter Lajesh Saxena and, therefore, the devolution of the property of Jagan Verma was governed by the provisions of Hindu Succession Act and the High Court rightly increased the share of Jagan Verma's daughter Lajesh Saxena.

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In ***Savithri v. Karthyayani Amma, (2007) 11 SCC 621 at page 629***, this Court has held as under:–

> "A Will like any other document is to be proved in terms of the provisions of the Succession Act and the Evidence Act. The onus of proving the Will is on the profounder. The testamentary capacity of the testator must also be established. Execution of the Will by the testator has to be proved. At least one attesting witness is required to be examined for the purpose of proving the execution of the Will. It is required to be shown that the Will has been signed by the testator with his free will and that at the relevant time he was in sound disposing state of mind and understood the nature and effect of the disposition. It is also required to be established that he has signed the Will in the presence of two witnesses who attested his signature in his presence or in the presence of each other. Only when there exists suspicious circumstances, the onus would be on the profounder to explain them to the satisfaction of the Court before it can be accepted as genuine."

It is not necessary for us to delve at length to the facts of the matter as also the evidence adduced by the parties before the High Court. Suffice it to note that the execution of the Wills has to be proved in accordance with Section 68 of the Indian Evidence Act.

Insofar as the execution of the first Will dated 07.12.1969 is concerned, the witnesses Shyam Mohan Bhatnagar and scribe Mahesh Narayan have stated that the testator Jaydevi executed the Will and witnesses Shyam Mohan and R.P. Johri have signed. Witness Johri was the brother–in–law of Ramesh Verma and thus interested witness. Scribe Mahesh Narayan is known to mother–in–law of Ramesh Verma. After referring to their evidence, High Court held that execution of the Will has not been proved. Further, the High Court in its judgment has pointed out the contradictions in their evidences and recorded the factual finding that the Will could not have been executed in the manner as alleged by the witnesses. We do not find any reason to interference with the factual findings recorded by the High Court.

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***76. INDIAN PENAL CODE, 1860– Sections 21 and 409**

GENERAL CLAUSES ACT, 1897– Section 26

(i) Public Servant – Whether manager of a co-operative society entrusted with goods in form of property on behalf of the Government to distribute to particular section of the society for which subsidy is provided is Public Servant? Held, definition of 'Public Servant' under section 21 of the Indian Penal Code is wide – Clause nine of the definition will include such manager.

(ii) Criminal breach of trust by manager of co-operative society under Public Distribution System – Goods held by fair price shop

under Public Distribution System on trust – Goods not distributed in terms of scheme and dishonestly misappropriated is violation of trust by manager.

(iii) Offence punishable under two or more enactment – Where an act or omission constitute an offence under two or more enactments – Offender shall not be liable to be punished twice for the same offence – Offence under section 3/7 of Essential Commodities Act does not constitute the same offence as contained in section 409 of IPC.

(iv) Further held, when no specific punishment is provided under special law, punishment prescribed under general law i.e. I.P.C. comes into operation – No punishment prescribed for offence of section 409 I.P.C. in Essential Commodities Act – Hence, charge under section 409 I.P.C. is maintainable (*Ejas Ahmed v. State of Jharkhand, 2010 CrLJ 1953* relied on).

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 21 ,oa 409

lk/kkj.k [k.M vf/kfu;e] ¼ii½ 1897 & /kkjk 26

¼i½ *ykd lsod & D;k lgdkjh lfLkfr dk ikcU/kd ftls ljdkj dh vksj ls ,slh oLrqvksa dks lqiqnZ djus ds :i esa U;Lr fd;k x;k gS] ftUgsa lekt ds fo'ks"k oxZ dks inku fd;k tkuk gS ,oa ftlds fy;s vuqnku Hkh fn;k tkrk gS] ykd lsod gS\ & vfHkfu/kkZfjr] /kkjk 21 Hkkjrh; naM lafgrk ds vUrxZr ykd lsod dh ifjHkk"kk O;kid gS & ifjHkk"kk dk uksa [k.M esa ,slk ikcU/kd 'kkfey gksxkA*

¼ii½ *lkoZtfud forj.k iz.kkyh ds vUrxZr lgdkjh lfefr ds ikcU/kd }kjk vkijkf/kd U;kl Hkax & mfpr eqY; nqdkuksa }kjk lkoZtfud forj.k iz.kkyh ds vUrxZr oLrqvksa dk U;Lr gksdj j[kk tkuk & ;kstuk dh 'krksZa ds vuqlkj oLrqvksa dk forfjr u fd;k tkuk ,oa csbZekuhiwoZd nqfoZfu;ksx ikcU/kd }kjk U;kl Hkax gSA*

¼iii½ *nks ;k vf/kd vf/kfu;e ds vUrxZr n.Muh; vijk/k & tgka dksbZ ÑR; ;k yksi nks ;k vf/kd vf/kfu;e ds vUrxZr vijk/k xfBr djrk gS & vijk/kh leku vijk/k ds fy;s nks ckj nf.Mr fd;s tkus ds fy;s nkf;Rok/khu ugha gksxk & /kkjk 3@7] vko';d oLrq vf/kfu;e mlh vijk/k dk xBu ugha djrk gS] tSlk fd /kkjk 409 Hkk-n-l- esa fufgr gSA*

¼iv½ *vkxs vfHkfu/kkZfjr] tgka fo'ks"k fof/k ds vUrxZr dksbZ fofufnZ"V naM ugha fn;k x;k gS] ogka lkekU; fof/k tks fd Hkk-n-l- ds rgr ikoS/kkfur naM iHkko esa vk;sxk & /kkjk 409 Hkk-n-l- ds vijk/k gsrq vko';d oLrq vf/kfu;e esa dksbZ naM mYysf[kr ugha gS & vr% /kkjk 409 Hkk-n-l- ds vUrxZr vkjksi iapyu ;ksX; gSA ¼btkl vgen fo:) >kj[kaM jkT;] 2010 lh-vkj-,y-ts- 1953 dk voyac fy;k x;k½*

Jagdish Korku v. State of M.P. & anr.

Order dated 01.07.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 3755 of 2016 (Gwalior Bench), reported in ILR (2016) MP 2418

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77. INDIAN PENAL CODE, 1860 – Section 34

EVIDENCE ACT, 1872 – Section 3

(i) Question of common intention has to be decided on the case to case basis – Facts of two cases cannot be regarded as similar – Common intention to be gathered from variety of factors and totality of circumstances must be taken into consideration – The carrying of weapon, arrival at a particular place, entering into the shed at the same time and act will attract the constructive liability.

(ii) Distinction between a witness who is related and an interested witness – A relative is a natural witness.

(iii) Non-examination of independent witness – Absence must be examined in the background of facts and circumstance of each case – Duty of the court to first assess the trustworthiness of the evidence available – If trustworthy evidence is available then absence/non-examination of independent witness is not fatal.

Hkkjrh; n.M lafgrk] 1860 & /kkjk 34

lk{; vf/kfu;e] 1872 & /kkjk 3

¼i½ lkekU; vk'k; dk i:'u ekeyn nj ekeyn dh vk/kkj ij fofuf'pr fd;k tkuk pkfg;s & nks ekeyksa dh rF; leku gksuk ugha ekuk tk ldrk & lkekU; vk'k; dk dbZ fofHkUu dkjdksa ,oa lexz ifjfLFkfr;ksa ij fopkj dj ,df=r fd;k tkuk gS & vk;/k dk ;g tkuk] fof'k"V LFkku ij vkxeu] 'kM esa ,d gh le; izo'k djuk ,oa ÑR; vkUof;d nkf;Ro dk vkdf'kr djxA

¼ii½ fj'rsnkj ,oa fgrc) lk{kh dh e/; foHkn & ,d fj'rsnkj izkÑfrd lk{kh gSA

¼iii½ Lorsa= lk{kh dh ijh{kk u gksuk & vuqifLFkfr dk izR;sd ekeyn dh rF;ksa ,oa ifjfLFkfr;ksa dh i"BHkfe ij ifjf{kr djuk pkfg;s & U;k;ky; dk ;g drZO; gS fd og izFker% miyC/k lk{; dh fo'oluh;rk dk eY;kadu dj& ;fn fo'oluh; lk{; miyC/k gS rks fQj Lorsa= lk{kh dh vuqifLFkfr@vijh{k.k ?kkrd ugha gSA

Vijendra Singh v. State of U.P.

Judgment dated 04.01.2017 passed by the Supreme Court in Criminal Appeal No. 1448 of 2010, reported in AIR 2017 SC 860

Relevant extracts from the judgment:

In ***Goudappa and ors. v. State of Karnataka, (2013) 3 SCC 675*** the Court has

reiterated the principle by opining that Section 34 IPC lays down a principle of joint liability in doing a criminal act and the essence of that liability is to be found in the existence of common intention. The Court posed the question how to gather the common intention and answering the same held that the common intention is gathered from the manner in which the crime has been committed, the conduct of the accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by the accused and from the nature of the injury caused by one or some of them and for arriving at a conclusion whether the accused had the common intention to commit an offence of which they could be convicted, the totality of circumstances must be taken into consideration.

The aforesaid authorities make it absolutely clear that each case has to rest on its own facts. Whether the crime is committed in furtherance of common intention or not, will depend upon the material brought on record and the appreciation thereof in proper perspective. Facts of two cases cannot be regarded as similar. Common intention can be gathered from the circumstances that are brought on record by the prosecution. Common intention can be conceived immediately or at the time of offence. Thus, the applicability of Section 34 IPC is a question of fact and is to be ascertained from the evidence brought on record. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the fact of the case and circumstances of the situation. Whether in a proved situation all the individuals concerned therein have developed only simultaneous and independent intentions or whether a simultaneous consensus of their minds to bring about a particular result can be said to have been developed and thereby intended by all of them, is a question that has to be determined on the facts. (See :***Kirpal and Bhopal v. State of U.P., AIR 1954 SC 706***). In ***Bharwad Mepa Dana and anr. v. The State of Bombay, AIR 1960 SC 289*** it has been held that Section 34 IPC is intended to meet a case in which it may be difficult to distinguish the acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The principle which the Section embodies is participation in some action with the common intention of committing a crime; once such participation is established, Section 34 is at once attracted.

In the case at hand, it is contended that there is no injury caused by lathi or ballam. Absence of any injury caused by a lathi cannot be the governing factor to rule out Section 34 IPC. It is manifest from the evidence that the accused–appellants had accompanied the other accused persons who were armed with gun and they themselves carried lathi and ballam respectively. The carrying of weapons, arrival at a particular place and at the same time, entering into the shed and murder of the deceased definitely attract the constructive liability as engrafted under Section 34 IPC.

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In this regard reference to a passage from ***Hari Obula Reddy and Ors. v. State of Andhra Pradesh, (1981) 3 SCC 675*** would be fruitful. In the said case, a three-Judge Bench has ruled that it cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of the interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. It is worthy to note that there is a distinction between a witness who is related and an interested witness. A relative is a natural witness. The Court in ***Kartik Malhar v. State of Bihar, (1996) 1 SCC 614*** has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term "interested" postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

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The submission of Mr. Giri is that non-examination Nepal Singh, Ramlal and Kalsa is quite critical for the case of the prosecution and as put forth by him, their non–examination crucially affects the prosecution version and creates a sense of doubt. According to Mr. Giri, Nepal Singh is a material witness. In this regard we may refer to the authority in ***State of H.P. v. Gian Chand, (2001) 6 SCC 71,*** wherein it has been held that non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of withholding a material witness from the court levelled against the prosecution should be examined in the background of the facts and circumstances of each case so as to find whether the witnesses are available for being examined in the court and were yet withheld by the prosecution. The Court after so holding further ruled that it is the duty of the court to first assess the trustworthiness of the evidence available on record and if the court finds the evidence adduced worthy of being relied on and deserves acceptance, then non–examination of any other witnesses available who could also have been examined but were not examined, does not affect the case of the prosecution.

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78. INDIAN PENAL CODE, 1860 – Sections 149 and 304 Part II

INTERPRETATION OF STATUTES:

(i) Unlawful assembly – Scuffle between two groups due to political conflicts – Accused persons not carrying any deadly weapons – Mere possession of small sticks itself does not constitute conspiracy & common object to cause fatal harm – Held, accused persons not constituting unlawful assembly but responsible for their individual acts.

(ii) Unlawful assembly – Commission of an overt act – Mere presence of a person in any unlawful assembly does not *ipso facto* attracts section 147, 148 and 149 of the Act – Active participation of such persons or doing some overt act with criminal intention or sharing common object with others is necessary to constitute unlawful assembly.

(iii) 'In prosecution of common object', interpretation of – Act must be done with the view to accomplish the common object attributed to the members of the unlawful assembly – Must be strictly construed so as to attain literal meaning.

(iv) Culpable homicide not amounting to murder – Single fatal blow on head itself not conclusive to constitute intention to commit murder – No other injuries on vital parts of the body of deceased as well as other injured persons – Accused not having pre-conceived common object to murder – Accused committing culpable homicide not amounting to murder – Conviction altered from murder to culpable homicide not amounting to murder.

Hkkjrh; n.M lafgrk] 1860 & /kkjk 149 ,oa 304 Hkkx 2

lafof/k;ksa dk fuoZpu%

¼i½ *fof/k fo:) teko & jktuhfrd la?k"kZ dh dkj.k nks leqgksa dh chp gkFkk&ikbZ & vfHk;qDr 0;fDr dkbZ ?kkrd gfFk;kj ugha ys tk jgs Fks & doy NkVh NfM+;ksa dh vkf/kiR; esa gksus ls gh ?kkrd migfr dkfjr djus dk "kM+;a= ;k lkekU; mn~ns'; dk lcwr ugha gksrk gS & vfHkfu/kkZfjr] vfHk;qDr 0;fDr;ksa dk }kjk fof/k fo:) teko dk lcwr ugha fd;k x;k cfYd og mudk 0;fDrxr Ñr;ksa dk fy;s nk;h gSA*

¼ii½ *fof/k fo:) teko & iR;{k Ñr; dk fd;k tkuk & fdlh Hkh fof/k fo:) teko esa 0;fDr dh mifLFkfr ls gh 0;fDr dks Lor% gh /kkjk 147] 148 vkSj 149 dk rgr nk;h ugha Bgjk;k tk ldrk gS & ,sls 0;fDr;ksa dh lfØ; Hkkxhnkjh ;k vkijkf/kd vk'k; ls iR;{k Ñr; fd;k tkuk ;k mudk }kjk vU; dk lkFk lkekU; mn~ns'; fufeZr djrs gq;s fof/k fo:) teko dk lcwr fd;k tkuk vko';d gSA*

¼iii½ *^^lkekU; mn~ns'; dk vfHk;kstu esa** dk fuoZpu & fof/k fo:) teko dh lkekU; mn~ns'; dks iwjk djus dk lca/k esa vko';d :i ls Ñr; teko dk lnL;ksa }kjk fd;k tkuk pkfg;s & bldk l[rh ls vFkkZUou vko';d gS rkfd 'kkfCnd vFkZ dks iwjk fd;k tk ldsA*

¼iv½ *gR;k dh Js.kh esa u vkus okyk vkijkf/kd ekuo o/k & flj ij doy gh ,d ?kkrd geyk Lo;a esa gR;k djus dk vk'k; dk xBu djus dk fy, fu'pk;d ugha gS & e`rd rFkk vU; vkgr 0;fDr;ksa dk 'kjhj dk ekfeZd Hkkxksa ij dksbZ*

vU; pkV ugh & vfHk;qDrx.k dk gR;k dkfjr dju dk io l lkekU; mnn'; ugh & vfHk;qDrx.k d }kjk ,slk vkijkf/kd ekuo o/k dkfjr fd;k x;k g] tk gR;k dh J.kh e ugh vkrk & n.Mkn'k dk gR;k l vkijkf/kd ekuo o/k tk fd gR;k dh J.kh e ugh vkrk] ifjofrr fd;k x;kA

Vijay Pandurang Thakre & ors.v. State of Maharashtra

Judgment dated 02.02.2017 passed by the Supreme Court in Criminal Appeal No. 1305 of 2011, reported in AIR 2017 SC 897

Relevant extracts from the judgment:

...the prosecution evidence is not sufficient to conclude that any conspiracy was hatched by the appellants with common object to cause the death of Ashok or the appellants are charged members of the other group with such an objective. Even as per the prosecution, the convicted persons were not carrying any deadly weapons. They were armed with Ubharis which are small sticks and Ubharis used by the farmers for disciplining the bullocks. This itself would be sufficient to negate the prosecution version that there was a conspiracy and common object to cause fatal harm to the members of the opposite group. At the most, the appellants wanted to inflict some physical harm to the members of the Deshmukh family in order to 'teach them a lesson'...

As is clear from the plain language of Section 149 of IPC, in order to attract the provision of the Section, following ingredients are to be essentially established.

(i) There must be an unlawful assembly.

(ii) Commission of an offence by any member of an unlawful assembly.

(iii) Such offence must have been committed in prosecution of the common object of the assembly; or must be such as the members of the assembly knew to be likely to be committed.

If these three elements are satisfied, then only a conviction under Section 149, I.P.C., may be substantiated, and not otherwise. None of the Sections 147, 148 and 149 applies to a person who is merely present in any unlawful assembly, unless he actively participates in the rioting or does some overt act with the necessary criminal intention or shares the common object of the unlawful assembly.

In the facts of the present case, we find that common object of the assembly, even if it is presumed that there was an unlawful assembly, has not been proved. The expression 'in prosecution of the common object' occurring in this Section postulates that the act must be one which have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. This expression is to be strictly construed as equivalent to in order to attain common object. It must be immediately connected with common object by virtue of nature of object. In the instant case, even the evidence is not laid on this aspect. As pointed out above, the courts below were influenced by the fact

that one of the injuries on the person of Ashok was on his head which became the cause of death and from this, common object is inferred.

xxx xxx xxx

No doubt, in the scuffle that took place, one blow came to be inflicted on the head of Ashok which injury proved fatal. However, this by itself cannot be the reason to conclude that there was any intention to commit his murder. If 30 persons had attacked the members of Deshmukh Group, there are no injuries on the vital parts of other persons who got injured in the said episode. Ashok also suffered only one injury on his head and no other injury is on vital part of his body. Had there been any common objective to cause murder of the members of Deshmukh Group, there would have been many injuries on deceased Ashok as well as other injured persons on the vital parts of their body. On the contrary, it has come on record that the injuries suffered by other persons are on their back or lower limbs i.e. legs etc.

We, thus, hold that there was no preconceived common object of eliminating the members of Deshmukh family and group and the assembly was not acquired with any deadly weapons either, as held by the High Court. Even the High Court has not pointed out any such evidence. These findings are hereby set aside. The conviction of the appellants under Section 302 IPC is converted into Section 304–II IPC for which the appellants are sentenced for rigorous imprisonment of seven years each. We were informed that all the appellants have already undergone sentence of seven years or more. If that is correct, these appellants shall be released forthwith, if not required in any other case.

Appeals are allowed partly in the aforesaid terms.

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***79. INDIAN PENAL CODE, 1860 – Sections 299 and 300**

Accused went to the house of her sister to correct situation and to make her understand unarmed – No evidence to show that accused had expressed any intention to kill the deceased – Assault by wooden plank picked from the spot – Held, accused cannot be held to have intention to kill deceased but only knowledge that it is likely to cause death – Conviction for murder set aside and accused convicted under section 304 Part II of IPC.

Hkkjrh; n.M lafgrk] 1860 & /kkjk 299 ,oa 300

vfHk;qDr dk mldh cgu d{ ?kj fLFkfr lq/kkjus ,oa mlls le>kus gsrq fu%'kL= tkuk & ,slh dkbZ lk{; ugha feyh ;g nf'kZr gksrk fd vfHk;qDr }kjk eR;q dkfjr djus dk dkbZ vk'k; vfHk0;Dr fd;k x;k gks & ?kVuk LFky ls mBkus x;s ydMh dk rdqk ls geyk & vfHkfu/kkfjr] vfHk;qDr dk e`rd dh eR;q dkfjr djus dk vk'k; u gksuk cfYd ek= eR;q dkfjr lHkk0; gksus dk Kku & gR;k gsrq nk"kf)f) vikLr dh xbZ ,oa vfHk;qDr dk /kkjk 304 Hkkx & 2 Hkk-n-l- d{ vrxZr nk"kfl) fd;k x;kA

Vijender alias Bijjo v. State (Govt. of NCT of Delhi)

Order dated 24.11.2016 passed by the Supreme Court in Criminal Appeal No. 1854 of 2010, reported in AIR 2017 SC 701

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80. INDIAN PENAL CODE, 1860 – Section 302

EVIDENCE ACT, 1972 – Section 8

Murder – Conduct of the accused – Presence of accused along with co-accused on place of occurrence proved by prosecution – Conduct of accused in confining son of deceased in same room where deceased was lying wounded – Accused left the place after bolting the door of the room – Conduct of accused reflects upon his culpability – If the accused was innocent he would not have confined the son of deceased in the same room and bolted door from outside, seeing the deceased wounded – No interference in conviction – Appeal dismissed.

Hkkjrh; n.M lafgrk] 1860 & /kkjk 302

lk{; vf/kfu;e] 1972 & /kkjk 8

gR;k & vfHk;qDr dk vkpj.k & vfHk;kstu }kjk vfHk;qDr dh lg&vfHk;qDr dh lkFk ?kVuk LFky ij mifLFkfr izekf.kr dh xbZ & vfHk;qDr dk e`rd dh iq= dk ?kk;y e`rd dh lkFk dejs esa fujkf/kr fd;s tkus dk vkpj.k & vfHk;qDr dejs ds njokts dk can djds LFky ls pyk x;k & vfHk;qDr dk vkpj.k mldh lnk"krk dk nf'kZr djrk gS & ;fn vfHk;qDr funk"k gksrk rks og e`rd dk ?kk;y nq[kdj mldh iq= dk e`rd okys dejs esa fujkf/kr ugha djrk ,oa ckgj ls njokts can ugha djrk & nk"kfl) esa gLr{ksi ugha & vihy [kkfjtA

Rikhiram v. State of Chhattisgarh

Judgment dated 17.11.2016 passed by the Supreme Court in Criminal Appeal No. 2403 of 2014, reported in AIR 2017 SC 690

Relevant extracts from the judgment:

Without adverting to the said evidence in detail, it would be sufficient to reproduce the following discussion from the judgment of the High Court:

> "10. Minute examination of the evidence makes it clear that on the date of incident accused Virendra entered the house of the deceased, took her to a nearby house on the pretext of showing it to the tenant and then committed her murder with the help of his associates. Evidence further makes it clear that after committing the murder of the deceased he returned to her house and this time took Ved Prakash to his room where the deceased was lying and after tying him up and bolting the door from outside he and his associates again came to the house where the deceased was residing

and then looted the cash an ornaments. Ved Prakash (PW-1) has duly supported the case of the prosecution and deposed in a descriptive manner how the incident had taken place. From the evidence of Ved Prakash (PW-1) it is further clear that the accused Rikhiram was also there along with accused Virendra in committing the murder of Ghasnin Bai. He (PW-1) has categorically named accused Virendra, Dipak and Rikhiram at the time of recording prompt Dehati Nalisi Ex. P-1. Further, he has duly identified accused Virendra and Rikhiram in the Court. Thus beyond any shadow of doubt it can be said that accused Virendra and Rikhiram have committed the murder of Ghasnin Bai. Though in the Court Ved Prakash (PW-1) has also identified accused Sanjay as one of the assailants yet his name has not been mentioned in the Dehati Nalisi Ex. P-1 and therefore his involvement in the crime in question becomes doubtful. Statement of Ved Prakash (PW–1) has been duly supported by Kaushal Kumar (PW-3), Sunil (PW-4) and Gangadhar (PW-6) and there is no reason for this Court to disbelieve the same."

It would also be pertinent to point out that the conduct of the appellant in locking the door from outside and leaving the place clearly reflects upon his culpability. It was argued by the learned counsel for the appellant that he along with Sanjay had come to the scene of occurrence afterwards and tied up PW-1 with a Bench after locking the door from outside and left the place. On this basis, it is argued that at the most the appellant can be convicted for wrongful confinement of PW-1. However, it is difficult to accept this argument. If the appellant was innocent, after seeing that Ghasnin Bai is wounded and fully drenched with blood lying on the cot, he would not have confined her son (PW-1) also in the same room and bolted the door from outside. This contemporaneous conduct of the appellant clearly reflects that he is also party to the crime of committing the murder of the deceased.

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81. INDIAN PENAL CODE, 1860 – Sections 323, 376, 109 and 376-D

CRIMINAL PROCEDURE CODE, 1973 – Section 161 and 164

Whether a woman can be charged and tried for the commission of offence of gang rape punishable under section 376-D of IPC? Held, No – As the wordings of Section 375 start with 'a man', hence the intention of legislature is ample clear that only a man can commit rape – Further held that a woman though cannot commit rape, can still be held liable for abetment under Section 109 of IPC – In this case husband of applicant took prosecutrix to his house and acted in obscene manner with her – Applicant/accused helped her

husband in committing crime – Hence, *prime facie* applicant committed offence under sections 323 and 376 r/w/s 109 IPC – Trial Court directed to frame charges under section 376 /109 instead of section 376-D IPC.

(*Omprakash v. State of Haryana, (2015) 2 SCC 84* relied on)

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 323] 376] 109 ,oa 376&Mh

n.M izfØ;k lafgrk] 1973 & /kkjk,a 161 ,oa 164

*D;k fdlh L=h dk /kkjk 376&Mh Hkk-n-l- dh varxZr nMuh; lkeqfgd cykRlax dh vijk/k dh dkfjr dju gsrq vkjksfir ,oa fopkj.k fd;k tk ldrk gS\ vfHkfu/kkfjr] ugha & pfd /kkjk 375 dh 'kCn *,d i:"k* dh lkFk ikjHkk gksrh gS] Qyr% fo/kkf;dk dk vk'k; i;kZIr :i ls Li"V gS fd ek= i:"k cykRlax dkfjr dj ldrk gS & vkx vfHkfu/kkfjr] fdlh efgyk dk gkykfd cykRlax gsrq nk"kh ugha ik;k tk ldrk ijarq /kkjk 107 Hkk-n-l- dh varxZr n"iz.k gsrq nkf;Rok/khu fd;k tk ldrk gS & orZeku ekeys esa vkjksid dh ifr }kjk vfHk;kDr=h dk mldh ?kj ys tk;k x;k ,oa mldh lkFk v'yhyrk ÑR; fd;k x;k & vkjksid@vfHk;Dr }kjk mldh ifr dh vijk/k dkfjr djus esa enn dh x;h & Qyr% izFke n"V;k vkjksid }kjk /kkjk 329 ,oa 376 lgifBr /kkjk 109 Hkk-n-l- dk vijk/k dkfjr fd;k x;k & fopkj.k U;k;ky; dk /kkjk 376&Mh] Hkk-n-l- dh LFkku ij /kkjk 376@109 dh varxZr vkjksi fojfpr fd;s tkus gsrq funsZf'kr fd;k x;kA*

¼vkeizdk'k fo:) LVV vkQ gfj;k.kk] ¼2015½ 2 ,l-lh-lh- 84 voyksdu½

Smt. Poorva Goyal & another v. State of Madhya Pradesh

Order dated 02.01.2017 by the High Court of M.P. in Criminal Revision No. 607 of 2015, reported in 2017 Law Suit (MP) 22

Relevant extracts from theorder:

The wordings of Section 376(sic 375) of IPC start with 'a man'. Hence, the intention of legislature is ample clear that only a man can commit rape within the meaning of Section 376 (sic 375) of IPC. Thus, there is no scope to incorporate commission of rape by woman under Section 376–D of IPC. In case of ***Omprakash v. State of Haryana, (2015) 2 SCC 84*** the Hon'ble Supreme Court has held that :–

> "17. In the light of the above provisions of law, we have carefully gone through the record and considered the cases referred to above. We find that in the present case, there is positive evidence adduced by the prosecution that accused Chhoti has aided the commission of offence by asking the victim to go to her house to take "lassi" where accused Om Prakash and Kartar Singh bolted the room and subjected the victim to rape. From the record, it appears that for about an hour, the victim was not allowed to go out from the house where she was subjected to rape. It was the house

of accused Chhoti and her husband where the incident is said to have taken place. As such, both the courts below have rightly concluded that it cannot be said that accused Chhoti has not abetted the crime in the manner suggested by the prosecution. We concur with the view taken by t he courts below. Intentional aiding of the offence is covered by the third clause mentioned in Section 107 IPC."

From the above mentioned aspect, it is not worthy that a woman though cannot commit rape, can still be held liable for abetment under Section 109 of IPC. "abetment is separate and distinct offence than rape" and if the act abetted is committed in consequences of the abetment, then the person i.e. man or woman abetting such crime is liable to be punished under Section 109 of IPC. Thus, a woman can definitely be held liable for abetment to rape under Section 109 of IPC and can be punished accordingly.

No doubt, in the FIR and statements of the prosecutrix dated 08.11.2014 recorded under Section 161 of Cr.P.C., it was alleged that the husband of the applicant Dheeraj Goyal caught hold her hand and acted in obscene manner with the prosecutrix. After some time the applicant came there and gave beating to the prosecutrix but in the statement recorded on 21.11.2014 under Section 164 of Cr.P.C. and on 22.12.2014 under Section 161 of Cr.P.C. prosecutrix alleged that the co–accused Dheeraj Goyal applied his hand over whole body of the prosecutrix. On her alarm the applicant came there and helped her husband in committing such crime.

On perusal of the statement of the prosecutrix recorded under Section 161 and 164 of Cr.P.C., prima facie it shows that an offence is made out against the applicant and at this stage, this Court has not to see whether the allegations made in the aforesaid statements are correct or not.

In my opinion, looking to the allegation made in the statements under Section 161 and 164 of Cr.P.C. by the prosecutrix, prima facie it seems that the applicant committed an offence under Section 323 and 376 read with Section 109 of IPC.

In view of aforesaid discussion, the impugned order is modified to the extent that instead of charge under Section 376-D of IPC, the trial Court is directed to frame the charge under Section 376/109 of IPC against the applicant, however, remaining part of the order shall remain intact.

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82. INDIAN PENAL CODE, 1860 – Sections 420, 468, 465 and 467
CRIMINAL PROCEDURE CODE, 1973 – Sections 482, 245, 244, 200 and 202
Whether a criminal complaint may be dismissed on the sole ground that it is based on allegations of civil nature? Held, No – But if both criminal offence and civil wrong made out from the act of the party and allegations were so predominately of civil nature that it would

have eliminated criminal intent and liability, the criminal proceeding may be quashed.

(*Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460* relied on)

Hkkjrh; n.M lafgrk] 1860 & /kkjk,a 420] 468] 465 ,oa 467

n.M izfØ;k lafgrk] 1973 & /kkjk,a 482] 245] 244] 200 ,oa 202

D;k vkijkf/kd ifjokn dk ek= bl vk/kkj ij fujLr fd;k tk ldrk gS fd vk{ksi flfoy izÑfr dk gS\ vfHkfu/kkfjr] ugha] ijarq ;fn vkijkf/kd vijk/k ,oa flfoy {kfr nkuksa i{kdkj dh ÑR; lqcwr gS ,oa vk{ksi e[;r% flfoy izÑfr dk gS tks fd vkijkf/kd vk'k; o nkf;Ro dk gVkrk gS] vkijkf/kd dk;kZgh vikLr dh tk ldrh gSA

Sanjay Baichen v. M/s. Navbharat Press (Bhopal) Pvt. Ltd.

Order dated 19.01.2017 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 3968 of 2005 (Gwalior Bench), reported in 2017 Law Suit (MP) 84

Relevant extracts from the order:

So far as the contention of the applicant that the allegations are predominantly of civil in nature and, therefore, the complaint should be dismissed on the said ground is concerned, suffice it to say that merely because case is also of a civil nature then the same cannot be dismissed on that ground only.

The Supreme Court in the case of ***Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460*** has held as under:–

> "Having examined the interrelationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being

in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of ***Indian Oil Corporation v. NEPC India Ltd. &ors., (2006) 6 SCC 736,*** this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal

proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5 Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender

27.7 The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full–fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11 Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed herewith by the prosecution.

27.13 Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14 Where the charge–sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15 Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist. {Ref. ***State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561; Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao***

Angre, (1988) 1 SCC 692; Janata Dal v. H.S. Chowdhary, 1992 4 SCC 305; Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194; G. Sagar Suri v. State of U. P., (2000) 2 SCC 636; Ajay Mitra v. State of M. P., (2003) 3 SCC 11; Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749; State of U. P. v. O. P. Sharma, (1996) 7 SCC 705; Ganesh Narayan Hegde v. S. Bangarappa, (1995) 4 SCC 41; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., (2000) 3 SCC 269; Shakson Belthissor v. State of Kerala, (2009) 14 SCC 466; V.V.S. Rama Sharma v. State of U. P., (2009) 7 SCC 234; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu, (2009) 11 SCC 203; Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288; State of Bihar v. P. P. Sharma, (1992) Supp1 SCC 222; Lalmuni Devi v. State of Bihar, (2001) 2 SCC 17; M. Krishnan v. Vijay Singh, (2001) 8 SCC 645; Savita v. State of Rajasthan, (2005) 12 SCC 338 and *S. M. Datta v. State of Gujarat, (2001) 7 SCC 659*.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."

If the allegations made in the complaint are considered in the light of the judgment mentioned above, it would be clear that the applicant although collected the sale price of the newspaper as well as also the advertisement charges from the persons concerned but did not remit the same to the complainant. As the advertisements were published in the newspaper published by the complainant from Gwalior, therefore, in fact the amount/fees required for such publication was to be remitted back to the complainant. When the applicant had recovered such amount from the persons concerned, then he was in possession of that amount in the capacity of a trustee. Similarly, the amount recovered from the customers by sale of newspapers is concerned, again the cost of the newspaper was to be remitted back to the complainant. The applicant had recovered the amount on behalf of the complainant and he was under obligation to transfer the same to the complainant and at the most he was entitled for his commission.

If the applicant has not remitted the said amount after collecting the same from the persons concerned then it cannot be said to be a dispute purely of civil in nature. There are also allegations that the forged receipts were prepared by the applicant and after forging the signatures of the General Manager of the complainant he continuously collected the amount even after termination of his agency. If the entire allegations are taken on their face value then it would be clear that there was a criminal intent on the part of the applicant in not remitting the amount so collected by him to the complainant. It is submitted by the counsel for the applicant that certain amount was to be received by the applicant from the complainant by way of his commission and thus if he has withheld the amount then it would not amount to an offence. There is nothing on record to suggest that any notice or any objection was ever taken by the applicant with regard to non–payment of his commission. Thus, where there is nothing on record that the applicant had ever raised any dispute with regard to non–payment of his commission then it cannot be said that the complaint merely discloses the business dispute and, therefore, the same cannot be termed as a dispute predominantly of a civil in nature.

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83. INDIAN SUCCESSION ACT, 1925 – Section 63

EVIDENCE ACT, 1872 – Section 68

(i) Proving of Will – When opposite party admits existence of a Will, proving thereof or its probate becomes immaterial.

(ii) Whether a co-owner can maintain a suit for injunction and protecting the property? Held, Yes.

Hkkjrh; mRrjkf/kdkj vf/kfu;e] 1925 & /kkjk 63

lk{; vf/kfu;e] 1872 & /kkjk 68

¼i½ olh;r dk izekf.kr fd;k tkuk & tc foi{kh i{kdkj }kjk olh;r dk vfLrRo Lohdkj fd;k tkrk gS] rc olh;r dk izekf.kr djuk ;k izkcsV djuk egRoghu gSA

¼ii½ D;k lg&Lokeh }kjk 0;kn'k ,oa lEifRr dh lj{k.k gsrq okn lafkfjr fd;k tk ldrk gS\ vfHkfu/kkfjr & gkA

Poonnamma Jagadamma v. Narayanan Nair

Judgment dated 01.05.2017 passed by the Supreme Court in Civil Appeal No. 5366 of 2017, reported in (2017) 6 SCC 778

Relevant extracts from the judgment:

Having considered the rival submissions, we find force in the argument of Respondent No.1 that even if the claim of Respondent No.1 regarding title over the whole of the suit property is answered against him, that does not necessarily negate his claim of being a co-owner of the suit property along with his brother. The fact that demarcation of 10 cents out of the suit property (which has been

bequeathed to the brother of Respondent No.1, Achuthan Nair) under a Will executed by their father has still not been done, that would not negate the Respondent No.1 from being a co-owner in the suit property along with his brother and to have undivided share therein. Being a co–owner of the suit property, there is nothing wrong if Respondent No.1, with a view to protect the suit property from any further encroachment, was to construct a compound wall within the portion of the suit property as specified by the High Court. The limited relief granted by the High Court to construct such compound wall, is very specific and in no manner likely to adversely affect the Appellants. Nothing has been brought to our notice to the contrary. Indeed, the construction of compound wall must conform to the mandate of municipal laws and other compliances in that behalf.

So long as the compound wall is constructed by the Respondent No.1 on the portion of suit property over which the Appellants have no right, title or interest; and by leaving out the portion which has been encroached upon by the Appellants/ defendants and some more land from such trespassed portion, the Appellants can have no grievance whatsoever. It is a different matter that the High Court has not dealt with each of the substantial questions of law formulated while entertaining the second appeal. As the arrangement provided by the High Court would meet the ends of justice and also avoid any further litigation between the parties, it would not be necessary to deal with all the substantial questions of law. As a matter of fact, in absence of specific denial about the execution or existence of the said Will by the Appellants – defendants, the question of examining the issue of admissibility of that Will pales into insignificance. The High Court also justly noted that the beneficiary under the Will was not before the Court. Even for this reason, it would be unnecessary to answer the substantial questions of law formulated at the instance of the Appellants – defendants and because the nature of the arrangement predicated by the High Court is such that it would not affect the rights of the Appellants – defendants in any manner with regard to the enjoyment of the property owned or occupied by them bearing Survey No.2061 and including the stated encroached portion in Survey No.2063. In that sense, there is no subsisting cause for the Appellants to question the correctness of the Will nor is there any tangible ground to assail the arrangement specified by the High Court while disposing of the second appeal filed by Respondent No.1.

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84. INFORMATION TECHNOLOGY ACT, 2000 – Sections 67, 79 and 81
INDIAN PENAL CODE, 1860 – Section 292
Obscene material in electronic form – IT Act being the special law would apply – If accused is discharged under section 67 of IT Act because of the exemption under section 79 of the IT Act, then he cannot be proceeded under Section 292 of IPC – special law will have overriding effect and will cover the criminal act and offender.

lpuk ik|kfxdh vf/kfu;e] 2000 & /kkjk,a 67] 79 ,oa 81

Hkkjrh; naM lafgrk] 1860 & /kkjk 292

byDVkfud :i esa v'yhy lkexh & lpuk ik?kkfxdh vf/kfu;e fo'k"k fof/k gkuh ls ykxw gksxk & ;fn vfHk;qDr dk vf/kfu;e dh /kkjk 67 dk vuqxzg.k /kkjk 79 dk vuqxzg.k NwV dk dkj.k mUekfpr fd;k tkrk gS] rc mlds Hkk-n-l- dh /kkjk 292 dk vuqxzg.k fojfpr ugha fd;k tk ldrk gS & fo'k"k fof/k dk v/;kgh iHkkoh gksxk ,oa vkijkf/kd ÑR; o vfHk;qDr dk leko'k djuxkA

Sharat Babu Digumarti v. Govt. of NCT of Delhi

Judgment dated 14.12.2016 passed by the Supreme Court in Criminal Appeal No. 1222 of 2016, reported in AIR 2017 SC 150

Relevant extracts from the judgment:

Having noted the provisions, it has to be recapitulated that Section 67 clearly stipulates punishment for publishing, transmitting obscene materials in electronic form. The said provision read with Section 67A and 67B is a complete code relating to the offences that are covered under the IT Act. Section 79, as has been interpreted, is an exemption provision conferring protection to the individuals. However, the said protection has been expanded in the dictum of ***Shreya Singhal v. Union of India, (2015) 5 SCC 1*** and we concur with the same. Section 81 also specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. All provisions will have their play and significance, if the alleged offence pertains to offence of electronic record. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 of the IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record the protection and effect of Section 79 cannot be ignored and negated. We are inclined to think so as it is a special provision for a specific purpose and the Act has to be given effect to so as to make the protection effective and true to the legislative intent. This is the mandate behind Section 81 of the IT Act. The additional protection granted by the IT Act would apply.

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In ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71*** this Court while dealing with two special statutes, namely, Section 13 of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and Section 32 of Sick Industrial Companies (Special Provisions) Act, 1985, observed as follows:–

> "Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the

Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply."

The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.

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***85. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 7A**

(i) Determination of Age – In case where sufficient documentary evidence is available – Medical evidence should not be called for.

(ii) Offence committed by series of acts – Relevant date for computation of age is, when the last act occurred.

fd'kkj U;k; ¼ckydksa dh ns[kjs[k ,oa lqj{k.k½ vf/kfu;e] 2000 & /kkjk 7 ,

¼i½ vk;q dk fu/kkj.k & ,sls ekeyksa esa tgk¡ i;kIr nLrkostksa lk{; miyC/k gks & fpdRldh; lk{; ugha cqyk;h tkuh pkfg;sA

¼ii½ vijk/k dk ÑR;k dh Øe esa dkfjr djuk & vk;q dh lx.kuk gsrq lqlxr fnukd og gks tc vfre ÑR; dkfjr gqvk gksA

Sri Ganesh v. State of Tamil Nadu & anr.

Judgment dated 06.01.2017 passed by the Supreme Court in Criminal Appeal No.39 of 2017, reported in AIR 2017 SC 537

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86. LAND ACQUISITION ACT, 1894 – Sections 3 and 23
CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 47 and Order 1 Rule 10

(i) Acquisition of land by State for a public purpose – After the Collector makes an award and takes possession, the land vests in the State – Any transferee from the State is not concerned with the process of acquisition.

(ii) Compensation to post acquisition allottee, determination of – Acquisition of land by State Government – Allotment of the land to various companies for setting up industrial units – Held,

post acquisition allottee neither a necessary nor proper party – Has no locus standi to be heard.

(iii) Additional evidence – Proceedings for determination of compensation – Neither it could be said that evidence sought to be adduced was not available despite exercise of due diligence, nor it could be held necessary to pronounce judgment – Cannot be permitted to fill in lacuna – Quashed the order of the High Court to produce additional evidence.

Hkfe vf/kxg.k vf/kfu;e] 1894 & /kkjk,a 3 ,oa 23

flfoy izfØ;k lafgrk] 1908 & vkn'k 41 fu;e 47 ,oa vkn'k 1 fu;e 10

¼i½ ykd iz;kstu ls jkT; }kjk Hkfe dk vf/kxg.k & dyDVj }kjk ipkV cuk;s tkus ,oa vkf/kiR; fy;s tkus ds i'pkr Hkfe jkT; esa fufgr gksrh gS & jkT; ls fdlh vrfjrh dk vf/kxg.k ls dkbZ lacaf/kr ugha gSA

¼ii½ vf/kxg.k ds i'pkr vkoVh dk izfrdj dk fu/kkj.k & jkT; ljdkj }kjk Hkfe dk vf/kxg.k & fofHkUu dqifu;ksa dk vk|kfxd laLFkk cuk;s tkus gsrq vkoVu & vfHkfu/kkfjr] vf/kxg.k ds i'pkr dk vkoVh u gh vko';d ,oa u mfpr i{kdkj gS & Jo.k fd;s tkus gsrq dkbZ gfl;r ugha gSA

¼iii½ vfrfjDr lk{; & izfrdj fu/kkfjr fd;s tkus gsrq dk;lokgh & ;g ugha dgk tk ldrk fd iLrkfor lk{; lE;d rRijrk ds ckotwn miyC/k ugha gks ik;h] u gh ml fu.kk; ikfjr djus gsrq vko';d gksuk vfHkfu/kkfjr fd;k tk ldrk Fkk & deh Hkjus gsrq vuefr ugha nh tk ldrh & mPp U;k;ky; ds vfrfjDr lk{; nus ds vkn'k dk vikLr fd;k x;kA

Satish Kumar Gupta etc. etc. v. State of Haryana & others, etc.

Judgment dated 21.02.2017 passed by the Sepreme Court in Civil Appeal No. 1587 of 2017, reported in AIR 2017 SC 1072

Relevant extracts from the judgment:

To determine the question whether the post–acquisition allottee of land is necessary or proper party or has any locus to be heard in the matter of determination of compensation, we may refer to the scheme of the Act. The acquisition may either be for a “public purpose” as defined under Section 3(f) or for a company under Part–VII of the Act. If the acquisition is for a public purpose (as the present case), the land vests in the State after the Collector makes an award and the possession is taken. Till the award is made, no person other than State comes into the picture. Once the land vests in the State, the acquisition is complete. Any transferee from the State is not concerned with the process of acquisition. The State may transfer the land by public auction or by allotment at any price with which the person whose land is acquired has no concern. The mere fact that the Government chooses to determine the allotment price with reference to compensation price determined by the Court does not provide any locus to an allottee to contest the claim for enhancement of compensation.

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The only other justification in the impugned judgment which has been relied upon by the respondents is lack of sincerity on the part of the State authority for whose benefit the acquisition has been made viz. HSIDC, which by itself cannot be a valid ground to permit post–acquisition allottee to be treated as a necessary or properauthority under Order I Rule 10 of CPC to proceedings for determination of compensation. The view taken in the impugned judgment cannot be sustained on any principle or precedent.

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Accordingly, we hold that the post-acquisition allottee has no Locus to be heard in the matter and is neither a necessary nor a proper party. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled principles under Order XLI Rule 27 of CPC. The provision is reproduced below:–

" 27. Production of additional evidence in Appellate Court.–

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in the lacunae or to patch-up the weak points in the case 17. There was no ground for remand in these circumstances.

We may also refer to the argument that this Court, while remanding the matter in the earlier round, had given liberty to the MSIL to file an application for impleadment or to act as an intervenor which implied that such application was to be accepted. We do not find any merit in this contention also. It cannot be held that any right was crystalised by the said observation and such prayer had to be considered according to law. We have already held that the post–acquisition allottee had no right in the matter.

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87. LAND ACQUISITION ACT, 1894 – Sections 4,6,10 and 18

(i) Acquisition of land for rehabilitation of displaced persons – Settled principle that market value of acquired land to be determined on the basis of exemplar sale deed – Absence of such material – Held, Reference Court rightly assessed the value of the land considering statements of material witnesses.

(ii) Determination of compensation, basis of – Acquisition of agricultural land for rehabilitation of displaced persons – Criteria for fixing market value of acquired land – Geographical situation of land, use of land, available advantages, market value of other land situated in same locality/village/area or adjacent to acquired land – Further held, willingness of an informed buyer to offer the price and potentiality of the acquired land should also be taken into consideration.

(iii) Award of compensation – Acquisition of land for rehabilitation of displaced persons – Consideration of deduction – 20% deduction for utilization of land area in layout for roads, drains, civic amenities etc. – 15% deduction towards development charges – Held, total 35% deduction to be made from market value of the land.

Hkfe vf/kxg.k vf/kfu;e] 1894 & /kkjk,a 4] 6] 10 ,oa 18

¼i½ foLFkkfir 0;fDr;ksa dk iquokl dh fy;s Hkfe dk vf/kxg.k & LFkkfir fl)kar gS fd vf/kxfgr Hkfe dh ckttkj eY; dk fu/kkj.k mnkgj.kkFk foØ; i= dh vk/kkj ij fd;k tkuk gS & mDr lkexh dk vHkko & vf/kfu/kkfjr] jQjhl U;k;ky; }kjk mfpr :i ls rkfRod lk{khx.k dh dFkuksa dh vk/kkj ij ckttkj eY; dk fu/kkj.k fd;k x;kA

¼ii½ ifrdj dh fu/kkj.k dh vk/kkj & foLFkkfir 0;fDr;ksa dh iquokl dh fy;s Ñf"k Hkfe dk vf/kxg.k & vf/kxfgr Hkfe dh ckttkj eY; dk fu;r djus dh fy;s ekunaM & Hkfe dh HkkSxkfyd fLFkfr] Hkfe dk mi;ksx] miyC/k ykHk] leku byksd@xkao@{ks= esa fLFkr vU; Hkfe ;k vf/kxfgr Hkfe ls yxh gqbZ Hkfe dk ckttkj eY; & vkxs vf/kfu/kkfjr fd;k x;k fd] lfpr Øerk dh eY; iLrkfor djus dh bPNk ,oa vf/kxfgr Hkfe dh {kerk dk Hkh /;ku esa j[kuk pkfg;sA

¼iii½ ifrdj vokMZ & foLFkkfir 0;fDr;ksa dk iquokl gsrq Hkwfe dk vf/kxg.k & dVksrh dh vk/kkj & 20 ifr'kr dVksrh Hkwfe dk mi;ksx gsrq lM+dksa] ukfy;ksa] ukxfjd lqfo/kkvksa vkfn ds lEc/k esa & 15 ifr'kr dVksrh fodkl 'kYd ds lEc/k esa & vfHkfu/kkfjr] dqy 35 ifr'kr dVksrh Hkwfe dk cktkj: eY; esa lsa fd;k tk ldrk gSA

Badam Singh v. State of Madhya Pradesh and others

Judgment dated 26.04.2016 passed by the High Court of Madhya Pradesh in First Appeal No. 615 of 2008 (Indore Bench), reported in 2016 (2) RN 193 (DB)

Relevant extracts from the Judgment:

The area of Shakalda – Command is tribal area and is 22 kilometres away from village Dharampuri. This fact has been considered by the learned Reference Court in para 37 & 42 of the impugned judgment. As per Ex–P/2 to P/4, the value of 1 hectare land comes to Rs.20,13,793.103 MP per hectares. Ex– P/2 to P/4 are sale deeds of unirrigated land and, therefore, enhanced value of irrigated land is 1.5 times of aforesaid value and the average value of irrigated land comes to Rs.30,20,689.654 MP per hectare. Sale deeds Ex–P/2 to P/4 are in respect of land situated in village Dharamnpuri whereas the land which has been acquired is of village adjoining to village Dharampuri. Thus, in absence of any material and considering the statements of material prosecution witnesses so also the sale–deeds Ex–P/2 to P/4, we are of the view that the learned reference court has rightly assessed the value of the land @ Rs.30,20,689.654 for irrigated land and Rs.20,13,793.103 for unirrigated land.

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It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(i) Existing geographical situation of the land.

(ii) Existing use of the land.

(iii) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(iv) Market value of other land situated in the same locality/ village/area or adjacent or very near the acquired land.

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefore. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value

of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institution. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration

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In the instant case, having regard to the extent of land acquired and the development in and around for "rehabilitation of displaced persons" of villages which comes under the submergence due to increase of height of Sardar Sarovar Dam of Tehsil– Dharmapuri in District – Dhar, in our view it is appropriate to make 20% deduction towards utilisation of the land area in the layout for roads, drains, civic amenities etc. So far as the expenditure for development of the large extent of land into a developed area by construction of roads, drainage, civic amenities etc., it is appropriate to make further deduction of 15% towards development charges. Two components taken together, the total deduction to be made would be 35%. Thus, it is a case of less deduction. In our opinion a deduction of 35% from the market value on account of development charges and other possible expenditure would be justifiable and called for in the facts and circumstances of the present case. After deducting @ 35%, the market value comes to Rs.19,63,448.2751/– (Rs.30,20,689.654 – Rs.10,57,241.3789 = Rs.19,63,448.2751) per hectare for irrigated land and for unirrigated land, the market value comes to Rs.13,08,965.51695/– (Rs.20,13,793.103 – Rs.7,04,827.58605 = Rs.13,08,965.51695) per hectare.

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88. LAND ACQUISITION ACT, 1894 – Section 23

Determination of Compensation – The extent of the area transferred is a relevant factor – Large area cannot be compared with exemplar sale deed of small areas for the purpose of construction of small houses – Also, in case of large area acquired for housing colony suitable deductions have to be made – Where there is adequate evidence on record – Determination of compensation on the basis of guesswork is not permissible.

Hkfe vf/kxg.k vf/kfu;e] 1894 & /kkjk 23

izfrdj dk fu/kkj.k & vrfjr {k=Qy dh lhek ,d lqlxr dkjd gS & cM+s {k= dh NksVh ?kj cukus ds iz;kstukFk NksVs {k=Qy ds mnkgj.kkFk foØ; i= lq rqyuk ugha dh tk ldrh gS & vkokl h; dkyksuh gsrq cM+s {k= ds vf/kxg.k ds ekeys esa mfpr dVkfr;k Hkh fd;k tkuk pkfg;s & tgk vfHkyf[k ij i;kIr lk{; gS & izfrdj dk fu/kkj.k vuqeku l fd;k tkuk vuqK; ugha gSA

Shawal Singh (D) Thr. LRs. v. Land Acquisition Collector, HP and ors.

Judgment dated 14.01.2016 passed by the Supreme Court in Civil Appeal No. 5885 of 2006, reported in AIR 2016 SC 5548

Relevant extracts from the judgment:

From the order of the Reference Court, which is available on record, we find that the claimant in support of his claim of higher compensation had brought on record several sale deeds showing transactions between the rate of Rs.8,500/ and Rs.50,000/–per kanal. The Reference Court on consideration of the aforesaid exemplars had recorded a finding that the sale deeds in question were for very small areas ranging from 5 marlas to 1 kanal 3 marlas and that such lands had been purchased for the purposes of construction of private houses. The Reference Court had also recorded a finding that Exhibit P–12, Exhibit P–14, Exhibit P–16 and Exhibit P–20 cited by the claimant himself show that the said transaction was at the rate of near about Rs.20,000/–per kanal. Though, the basis on which the Reference Court had declined enhancement of the compensation has been disagreed with by the High Court and higher compensation, as already noticed, has been awarded by the High Court, the aforesaid findings of fact remain undisturbed. The fact that the exemplar sale deeds were for small plots and the acquisition in the present case is of a large area measuring 98 kanals and 2 marlas cannot be disputed. Coupled with the above is the settled position in law that in respect of a large area acquired for a housing colony suitable deductions have to be made. The same has not been taken into account by the High Court in awarding the higher compensation of Rs.23,115/– per kanal, a fact that must go into the process of determination of the quantum awardable.

The decision of this Court in ***Mehrawal Khewaji Trust (Registered), Faridkot and others v. State of Punjab & others, AIR 2012 SC 2721*** with regard to highest rate of comparable sales is subject to certain well defined and well understood exceptions apart from the necessity of proving such sales to be bona fide as indicated in the decisions of this Court. The extent of the area transferred would certainly be a relevant factor which issue stands concluded by findings of fact recorded by the learned Reference Court.

The decision of this Court in ***Trishala Jain and anr. v. State of Uttaranchal and anr., AIR 2011 SC 2458*** insofar as the determination of compensation on the basis of guesswork is concerned itself contains an observation to the effect that such guesswork would be permissible only if relevant/sufficient evidence is not available on record. In the present case, as already observed by the Court, adequate evidence which would militate against the claim of higher compensation made by the claimant is readily available, as discussed above.

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89. LAND REVENUE CODE, 1959 (M.P.) – Section 164
HINDU SUCCESSION ACT, 1956 – Sections 6 and 8

Devolution of property – 'A' (Hindu male) Bhumiswami died intestate – Property inherited by his son 'B' as individual right and not as Karta of joint family – The property sold by successor of deceased Bhumiswami i.e. 'B' – Whether grandsons of deceased Bhumiswami 'A' (sons of 'B') have any right to partition in the life of his father 'B'? Held, No – As per Section 8 of 1956 Act the interest not devolved to son whose father is alive – Further held that civil suit by grandsons of deceased 'A' cannot be decreed.

(*Uttam v. Saubhag Singh, (2016) 4 SCC 68, Bhanwar Singh v. Puran, (2008) 3 SCC 87 and Commissioner of Wealth-tax, Kanpur v. Chander Sen, AIR 1986 SC 1753* **relied on)**

Hkw&jktLo lafgrk] 1959 ¼e-iz-½ & /kkjk 164
fgUnw mRrjkf/kdkj vf/kfu;e] 1956 & /kkjk,a 6 ,oa 8

*laifRr dk U;kxeu & *,* ¼fgUnw iq:"k½ HkwfeLokeh dh fuolh;r eR;q & mlds iq= *ch* }kjk laifRr O;fDrxr vf/kdkj ds :i esa vftZr dh x;h ,oa u fd l;qDr ifjokj ds drkZ ds :i esa & *ch* ds mRrjkf/kdkjh }kjk eR;q ds i'pkr~ Hkwfe csp nh xbZ & D;k e`rd HkwfeLokeh *,* ds ikS= ¼*ch* ds iq=k½ dks firk ds thoudky esa foHkktu djkus dk dksbZ vf/kdkj izkIr gS\ vfHkfu/kkZfjr] ugha] 1956 ds vf/kfu;e dh /kkjk 8 ds vuqlkj ,sls iq= ftlds firk thfor gSa] dks fgr U;kxr ugha gksrk gS & vkxs vfHkfu/kkZfjr *,* ds ikS=ksa }kjk izLrqr flfoy okn fMØh ugha fd;k tk ldrk gSA*

Rajkumar Singh and others v. Pushpendra Singh and others
Judgment dated 03.01.2017 passed by the High Court of Madhya Pradesh in First Appeal No. 4 of 1999 (Jabalpur Bench), reported in 2017 Law Suit (MP) 12

Relevant extracts from the judgment:

The precise question which invites consideration is : whether in the wake of Section 8 of the Hindu Succession Act, 1956, the defendant No.5 would inherit the property left by Bhuvneshwar Singh, who died intestate, in individual capacity or as the Karta of his own undivided family ?

Section 8 of the Hindu Succession Act, 1956 lays down the General Rules of Succession in the cases of males. The first rule is that the property of a male Hindu dying intestate shall devolve according to the provisions of Chapter II and Class I of the Schedule provides that if there is a male heir of Class I, then upon the heirs mentioned in Class I of the Schedule.

Dwelling on the issue similar to that as presently arises for consideration, their Lordships in ***Commissioner of Wealth–tax, Kanpur v. Chander Sen, 1986 AIR (SC) 1753*** observed :

"20. In view of the preamble to the Act i.e. that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8.

Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

21. Before we conclude we may state that we have noted the observations of Mulla's Commentary on Hindu law 15th Edn. dealing with section 6 of the Hindu Succession Act at page 924–26 as well as Mayne's on Hindu Law, 12th Edition pages 918–919.

22. The express words of section 8 of The Hindu Succession Act, 1956 cannot be ignored and must prevail. The preamble to the Act reiterates that the Act is, inter alia, to 'amend' the law, with that background the express language which excludes son's son but included son of a predeceased son cannot be ignored."

In ***Bhanwar Singh v. Puran, (2008) 3 SCC 87,*** following the decision in ***Chander Sen*** (supra), their Lordships were pleased to observe :

"12. The Act brought about a sea change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a nonobstente provision in terms whereof any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the

commencement of the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

13. Section 6 of the Act, as it stood at the relevant time, provided for devolution of interest in the coparcenary property. Section 8 lays down the general rules of succession that the property of a male dying intestate devolve according to the provisions of the Chapter as specified in clause (1) of the Schedule. In the Schedule appended to the Act, natural sons and daughters are placed in Class-I heirs but a grandson, so long as father is alive, has not been included. Section 19 of the Act provides that in the event of succession by two or more heirs, they will take the property per capita and not per stirpes, as also tenants-in-common and not as joint tenants.

14. Indisputably, Bhima left behind Sant Ram and three daughters. In terms of Section 8 of the Act, therefore, the properties of Bhima devolved upon Sant Ram and his three sisters. Each had 1/4th share in the property. Apart from the legal position, factually the same was also reflected in the record of rights. A partition had taken place amongst the heirs 15. Although the learned First Appellate Court proceeded to consider the effect of Section 6 of the Act, in our opinion, the same was not applicable in the facts and circumstances of the case. In any event, it had rightly been held that even in such a case, having regard to Section 8 as also Section 19 of the Act, the properties ceased to be joint family property and all the heirs and legal representatives of Bhima would succeed to his interest as tenants in common and not as joint tenants. In a case of this nature, the joint coparcenary did not continue."

Recently, their Lordships in ***Uttam v. Saubhag Singh, (2016) 4 SCC 68,*** wherein while dwelling on the following facts that 'One J, having interest in an ancestral Mitakshara joint family property along with other coparceners, died in 1973 leaving behind his widow M and sons. The appellant–plaintiff was the grandson of J who was born in 1977 i.e. after his grandfather's death. He filed a suit for partition of the joint family property in 1998 in which the first four defendants were his father (D-3) and his father's three brothers (D-1, D-2 and D-4). He claimed a 1/8th share in the suit property on the footing that the suit property was ancestral property, and that, being a coparcener, he had a right by birth in the said property in accordance with the Mitakshara law. The trial court in 2000 decreed the suit holding that the property was ancestral and that on the evidence, there was no earlier partition of the said property, as pleaded by the defendants in their written statements. The first Appellate Court, while confirming the trial court's finding regarding the property being ancestral and there being no earlier partition, held that after death of the plaintiff's grandfather

J, his widow being alive, J's share would have to be distributed in accordance with Section 8 HSA as if J died intestate and as such the joint family property had to be divided in accordance with rules of intestacy and not survivorship. Accordingly, no joint family property remained to be divided when the suit for partition was filed by the plaintiff, and that since the plaintiff had no right while his father was alive, the father alone being a Class I heir (and consequently the plaintiff not being a Class I heir), the plaintiff had no right to sue for partition, and therefore the suit was dismissed and consequently, the first appeal was allowed. The High Court dismissed the second appeal of the plaintiff following the same line of reasoning'; were pleased to hold :–

> "18. Some other judgments were cited before us for the proposition that joint family property continues as such even with a sole surviving coparcener, and if a son is born to such coparcener thereafter, the joint family property continues as such, there being no hiatus merely by virtue of the fact there is a sole surviving coparcener. Dharma ***Shamrao Agalawe v. Pandurang Miragu Agalawe, (1988) 2 SCC 126, Sheela Devi v. Lal Chand, (2006) 8 SCC 581*** and ***Rohit Chauhan v. Surinder Singh, (2013) 9 SCC 419,*** were cited for this purpose. None of these judgments would take the appellant any further in view of the fact that in none of them is there any consideration of the effect of Sections 4, 8 and 19 of the Hindu Succession Act. The law, therefore, insofar as it applies to joint family property governed by the Mitakshara School, prior to the amendment of 2005, could therefore be summarized as follows:–
>
> (i) When a male Hindu dies after the commencement of the Hindu Succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6).
>
> (ii) To proposition (i), an exception is contained in Section 30 Explanation of the Act, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary disposition.
>
> (iii) A second exception engrafted on proposition (i) is contained in the proviso to Section 6, which states that if such a male Hindu had died leaving behind a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative surviving him, then the interest of the deceased in the coparcenary property

would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by Section 6 proviso, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindu's widow get a share in the joint family property.

(v) On the application of Section 8 of the Act, either by reason of the death of a male Hindu leaving self–acquired property or by the application of Section 6 proviso, such property would devolve only by intestacy and not survivorship.

(vi) On a conjoint reading of Sections 4, 8 and 19 of the Act, after joint family property has been distributed in accordance with section 8 on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants."

Applying the principle of law laid down in ***Chander Sen*** (surpra), ***Bhanwar Singh*** (surpra) and ***Uttam*** (surpra), it is held that in the facts of the case at hand that Bhuvneshwar Singh dying intestate, the property held by him was inherited by defendant No.5 not as a Karta of Hindu Undivided family but, as an individual, it was within his right to have sold the property without any prior consent of other family members as would create any dent to the sale deed executed on 31.7.1991, nor the plaintiffs will have any right in them to seek partition thereof by treating it to be an ancestral/ coparceners property.

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90. PREVENTION OF CORRUPTION ACT, 1988 – Sections 2(c)(iii) and 2 (c) (ix)

Accused working as the assistant manager in 'the NCCF' – The cumulative value of the redeemable and non-redeemable shares subscribed by the Central Government in the 'NCCF' constituted almost 85% of total share capital – It will come under the meaning and scope of the expression "aided" under Section 2(c)(iii) – Accused held to be a public servant under the Act.

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*vfHk;qDr ,u-lh-lh-,Q- esa lgk;d izca/kd dk :i esa dk;Zjr & ,u-lh-lh-,Q- dk dqy 'ks;j iwath esa 85 izfr'kr esa foekpu ;ksX; ,oa vfoekpuh; 'ks;j dsUnz ljdkj }kjk /kkfjr & ;g /kkjk 2 ¼***c****½ ¼***iii****½ dk vrxZr lgk;rk izkIr djus okyk dk vFkZ ,oa izfjf/k esa vk;qDr & vfHk;qDr dk vf/kfu;e dk vrxZr ykd lsod gksuk vfHkfu/kkfjr fd;k x;kA*

Central Bureau of Investigation, State of M.P. v. P.G. Jain

Judgment dated 05.04.2016 passed by the Supreme Court in Criminal Appeal No. 264 of 2016, reported in 2017 CriLJ 735

Relevant extracts from the judgment:

In the discussions of the learned trial Court and on the basis of the reference made to the decision of the Karnataka High Court in Writ Petition No.28014 of 1995 [***D.G. Katti Sethi v. National Co-operative Consumers Federation of India Ltd.***], we find the extent of the participation of the Central Government in the equity base of the NCCF. Such participation is by subscription to redeemable as well as non–redeemable shares. The ***Karnataka High Court in D.G. Katti Sethi*** (supra) took the view that a distinction should be made between the two and the investment of the Government in non–redeemable shares should be taken as a loan instead of participation in the equity of the NCCF.

The Karnataka High Court in the said writ petition was examining the status of the NCCF from the standpoint of Article 12 of the Constitution to determine whether the employee concerned is a public servant. It is in that light that the funding in the NCCF made by the Government was considered. As the specific provisions of Section 2(c) of the P.C. Act, 1988 were not debated, naturally, the High Court had no occasion to deal with the expression "aided" appearing in Section 2(c)(iii) of the P.C. Act, 1988, namely, that employees of a body owned or controlled or aided by the Government would be public servants within the meaning of said Section. In a situation where the cumulative value of the redeemable and non–redeemable shares subscribed by the Central Government in the NCCF would constitute almost 85% of its share–capital, we do not see how the participation of the Central Government, by means of subscription to the non–redeemable shares, would fall outside the meaning and scope of the expression "aided" as appearing in Section 2(c)(iii) of the P.C. Act, 1988. Even otherwise, we find no basis to hold that the equity participation insofar as the non–redeemable shares is concerned would amount to a loan to the NCCF by the Central Government. We, therefore, hold that the Central Government holds majority of the shares in the NCCF i.e. 85% thereof and, therefore, the NCCF is a body "aided" by the Central Government as required under Section 2(c)(iii) of the P.C. Act, 1988.

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91. PREVENTION OF FOOD ADULTERATION ACT, 1954 – Section 2 (ix), Rule 32, 7(ii) r/w/s 16 (1) (a) (ii)

CRIMINAL PROCEDURE CODE, 1973 – Section 482

Application for quashing of criminal proceedings on ground that PFA Act, 1954 is repealed by Food Safety and Standards Act, 2006 as per notification S.O. 1855 (E) dated 29.07.2010, whereas the alleged offence was committed on 29.11.2010 – As per Section 97(4) of the 2006 Act, court can take cognizance under Repealed Act till expiry of 3 years from the date of commencement of the Act – Act of

2006 commenced on 29.07.2010 and earlier Act was repealed w.e.f. 05.08.2011 – Held, in pursuance of section 97(4) of the 2006 Act, the court is competent to take cognizance under the Repealed Act till 28.07.2013 – Petition dismissed.

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n.M izfØ;k lfgrk] 1973 & /kkjk 482

vkijkf/kd dk;kZgh dk vikLr djus gsrq bl vk/kkj ij vkosnu iLrqr fd;k x;k fd [kk| vifeJ.k vf/kfu;e] 1954 dk [kk| lqj{kk ,oa ekud vf/kfu;e] 2006 dh vf/klwpuk Øekd ,l-vk- 1855 ¼b½ fnukad 29-07-2010 }kjk fujflr fd;k tk pqdk gS] tcfd vk{kfir vijk/k fnukad 29-11-2010 dk dkfjr fd;k x;k gS & o"k 2006 dk vf/kfu;e dh /kkjk 97 ¼4½ dk vuqlkj fujflr U;k;ky; vf/kfu;e dk izoRr gksus dk rhu o"k dh lekfIr rd fujflr vf/kfu;e dk vrxZr lKku y gks ldrk gS & o"k 2006 dk vf/kfu;e fnukd 29-07-2010 dk izoRr gqvk ,oa i.k vf/kfu;e fnukd 05-08-2011 dk fujflr gqvk gS & vfHkfu/kkfjr] o"k 2006 dk vf/kfu;e dh /kkjk 97 ¼4½ dk vxqlj.k esa U;k;ky; lKku fujflr vf/kfu;e dk vrxZr lKku yqIr gsrq fnukd 28-07-2013 rd l{ke gS & ;kfpdk fujLr dh xbZA

Manik Hiru Jhangiani v. State of Madhya Pradesh

Order dated 13.05.2016 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 10611 of 2015 (Indore Bench), reported in ILR (2016) MP 2405

Relevant extracts from the order:

Misbranding is punishable under Section 52 of FSSA. As per above referred notification this provision came into force w.e.f. 19th July, 2010. As per the provision of Sub Section 4 of Section 97 of the FSSA, no Court can take cognizance under Repealed Act after the expiry of a period of three years from the date of commencement of the Act. Section 52 of FSSA is commenced on 29.07.2010 and the PFA Act is repealed w.e.f. 05.08.2011. As per the provision under Section 97 (4) the Court can take cognizance under the Repealed Act i.e. Prevention of Food Adulteration Act till 28.07.2013 for the offence under Section 52 of FSSA (misbranding).

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There is specific provision under Section 97 of FSSA for repealing the PFA Act then it cannot be interpreted that after the commencement of Section 52 of FSSA i.e. 29.07.2010 the provision for punishment under PFA Act deemed to be repealed. We have to keep in mind that as per Sub Section 4 of Section 97 of FSSA the Court is competent to take cognizance under the Repealed Act (in present case PFA Act) itll 28.07.2013 for the offence of misbranding as discussed above. In the present case the alleged offence has been committed on 29.11.2010 and the Court has taken the cognizance on 12.08.2011, therefore, I am of the view

that the Court has rightly took the cognizance for offence of misbranding under Section 2(ix)(k) Rule 32, 7(ii) read with Section 16(1)(a)(ii) of PFA Act, 1954.

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92. PROBATION OF OFFENDERS ACT, 1958 – Section 4

DOWRY PROHIBITION ACT, 1961 – Section 4

(i) Applicability of Section 4 of the Probation of Offenders Act where the accused is convicted under Section 4 of the Dowry Prohibition Act – Section 4 of the Dowry Prohibition Act prescribes for minimum jail sentence but also grants discretion to not award jail sentence for reasons recorded in writing – If sentence can be reduced to nil then there is no minimum sentence and Probation of Offenders Act will apply.

(ii) Court must form an opinion based upon the nature of the offence and circumstances in which it is expedient to rescuse the convicted person on probation of good conduct – "Expedient" means apt and suitable to the end in view.

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ngt i fr"k/k vf/kfu;e] 1961 & /kkjk 4

¼i½ *vijk/kh ifjoh{kk vf/kfu;e dh /kkjk 4 dh i;kT;rk tgk fd vfHk;Dr dk /kkjk 4 ngt i fr"k/k vf/kfu;e d vrxr nk"kfl) fd;k x;k gk & ngt i fr"k/k vf/kfu;e dh /kkjk 4 U;ure dkjkokl h; l tk dk i ko/kku djrh g] ijr y[kc) fd;k x;k dkj.kk d vk/kkj ij dkjkokl h; nM u nu dk food Hkh i nku djrh g & ;fn nM dk 'kU; rd de fd;k tk l drk g rk dkb U;ure dkjkokl ugh g ,o vijk/kh ifjoh{kk vf/kfu;e ykx gk xkA*

¼ii½ *U;k;ky; }kjk vijk/k dh iÑfr ,o ifjfLFkfr;k d vk/kkj ij nk"kfl) 0;fDr dk vPN vkpj.k dh ifjoh{kk ij NkM k tkuk l ehphu gkuk dk vfHker cuk;k tkuk pkfg; & **l ehphu** dk vFk vr dk fopkj e j[kdj mfpr ,o mi;Dr l g A*

Mohd. Hashim v. State of U.P. and others

Judgment dated 28.11.2016 passed by the Supreme Court in Criminal Appeal No. 1218 of 2016, reported in AIR 2017 SC 660

Relevant extracts from the judgment:

The issue that arises for consideration is whether minimum sentence is provided for offences under which the respondents have been convicted. On a plain reading of Section 323 and 498-A, it is quite clear that there is no prescription of minimum sentence. Learned counsel for the appellant would contend that Section 4 of the 1961 Act provides for minimum punishment. To appreciate the said contention, the provision is reproduced below:–

> "4. Penalty for demanding dowry. – If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:
> Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months."

Learned counsel would submit that the legislature has stipulated for imposition of sentence of imprisonment for a term which shall not be less than six months and the proviso only states that sentence can be reduced for a term of less than six months and, therefore, it has to be construed as minimum sentence. The said submission does not impress us in view of the authorities in ***Arvind Mohan Sinha,(1974 4 SCC 222) and Ratan Lal Arora, (2004 4 SCC 590).*** We may further elaborate that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts. In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison. Minimum sentence means a sentence which must be imposed without leaving any discretion to the court. It means a quantum of punishment which cannot be reduced below the period fixed. If the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications, which should be recognized and accepted for the PO Act.

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We have referred to the aforesaid authority to stress the point that the Court before exercising the power under Section 4 of the PO Act has to keep in view the nature of offence and the conditions incorporated under Section 4 of the PO Act. Be it stated in Dalbir Singh v. State of Haryana and others, AIR 2000 SC 1677 it has been held that Parliament has made it clear that only if the Court forms the opinion that it is expedient to release the convict on probation for the good conduct regard being had to the circumstances of the case and one of the circumstances which cannot be sidelined in forming the said opinion is "the nature of the offence". The Court has further opined that though the discretion as been vested in the court to decide when and how the court should form such opinion, yet the provision itself provides sufficient indication that

releasing the convicted person on probation of good conduct must appear to the Court to be expedient. Explaining the word "expedient", the Court held thus:–

> "9. The word "expedient" had been thoughtfully employed by Parliament in the section so as to mean it as "apt and suitable to the end in view". In Black's Law Dictionary the word expedient is defined as "suitable and appropriate for accomplishment of a specified object" besides the other meaning referred to earlier. In State of Gujarat v. Jamnadas G. Pabri a three-Judge Bench of this Court has considered the word "expedient". Learned Judges have observed in para 21 thus:
>
> "Again, the word 'expedient' used in this provisions, has several shades of meaning. In one dictionary sense, 'expedient' (adj.) means 'apt and suitable to the end in view', 'practical and efficient'; 'politic'; 'profitable'; 'advisable', 'fit, proper and suitable to the circumstances of the case'. In another shade, it means a device 'characterised by mere utility rather than principle, conducive to special advantage rather than to what is universally right' (see Webster's New International Dictionary)."

It was then held that the court must construe the said word in keeping with the context and object of the provision in its widest amplitude. Here the word "expedient" is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account "the circumstances of the case including the nature of the offence…". This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct."

We have highlighted these aspects for the guidance of the appellate court as it has exercised the jurisdiction in a perfunctory manner and we are obligated to say that the High Court should have been well advised to rectify the error.

At this juncture, learned counsel for the respondents would submit that no arguments on merits were advanced before the appellate court except seeking release under the PO Act. We have made it clear that there is no minimum sentence, and hence, the provisions of the PO Act would apply. We have also opined that the court has to be guided by the provisions of the PO Act and the precedents of this Court. Regard being had to the facts and circumstances in entirety, we are also inclined to accept the submission of the learned counsel for the respondents that it will be open for them to raise all points before the appellate court on merits including seeking release under the PO Act.

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***93. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 3 and 12**

Whether express denial of share in father's property by brother to his sister constitutes domestic violence – Complainant neither earlier nor presently residing with her brothers – Complaint filed only due to express denial of brothers to grant share in ancestral property due to existence of a Will – Held, conduct of brothers not giving share to sister does not constitute domestic violence – Complaint filed under section 12 of the Act quashed with liberty to take recourse to other remedy i.e. filing of civil suit for claiming share in property.

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D;k Hkkbl }kjk cgu dk firk dh lEifRr esa v'k nsus ls vfHk0;Dr bdkj ?kjsyw fgalk dh J.kh esa vkrk gS\ & ifjoknh u gh iwo esa uk orZeku esa mldk Hkkbl;ksa dk lkFk fuokljr gS & ifjokn ek= olh;r dh vfLrRo esa gksus dk dkj.k if=d lEifRr esa v'k u fn;s tkus dh vfHk0;Dr bdkj dh vk/kkj ij iLrqr fd;k x;k gS & vfHkfu/kkfjr] Hkkbl;ksa dk mudh cgu dks v'k u fn;s tkus dk vkpj.k ?kjsyw fgalk xfBr ugha djrk gS & vf/kfu;e dh /kkjk 12 ds vrxZr iLrqr ifjokn vU; mipkj tSls fd lEifRr esa v'k ikIr djus gsrq flfoy okn] iLrqr djus dh Lor=rk ds lkFk [kkfjt fd;k x;kA

Rajkishore Shukla & anr v. Asha Shukla

Order dated 22.09.2015 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 9246 of 2014 (Indore Bench), reported in ILR (2016) MP 2375

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***94. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 12, 18, 22 and 3 Explanation I (iv) (a)**

Acts of domestic violence committed prior to commencement of the Act, whether has a retrospective effect? Relevant period for causing domestic violence was from 17.05.2003 to 13.07.2005 i.e. before commencement of the Act – Order challenged on the ground that acts relate prior to enforcement of the Act – Held, while deciding a complaint under section 12 of the Act, the conduct of the parties even prior to the coming into force of the Act could be taken into consideration – Order affirmed. (*V.D. Bhanot v. Savita Bhanot, AIR 2012 SCW 1515* relied on).

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io| dh g| & vfHkfu/kkfjr] vf/kfu;e dh /kkjk 12 d| vrxZr ifjokn fuf.kr fd;s tkrs le;] i{kdkjksa dk vf/kfu;e iwoZr gksus d| iwo dk vkpj.k Hkh fopkj e| fy;k tk ldrk g| & vkns'k dh if"V dh x;hA ¼oh-Mh- HkukV fo:) 1fork HkukV] ,-vkbZ-vkj- 2012 ,l-1h-MCY;w- 1515 voyksfcr½

Hanif Khan & anr v. Shanno Bee

Order dated 10.02.2016 passed by the High Court of Madhya Pradesh in Criminal Revision No. 1893 of 2010 (Jabalpur Bench), reported in ILR (2016) MP 2355

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95. PUBLIC TRUSTS ACT, 1951 (M.P.) – Section 2

CIVIL COURTS ACT, 1958 (M.P.) – Sections 2 (1), 3, 7 and 15 (2)(3)

Suit under Special Act i.e. M.P. Public Trusts Act filed directly before the court of ADJ, validity of – Objection that ADJ court has no jurisdiction in absence of general or special order by the District Judge – Held, District Judge has jurisdiction to deal with cases arising of Special Act – As per section 7(1) of the Act, 1958, the court of District Judge is the Principal Civil Court of original Jurisdiction – ADJ court can be court of competent jurisdiction, if there exists a general or special order by District Judge assigning him the said work under Section 7(2) of the Act – In the present case there is an absence of general or special order of the District Judge – Petition allowed.

ykd U;kl vf/kfu;e] e/;izns'k] 1951 & /kkjk 2

flfoy U;k;ky; vf/kfu;e] 1958 & /kkjk,s 2 ¼1½] 3] 7 ,oa 15 ¼2½ ¼3½

fo'ks"k vf/kfu;e tks fd e-iz- ykd U;kl vf/kfu;e d| vrxZr okn dks lh/ks vij ftyk U;k;k/kh'k d| U;k;ky; e| izLrqr fd;s tkus dh o/kkfudrk & ;g vkifRr yh xbZ fd vij ftyk U;k;k/kh'k dh U;k;ky; dks ftyk U;k;k/kh'k d| lkekU; vFkok fo'ks"k vkns'k d| vHkko e| {ks=kf/kdkj ugh g| & vfHkfu/kkfjr] ftyk U;k;k/kh'k dks fo'ks"k vf/kfu;e l| mnHkwr gksus oky| izdj.kksa d| lqo/ks e| {ks=kf/kdkj g| & vf/kfu;e] 1958 dh /kkjk 7 ¼1½ d| vuqlkj ftyk U;k;k/kh'k dk U;k;ky; ikjaifHkd vf/kdkfjrk dk e[; flfoy U;k;ky; g| & vij ftyk U;k;k/kh'k dk U;k;ky; l{ke {ks=kf/kdkj dk U;k;ky; gks ldrk g| ;fn ftyk U;k;k/kh'k }kjk vf/kfu;e dh /kkjk 7 ¼2½ d| vrxZr fdlh izdkj dk lkekU; vFkok fo'ks"k vkns'k fd;k x;k g| & orZeku ekeys e| dksbZ lkekU; ;k fo'ks"k vkns'k dk vHkko g| & ;kfpdk Lohdkj dh xbZA

Jai Prakash Agrawal v. Anand Agrawal & ors.

Order dated 20.03.2015 passed by the High Court of Madhya Pradesh in W.P. No. 1342 of 2014 (Gwalior Bench), reported in ILR (2016) MP 2170

Relevant extracts from the judgment:

In my view, a conjoint reading of Section 7(2) and distribution memo makes it clear that principally the District Judge has the jurisdiction to deal with the cases arising out of Special Act, i.e. Trust Act. If there exists a general or special order assigning the work to ADJ, he assumes jurisdiction and can entertain and decide the matter. Any other interpretation will make Section 7(2) as redundant. Section 15(2) of Act of 1958, at best, provides that if the proceeding is instituted in the "court of competent jurisdiction". An ADJ court can be held to be a court of competent jurisdiction provided there exists a general or special assignment order of District Judge as per Section 7(2) of the Act of 1958. In absence there to, Section 15(2) is of no assistance.

So far the argument of the learned senior counsel for the respondent regarding deletion of sub-section 2 of Section 3 from the Act of 1958 is concerned, this will have no impact whatsoever on the requirement as per Section 7(2) of the Act of 1958. A division Bench of this Court in ***N.K. Saxena and anr. v. State of M.P. and anr., 2008 RN 249 (DB)*** opined as under:–

> "14.A reading of the provisions of the Civil Courts Act, as amended by the Act No. 17 of 1982 extracted above would show that although the Court of District Judge and the court of Additional District Judge have been classified as two separate classes of Court under sub-section (1) of section 3, they belong to one and same cadre, namely, the cadre of Higher Judicial Service, and that the Additional District Judge and the District Judge exercise almost the same judicial powers. Under sub–section (2) of section 7, Additional District Judge shall discharge any of the functions of a District Judge including the functions of Principal Civil Court of original jurisdiction which the District Judge may by general or special order assign to him and in the discharge of such functions, he can exercise the same powers as the District Judge."

In ***Surendra Kumar Lakhera v. Malik Singh Chawla and ors., 1998 (1) LJL 278*** and ***Yasmin Khan (Dr.) v. Sami Ullah Khan, 1999 (2) JLJ 228*** this Court opined that distribution memo issued by the District Judge has force of law regarding procedure as to in which court the particular suit can be tried. Larger bench of this court in ***Rajendra Prasad v. Mahendra Singh Bargahi, 2001 (2) MPLJ 82*** opined as under :–

> "We hereby clarify that as far as the first part of Section 20 is concerned, the District Judge has the jurisdiction to entertain the election petition and, therefore, in exercise of statutory powers conferred on him under M.P. Civil Courts Act he can assign the Additional District Judge to entertain and try the election petition."

The reliance was also placed by learned Senior Counsel for the respondent on ***Ravi Prakash Pujari v. Hemraj, 1990 JLJ 152***. A plain reading of para 3 of the judgment shows that there existed an order passed by the District Judge conferring jurisdiction on Additional Judge. The said order of District Judge conferring jurisdiction was under challenge. Hence, said judgment has no application in the present matter.

To sum up, the argument of learned Senior Counsel for the respondent was attractive at first blush, but on deeper analysis it is gathered that although Section 3(2) was deleted from the Act of 58, fact remains that Section 7(2) of said Act is still in existence. A plain reading of Section 7 makes it clear that sub–section 1 of Section 7 declares the District Judge as Principal Civil Court of original jurisdiction. This function of District Judge can be discharged by Additional District Judge if there exists a general or special order by the District Judge assigning him the said work. Thus, on deletion of section 3(2), requirement of Section 7(2) will not be vanished in the thin air. Any other interpretation will make Section 7(2) as non–existent. Same will be against the mandate of existing provision i.e. Section 7(2). In this view of the matter, the impugned order dated 13.02.2015 is liable to be interfered with, Resultantly, the impugned order dated 13.02.2015 is set aside. Learned ADJ is directed to submit the record of instant suit to the District Judge for appropriate orders. District Judge, in turn, shall pass orders either transfer the concerned record to the appropriate Court as per order of distribution of business or to any other court of competent jurisdiction. Learned District Judge will be at liberty to exercise his power flowing from Section 7(2) read with Section 15(3) of the Act of 1958.

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96. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 – Section 24

Whether the subsequent purchasers/assignees/power of attorney holders, etc., have *locus standi* to file a petition for a declaration of lapse of acquisition proceedings under Section 24 (2) of the Act of 2013? Held, Yes.

Hkfe vtu] iquoklu vkj iqu0;oLFkkiu esa mfpr ifrdj vkj ikjnf'krk dk vf/kdkj vf/kfu;e] 2013 & /kkjk 24

D;k i'pkrorhZ Øsrk@leunf'krh@ e[r;kjukek /kkjd bR;kfn dk vf/kfu;e dh /kkjk 24 ¼2½ d vrxZr vf/kxzg.k dk;Zokgh d lekIr gk tkus dh ?kks"k.kk gr ;kfpdk iLrqr djus dh gfl;r ikIr gS\ vfHkfu/kkfjr & gkA

Govt. of NCT of Delhi v. Manav Dharam Trust and another

Judgment dated 04.05.2017 by the Supreme Court in Civil Appeal No. 6112 of 2017, reported in (2017) 6 SCC 751

Relevant extracts from the juudgment:

The main purpose of the 2013 Act is clearly stated in the preamble. There is a clear indication that the Act proposes to protect the interest of those persons, among others who are affected by the acquisition. The subsequent purchasers/successors, etc., in the cases before us, are all people affected by the acquisition, and therefore, also they are entitled to seek a declaration on lapse under the 2013 Act.

The High Court of Karnataka at Bengaluru in ***Suryaprakash and others v. State of Karnataka and others***, Writ Petition No. 10286-291 of 2014, decided on 05.12.2016 has considered a situation of lapse and locus standi of the subsequent purchaser to file a writ petition for a declaration on lapse, though not under Section 24(2) of the 2013 Act. At paragraph–16, it has been held:

> "16. ... the principle that transferee of land after the publication of preliminary notification cannot maintain a writ petition challenging the acquisition, cannot be made applicable to a case where the acquisition itself has been abandoned and has stood lapsed due to efflux of time on account of the omission and inaction on the part of the acquiring authority, particularly because, it is because of the lapse of time and the abandonment of the acquisition, right accrues to the original owner to deal with his property including by way of the sale and the purchaser will acquire right to protect his interest. Hence, the judgment in the case of ***Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427,*** will have no application to the facts of the present case."

We are of the view that this decision, in principle, applies to the facts of these appeals as well.

Thus, the subsequent purchaser, the assignee, the successor in interest, the power of attorney, etc., are all persons who are interested in compensation/land owners/affected persons in terms of the 2013 Act and such persons are entitled to file a case for a declaration that the land acquisition proceedings have lapsed by virtue of operation of Section 24(2) of the 2013 Act. It is a declaration qua the land wherein indisputably they have an interest and they are affected by such acquisition. For such a declaration, it cannot be said that the respondents/writ petitioners do not have any locus standi.

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97. SPECIFIC RELIEF ACT, 1963 – Section 28

CIVIL PROCEDURE CODE, 1908 – Order 20 Rule 12A

(i) Application for execution of decree for specific performance of contract, sustainability of – Non-deposit of purchase amount within stipulated time – As per order 20 Rule 12A CPC, court directed to deposit purchase amount in 2 months from the date of decree – In absence of extension of time, decree can be executed only by making payment of the decretal amount to judgment-debtor or by depositing in the Court – Neither said deposit was made within the stipulated time nor extension of time was sought or granted – No explanation furnished for delayed deposit – Decree not executable – The order of executing court is upheld.

(ii) Rescission of contract – Judgment debtor merely not seeking relief of rescission of contract – Absence of such relief does not automatically result in extension of time.

fofufn"V vuqrk"k vf/kfu;e]1963 & /kkjk 28

flfoy izfØ;k lafgrk] 1908 & vkn'k 20 fu;e 12 ,

¼i½ lafonk dh fofufn"V ikyu dh fMØh dh lapkyu esa iLrqr izorZu vkosnu dh ik"kh;rk & Ø; jkf'k dk fofgr le;kof/k esa tek u fd;k tkuk & vkn'k 20 fu;e 12 , lh-ih-lh- dh rgr U;k;ky; }kjk Ø; jkf'k dh fMØh fnukad ls 2 ekg dh Hkhrj tek djus dh funsZ'k fn;s x;s & le; dh foLrkj dh vuqifLFkfr esa fMØh dk izorZu dsoy fMØh jkf'k dk fu.khZr _.kh dk inku dj ;k mlh U;k;ky; esa tek dj gh fd;k tk ldrk gS & u rks jkf'k dk fofgr le;kof/k esa vnk fd;k x;k vkj u gh le; dh foLrkj dh ekx dh xbZ ;k mlh le; inku fd;k x;k & foyEc ls jkf'k tek djus dk dkbZ Li"Vhdj.k iLrqr ugh fd;k x;k & fMØh fu"iknu ;kX; ugh gS & fu"iknu U;k;ky; dh vkn'k dh if"V dh xbZA

¼ii½ lafonk dk fujlu & fu.khZr _.kh dh }kjk dsoy lafonk dh fujlu dh ekx ugh dh xbZ & bl rjg dh lgk;rk dk vHkko Lor% gh le; dk foLrkj ugh djrk gSA

Prem Jeevan v. K.S. Venkata Raman & another

Judgement dated 17.01.2017 passed by the Supreme Court in Civil Appeal No. 608 of 2017, reported in AIR 2017 SC 623

Relevant extracts from the judgment:

Reference to Order 20, Rule 12A CPC shows that in every decree of specific performance of a contract, the court has to specify the period within which the payment has to be made. In the present case, the said period was two months from the date of the decree.

In absence of the said time being extended, the decree–holder could execute the decree only by making the payment of the decretal amount to the judgment–debtor or making the deposit in the court in term of the said decree. In the present case, neither the said deposit was made within the stipulated time nor extension of time was sought or granted and also no explanation has been furnished for the delay in the making of the deposit. No doubt, as contended by the learned counsel for the decree–holders, relying on judgment of this Court in ***Ramankutty Guptan v. Avara, (1994) 2 SCC 642,*** in an appropriate case the Court which passed the decree could extend the time as envisaged in the Specific Relief, 1963. In the present case no such steps have been taken by the decree–holders.

In above circumstances, the contention, advanced on behalf of the decree–holders, respondents herein, that unless the judgment-debtor seeks rescission of the contract in terms of Section 28 of the Specific Relief Act, the decree remains executable in spite of expiry of period for deposit, with the only obligation on the part of the decree-holders to pay interest, cannot be accepted.

There is no doubt that the above provision Section 28 of Specific Relief Act, permits the judgment-debtor to seek rescission of a contract and also permits extension of time by the Court but merely because rescission of contract is not sought by the judgment–debtor, does not automatically result in extension of time.

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98. SPECIFIC RELIEF ACT, 1963 – Section 34
COURT FEES ACT, 1870 – Section 7(iv)(c)

(i) Suit for declaration and mandatory injunction by the highest bidder against rejection of his bid – Held, a bidder has no right to get contract concluded unless the bid is accepted – Suit not tenable.

(ii) Suit for declaration and mandatory injunction for acceptance of the highest bid – Valuation of the suit should not be less than bid amount – Also ad valorem court fee is payable.

fofufn"V vuqrk"k vf/kfu;e] 1963 & /kkjk 34

U;k;ky; 'kqYd vf/kfu;e] 1870 & /kkjk 7 ¼iv½¼c½

¼i½ *Ckkyh fujLr fd;s tkus dh fo:) mPpre ckyh yxkus okys }kjk ?kk"k.kk ,oa vkKkid 0;kns'k gsrq okn & vfHkfu/kkfjr] ckyh yxkus okys dk rc rd vuqc/k i.k djkus dk vf/kdkj ugha gS tc rd ckyh Lohdkj ugha dh tkrh gS & okn fopkj.kh; ugha gSA*

¼ii½ *mPpre ckyh Lohdkj fd;s tkus gsrq ?kk"k.kk ,oa vkKkid 0;kns'k gsrq okn & okn dk eY;kdu ckyh dh jkf'k ls de ugha gkuk pkfg;s &,Mokyje U;k;ky; 'kqYd Hkh nsus gksxkA*

Haryana Urban Development Authority & ors.v. Orchid Infrastructure Developers Pvt. Ltd.

Judgment dated 27.01.2017 passed by the Supreme Court in Civil Appeal No. 1016 of 2017, reported in AIR 2017 SC 882

Relevant extracts from the judgment:

Firstly, we examine the question whether there being no concluded contract in the absence of acceptance of bid and issuance of allotment letter, the suit could be said to be maintainable for the declaratory relief and mandatory injunction sought by the plaintiff. The plaintiff has prayed for a declaration that rejection of the bid was illegal. Merely by that, plaintiff could not have become entitled for consequential mandatory injunction for issuance of formal letter of allotment. Court while exercising judicial review could not have accepted the bid. The bid had never been accepted by concerned authorities. It was not a case of cancellation of bid after being accepted. Thus even assuming as per plaintiff's case that the Administrator was not equipped with the power and the Chief Administrator had the power to accept or refuse the bid, there had been no decision by the Chief Administrator. Thus, merely by declaration that rejection of the bid by the Administrator was illegal, the plaintiff could not have become entitled to consequential relief of issuance of allotment letter. Thus the suit, in the format was filed, was not maintainable for relief sought in view of the fact that there was no concluded contract in the absence of allotment letter being issued to the plaintiff, which was a sine qua non for filing the civil suit.

It is a settled law that the highest bidder has no vested right to have the auction concluded in his favour. The Government or its authority could validly retain power to accept or reject the highest bid in the interest of public revenue. We are of the considered opinion that there was no right acquired and no vested right accrued in favour of the plaintiff merely because his bid amount was highest and had deposited 10% of the bid amount.

xxx xxx xxx

Plaintiff came to the court for mandatory injunction, for issuance of allotment letter without payment of court fee also. It was incumbent upon the plaintiff to pay the ad valorem court fee as prevailing and the valuation of the suit should not have been less than the bid amount of Rs.111.75 crores, as rightly held by the first appellate court. The plaintiff is directed to pay the ad valorem court fee not only before the trial court but also before the High Court. Plaintiff is directed to deposit the court fee within two months from today, as payable.

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99. SPECIFIC RELIEF ACT, 1963 – Section 37

TRANSFER OF PROPERTY ACT, 1882 – Sections 105 and 107

Grandmother of the plaintiff was merely allowed to use and occupy the premises – In a suit for Permanent Injunction against the defendants, plaintiff claimed interim injunction restraining them

from interfering in possession – Held, person holding possession gratuitously or in capacity as a servant or caretaker does not acquire any right or interest in the property – Long possession is immaterial – Interim injunction cannot be granted.

fofufn"V vu|rk"k vf/kfu;e] 1963 & /kkjk 37

l|ifRr v|rj.k vf/kfu;e] 1882 & /kkjk,| 105 ,o| 107

oknh dh nknh dk ifjlj ek= mi;ksx dju| ,o| jgu| gr| vu|efr nh x;h & ifroknhx.k d| fo:) LFkk;h 0;kn'k d| okn e| okn h }kjk vkf/kiR; e| gLr{ksi jksd| tku| gr| vLFkk;h 0;kn'k pkgk x;k & vfHkfu/kkfjr] vku|xfgd :i l| uksdj dh gfl;r l| ;k vfHkj{kd d| :i e| vkf/kiR; j[k tku| l| l|ifRr e| fdlh i|dkj dk vf/kdkj ;k fgr vft|r ugh gksrk g& y|ck vkf/kiR; egRoghu g& & v|rfje 0;kn'k inku ugh fd;k tk ldrk gA

Behram Tejani and others v. Azeem Jagani

Judgment dated 06.01.2017 passed by the Supreme Court in Civil Appeal No. 150 of 2017, reported in AIR 2017 SC 273

Relevant extracts from the judgment:

The matter was further elaborated in subsequent decision of this Court in ***Maria Margarida, Sequeira Fernandes and others v. Erasmo Jack De Sequeira (dead) thr. LRs, (2012) 5 SCC 370*** as under:

> "97. Principles of law which emerge in this case are crystallized as under:
>
> (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.
>
> (2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.
>
> (3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.
>
> (4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.
>
> (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession."

Thus, a person holding the premises gratuitously or in the capacity as a caretaker or a servant would not acquire any right or interest in the property and even long possession in that capacity would be of no legal consequences. In the circumstances City Civil Court was right and justified in rejecting the prayer for interim injunction and that decision ought not to have been set aside by the High Court.

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***100. TRANSFER OF PROPERTY ACT, 1882 – Section 54**

CIVIL PROCEDURE CODE, 1908 – Section 11

(i) Suit for declaration and recovery of possession by daughter of seller – 94 bighas of land and house – Seller illiterate and ailing – Merely Rs. 4,000/– paid as consideration for property – Sale deed prepared at place 'X' but executed at place 'Y' – On basis of such prevailing conditions it creates doubt regarding execution of sale deed – Sale deed rightly declared null and void by High Court to the extent of agricultural land.

(ii) *Res judicata*, applicability of – Registered sale deed for 94 bighas of land and house – Sale deed declared null and void to the extent of agricultural land – Appellant Court declared sale deed valid to the extent of house – Validity of sale deed regarding house not challenged by plaintiff – Finding regarding house will not have effect of res judicata on agricultural land.

lifRr vUrj.k vf/kfu;e] 1882 & /kkjk 54

flfoy izfØ;k lafgrk] 1908 & /kkjk 11

¼i½ *foØrk dh i=h }kjk ?kks"k.kk ,oa vkf/kkiR; izkfIr gsrq okn & 94 cgu Hkkfe ,oa ?kj & foØrk fuj{kj ,oa chekj & lifRr gsrq ek= :i;s 4000@& izfrQy Lo:i vnk fd;s x;s & foØ; i= *,Dl* LFkku ij r|;kj fd;k x;k ijUrq *ok;* LFkku ij fu"iknu fd;k x;k mDr izpfyr izfjfLFkfr;ksa ds vk/kkj ij foØ; i= ds fu"iknu ds lEc/k esa lansg mRiUu gksrk gS & mPp U;k;ky; }kjk foØ; i= dks mfpr :i ls vÑr ,oa 'kU; ?kksf"kr fd;k x;kA*

¼ii½ *ioZ U;k; dh i;kZIrk & 94 cgu Hkkfe ,oa edku ds lEc/k esa izfthÑr foØ; i= & foØ; i= dks Ñf"k Hkkfe dh lhek rd vÑr ,oa 'kU; ?kksf"kr fd;k x;k & vihyh; U;k;ky; }kjk edku dh lhek rd foØ; i= dks o/kZ ?kksf"kr fd;k x;k & oknh }kjk edku ds lEc/k esa foØ; i= dh o/krk dks pqukSrh ugha nh xbZ & edku ds lEc/k esa fd;k x;k fu"d"kZ Ñf"k Hkkfe ij ioZ U;k; dk iHkko ugha j[kxkA*

Lakhan Singh and another v. Beti Bai (Dead) Thr. LRs and another

Judgment dated 08.12.2016 passed by the Supreme Court in Civil Appeal No. 3013 of 2008, reported in 2017 (1) RN 42

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PART - II A

GUIDELINES RELATING TO SPEEDY TRIAL AND CONSEQUENT BAIL

The Apex Court in the case of ***Hussain v. Union of India,(2017) 5 SCC 702*** dealing with the question in which circumstances bail can be granted on the ground of delayed proceedings, re-emphasised following principles –

1. If appeal is not heard for 5 years, excluding the delay for which the accused himself is responsible, bail should normally be granted. [***Akhtari Bi (Smt.) v. State of M.P., (2001) 4 SCC 355*** and ***Surinder Singh alias Shingara Singh v. State of Punjab, (2005) 7 SCC 387*** relied on]
2. Speedy trial at all stages is part of right under Article 21 and if there is violation of right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time.
   [***Abdul Rehman Antulay and ors. v. R.S. Nayak and anr., (1992) 1 SCC 225*** relied on]
3. Speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, setting-up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures as are necessary for speedy trial.
4. Undertrial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations. These are matters which have to be dealt with on case-to case basis keeping in mind the guidelines laid down by the Apex Court.
5. Sympathy for the undertrials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases.
   [***Hussainara Khatoon and ors. (VII) etc. v. Home Secretary, Bihar and ors. etc., (1995) 5 SCC 326*** relied on]
6. Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. While a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases [***Supreme Court Legal Aid Committee representing undertrial prisoners v. Union of India and ors., 1994(3) R.C.R.(Criminal) 639 : (1994) 6 SCC 731*** relied on]

7. Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice. Long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery. [***Directions of Supreme Court in Noor Mohammed v. Jethanand and onr.,(2013) 5 SCC 202, quoted. Imtiyaz Ahmad v. State of Uttar Pradesh and Ors., (2012) 2 SCC 688*** and ***Anita Kushwaha etc. etc. v. Pushap Sudan etc. etc., (2016) 8 SCC 509*** relied on]
8. Liberal adjournments must be avoided and witnesses once produced must be examined on consecutive dates. [Direction of ***Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590*** quoted]
9. Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge has to hold one sitting in a week in each jail/prison for 2 months for effective implementation of Section 436A CrPC. [***Direction of Bhim Singh v. Union of India, (2015) 13 SCC 603*** quoted]
10. A review committee for implementation of Section 436A CrPC in every district under the chairmanship of the District Judge needs to be constituted. [Re: ***Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700*** referred]
11. As far as possible, bail applications in subordinate courts should ordinarily be decided within one week.
12. It is desirable that each High Court frames its annual action plan fixing a tentative time limit for subordinate courts for deciding criminal trials of persons in custody and other long pending cases and monitors implementation of such timelines periodically. This may perhaps obviate the need for seeking directions in individual cases from this Court.
13. Uncalled for strikes/abstaining from work by lawyers or frequent suspension of court work after condolence references are not legal with a view of judgment – ***Harish Uppal v. Union of India, (2003) 2 SCC 45***.
14. Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years.
15. Efforts be made to dispose of all cases which are five years old by the end of the year of 2017.
16. As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded, if conviction is recorded, such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time.
17. The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

THE MENTAL HEALTH CARE ACT, 2017
NO. 10 OF 2017

[7th April, 2017]

The following Act of Parliament received the assent of the President on the 7th April, 2017, and is hereby published for general information:—

An Act to provide for mental healthcare and services for persons with mentalillness and to protect, promote and fulfil the rights of such persons duringdelivery of mental healthcare and services and for matters connected therewithor incidental thereto.

WHEREAS the Convention on Rights of Persons with Disabilities and its OptionalProtocol was adopted on the 13th December, 2006 at United Nations Headquarters inNew York and came into force on the 3rd May, 2008;

AND WHEREAS India has signed and ratified the said Convention on the 1st day ofOctober, 2007;

AND WHEREAS it is necessary to align and harmonise the existing laws with the saidConvention.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India asfollows:—

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement – (1) This Act may be called the Mental Healthcare Act, 2017.

(2) It shall extend to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; or on the date of completion of the period of nine months from the date on which the Mental Healthcare Act, 2017 receives the assent of the President.

2. Definitions – (1) In this Act, unless the context otherwise requires,––

(a) **"advance directive"** means an advance directive made by a person under section 5;

(b) **"appropriate Government"** means,––

(i) in relation to a mental health establishment established, owned or controlled by the Central Government or the Administrator of a Union territory having no legislature, the Central Government;

(ii) in relation to a mental health establishment, other than an establishment referred to in sub-clause (i), established, owned or controlled within the territory of—

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;

(c) **"Authority"** means the Central Mental Health Authority or the State Mental Health Authority, as the case may be;

(d) **"Board"** means the Mental Health Review Board constituted by the State Authority under sub-section (1) of section 80 in such manner as may be prescribed;

(e) **"care-giver"** means a person who resides with a person with mental illness and is responsible for providing care to that person and includes a relative or any other person who performs this function, either free or with remuneration;

(f) **"Central Authority"** means the Central Mental Health Authority constituted under section 33;

(g) **"clinical psychologist"** means a person––

(i) having a recognised qualification in Clinical Psychology from an institution approved and recognised, by the Rehabilitation Council of India, constituted under section 3 of the Rehabilitation Council of India Act, 1992; or

(ii) having a Post-Graduate degree in Psychology or Clinical Psychology or Applied Psychology and a Master of Philosophy in Clinical Psychology or Medical and Social Psychology obtained after completion of a full time course of two years which includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 and approved and recognised by the Rehabilitation Council of India Act, 1992 or such recognised qualifications as may be prescribed;

(h) **"family"** means a group of persons related by blood, adoption or marriage;

(i) **"informed consent"** means consent given for a specific intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation, and obtained after disclosing to a person adequate information including risks and benefits of, and alternatives to, the specific intervention in a language and manner understood by the person;

(j) **"least restrictive alternative"** or "least restrictive environment" or "less restrictive option" means offering an option for treatment or a setting for treatment which––

(i) meets the person's treatment needs; and

(ii) imposes the least restriction on the person's rights;

(k) **"local authority"** means a Municipal Corporation or Municipal Council, or ZillaParishad, or Nagar Panchayat, or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the mental health establishment or empowered under any law for the time being in force, to function as a local authority in any city or town or village;

(l) **"Magistrate"** means––

(i) in relation to a metropolitan area within the meaning of clause (k) of section 2 of the Code of Criminal Procedure, 1973, a Metropolitan Magistrate;

(ii) in relation to any other area, the Chief Judicial Magistrate, Sub divisional Judicial Magistrate or such other Judicial Magistrate of the first class as the State Government may, by notification, empower to perform the functions of a Magistrate under this Act;

(m) **"medical officer in charge"** in relation to any mental health establishment means the psychiatrist or medical practitioner who, for the time being, is in charge of that mental health establishment;

(n) **"medical practitioner"** means a person who possesses a recognised medical qualification––

(i) as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and whose name has been entered in the State Medical Register, as defined in clause (k) of that section; or

(ii) as defined in clause (h) of sub-section (1) of section 2 of the Indian Medicine Central Council Act, 1970, and whose name has been entered in a State Register of Indian Medicine, as defined in clause (j) of sub-section (1) of that section; or

(iii) as defined in clause (g) of sub-section (1) of section 2 of the Homoeopathy Central Council Act, 1973, and whose name has been entered in a State Register of Homoeopathy, as defined in clause (i) of sub-section (1) of that section;

(o) **"Mental healthcare"** includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation of such person for his mental illness or suspected mental illness;

(p) **"mental health establishment"** means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public,

corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends;

(q) **"mental health nurse"** means a person with a diploma or degree in general nursing or diploma or degree in psychiatric nursing recognised by the Nursing Council of India established under the Nursing Council of India Act, 1947 and registered as such with the relevant nursing council in the State;

(r) **"mental health professional"** means—

(i) a psychiatrist as defined in clause (x); or

(ii) a professional registered with the concerned State Authority under section 55; or

(iii) a professional having a post-graduate degree (Ayurveda) in Mano Vigyan Avum Manas Roga or a post-graduate degree (Homoeopathy) in Psychiatry or a post-graduate degree (Unani) in Moalijat (Nafasiyatt) or a post-graduate degree (Siddha) in SirappuMaruthuvam;

(s) **"mental illness"** means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;

(t) **"minor"** means a person who has not completed the age of eighteen years;

(u) **"notification"** means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(v) **"prescribed"** means prescribed by rules made under this Act;

(w) **"prisoner with mental illness"** means a person with mental illness who is an under-trial or convicted of an offence and detained in a jail or prison;

(x) **"psychiatric social worker"** means a person having a post-graduate degree in Social Work and a Master of Philosophy in Psychiatric Social Work obtained after completion of a full time course of two years which

includes supervised clinical training from any University recognised by the University Grants Commission established under the University Grants Commission Act, 1956 or such recognised qualifications, as may be prescribed;

(y) **"psychiatrist"** means a medical practitioner possessing a post-graduate degree or diploma in psychiatry awarded by an university recognised by the University Grants Commission established under the University Grants Commission Act, 1956, or awarded or recognised by the National Board of Examinations and included in the First Schedule to the Indian Medical Council Act, 1956, or recognised by the Medical Council of India, constituted under the Indian Medical Council Act, 1956, and includes, in relation to any State, any medical officer who having regard to his knowledge and experience in psychiatry, has been declared by the Government of that State to be a psychiatrist for the purposes of this Act;

(z) **"regulations"** means regulations made under this Act;

(za) **"relative"** means any person related to the person with mental illness by blood, marriage or adoption;

(zb) **"State Authority"** means the State Mental Health Authority established under section 45.

(2) The words and expressions used and not defined in this Act but defined in the Indian Medical Council Act, 1956 or the Indian Medicine Central Council Act, 1970 and not inconsistent with this Act shall have the meanings respectively assigned to them in those Acts.

CHAPTER II

Mental Illness And Capacity To Make Mental Healthcare And Treatment Decisions

3. Determination of mental illness – (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

(a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;

(b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

4.Capacity to make mental healthcare and treatment decisions – (1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to—

(a) understand the information that is relevant to take a decision on the treatment or admission or personal assistance; or

(b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or

(c) communicate the decision under sub-clause (a) by means of speech, expression, gesture or any other means.

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1).

CHAPTER III

ADVANCE DIRECTIVE

5. Advance directive – (1) Every person, who is not a minor, shall have a right to make an advance directive in writing, specifying any or all of the following, namely:––

(a) the way the person wishes to be cared for and treated for a mental illness;

(b) the way the person wishes not to be cared for and treated for a mental illness;

(c) the individual or individuals, in order of precedence, he wants to appoint as his nominated representative as provided under section 14.

(2) An advance directive under sub-section (1) may be made by a person irrespective of his past mental illness or treatment for the same.

(3) An advance directive made under sub-section (1), shall be invoked only when such person ceases to have capacity to make mental healthcare or treatment decisions and shall remain effective until such person regains capacity to make mental healthcare or treatment decisions.

(4) Any decision made by a person while he has the capacity to make mental healthcare and treatment decisions shall over-ride any previously written advance directive by such person.

(5) Any advance directive made contrary to any law for the time being in force shall be ab initio void.

6. Manner of making advance directive – An advance directive shall be made in the manner as may be specified by the regulations made by the Central Authority.

7. Maintenance of online register – Subject to the provisions contained in clause (a) of sub-section (1) of section 91, every Board shall maintain an online register of all advance directives registered with it and make them available to the concerned mental health professionals as and when required.

8. Revocation, amendment or cancellation of advance directive – (1) An advance directive made under section 6 may be revoked, amended or cancelled by the person who made it at any time.

(2) The procedure for revoking, amending or cancelling an advance directive shall be the same as for making an advance directive under section 6.

9. Advance directive not to apply to emergency treatment – The advance directive shall not apply to the emergency treatment given under section 103 to a person who made the advance directive.

10. Duty to follow advance directive – It shall be the duty of every medical officer in charge of a mental health establishment and the psychiatrist in charge of a person's treatment to propose or give treatment to a person with mental illness, in accordance with his valid advance directive, subject to section 11. 11. (1)

11. Power to review, alter, modify or cancel advance directive – (1) Where a mental health professional or a relative or a care-giver of a person desires not to follow an advance directive while treating a person with mental illness, such mental health professional or the relative or the care-giver of the person shall make an application to the concerned Board to review, alter, modify or cancel the advance directive.

(2) Upon receipt of the application under sub-section (1), the Board shall, after giving an opportunity of hearing to all concerned parties (including the person whose advance directive is in question), either uphold, modify, alter or

cancel the advance directive after taking into consideration the following, namely:––

(a) whether the advance directive was made by the person out of his own free will and free from force, undue influence or coercion; or

(b) whether the person intended the advance directive to apply to the present circumstances, which may be different from those anticipated; or

(c) whether the person was sufficiently well informed to make the decision; or

(d) whether the person had capacity to make decisions relating to his mental healthcare or treatment when such advanced directive was made; or

(e) whether the content of the advance directive is contrary to other laws or constitutional provisions.

(3) The person writing the advance directive and his nominated representative shall have a duty to ensure that the medical officer in charge of a mental health establishment or a medical practitioner or a mental health professional, as the case may be, has access to the advance directive when required.

(4) The legal guardian shall have right to make an advance directive in writing in respect of a minor and all the provisions relating to advance directive, mutatis mutandis, shall apply to such minor till such time he attains majority.

12. Review of advance directives – (1) The Central Authority shall regularly and periodically review the use of advance directives and make recommendations in respect thereof.

(2) The Central Authority in its review under sub-section (1) shall give specific consideration to the procedure for making an advance directive and also examine whether the existing procedure protects the rights of persons with mental illness.

(3) The Central Authority may modify the procedure for making an advance directive or make additional regulations regarding the procedure for advance directive to protect the rights of persons with mental illness.

13.Liability of medical health professional in relation to advance directive – (1) A medical practitioner or a mental health professional shall not be held liable for any unforeseen consequences on following a valid advance directive.

(2) The medical practitioner or mental health professional shall not be held liable for not following a valid advance directive, if he has not been given a copy of the valid advance directive.

CHAPTER IV

NOMINATED REPRESENTATIVE

14. Appointment and revocation of nominated representative – (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 5, every person who is not a minor, shall have a right to appoint a nominated representative.

(2) The nomination under sub-section (1) shall be made in writing on plain paper with the person's signature or thumb impression of the person referred to in that sub-section.

(3) The person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act.

(4) Where no nominated representative is appointed by a person under sub-section (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness, namely:––

(a) the individual appointed as the nominated representative in the advance directive under clause (c) of sub-section (1) of section 5; or

(b) a relative, or if not available or not willing to be the nominated representative of such person; or

(c) a care-giver, or if not available or not willing to be the nominated representative of such person; or

(d) a suitable person appointed as such by the concerned Board; or

(e) if no such person is available to be appointed as a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:

Provided that a person representing an organisation registered under the Societies Registration Act, 1860 or any other law for the time being in force, working for persons with mental illness, may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Board.

(5) The representative of the organisation, referred to in the proviso to sub-section (4), may make a written application to the medical officer in-charge of the mental health establishment or the psychiatrist in-charge of the person's treatment, and such medical officer or psychiatrist, as the case may be, shall accept him as the temporary nominated representative, pending appointment of a nominated representative by the concerned Board.

(6) A person who has appointed any person as his nominated representative under this section may revoke or alter such appointment at any time in accordance with the procedure laid down for making an appointment of nominated representative under sub-section (1).

(7) The Board may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(8) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental healthcare or treatment.

(9) All persons with mental illness shall have capacity to make mental healthcare or treatment decisions but may require varying levels of support from their nominated representative to make decisions.

15. Nominated representative of minor – (1) Notwithstanding anything contained in section 14, in case of minors, the legal guardian shall be their nominated representative, unless the concerned Board orders otherwise under sub-section (2). (2) Where on an application made to the concerned Board, by a mental health professional or any other person acting in the best interest of the minor, and on evidence presented before it, the concerned Board is of the opinion that,––

(a) the legal guardian is not acting in the best interests of the minor; or

(b) the legal guardian is otherwise not fit to act as the nominated representative of the minor,

it may appoint, any suitable individual who is willing to act as such, the nominated representative of the minor with mental illness:

Provided that in case no individual is available for appointment as a nominated representative, the Board shall appoint the Director in the Department of Social Welfare of the State in which such Board is located, or his nominee, as the nominated representative of the minor with mental illness.

16. Revocation, alteration, etc., of nominated representative by Board – The Board, on an application made to it by the person with mental illness, or by a relative of such person, or by the psychiatrist responsible for the care of such person, or by the medical officer in-charge of the mental health establishment where the individual is admitted or proposed to be admitted, may revoke, alter or modify the order made under clause (e) of sub-section (4) of section 14 or under sub-section (2) of section 15.

17. Duties of nominated representative – While fulfilling his duties under this Act, the nominated representative shall––

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with mental illness in making treatment decisions under section 89 or section 90;

(d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) have access to the family or home based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;

(f) be involved in discharge planning under section 98;

(g) apply to the mental health establishment for admission under section 87 or section 89 or section 90;

(h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 87 or section 89 or section 90;

(i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

(j) appoint a suitable attendant under sub-section (5) or sub-section (6) of section 87;

(k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 99.

CHAPTER V

RIGHTS OF PERSONS WITH MENTAL ILLNESS

18. Right to access mental health care – (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.

(3) The appropriate Government shall make sufficient provision as may be necessary, for a range of services required by persons with mental illness.

(4) Without prejudice to the generality of range of services under sub-section (3), such services shall include––

(a) provision of acute mental healthcare services such as outpatient and inpatient services;

(b) provision of half-way homes, sheltered accommodation, supported accommodation as may be prescribed;

(c) provision for mental health services to support family of person with mental illness or home based rehabilitation;

(d) hospital and community based rehabilitation establishments and services as may be prescribed;

(e) provision for child mental health services and old age mental health services.

(5) The appropriate Government shall,—

(a) integrate mental health services into general healthcare services at all levels of healthcare including primary, secondary and tertiary healthcare and in all health programmes run by the appropriate Government;

(b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;

(c) ensure that the long term care in a mental health establishment for treatment of mental illness shall be used only in exceptional circumstances, for as short a duration as possible, and only as a last resort when appropriate community based treatment has been tried and shown to have failed;

(d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides;

(e) ensure that as a minimum, mental health services run or funded by Government shall be available in each district;

(f) ensure, if minimum mental health services specified under sub-clause (e) of sub-section (4) are not available in the district where a person with mental illness resides, that the person with mental illness is entitled to access any other mental health service in the district and the costs of treatment at such establishments in that district will be borne by the appropriate Government:

Provided that till such time the services under this sub-section are made available in a health establishment run or funded by the appropriate Government, the appropriate Government shall make rules regarding reimbursement of costs of treatment at such mental health establishment.

(6) The appropriate Government shall make available a range of appropriate mental health services specified under sub-section (4) of section 18 at all general hospitals run or funded by such Government and basic and emergency mental healthcare services shall be available at all community health

centres and upwards in the public health system run or funded by such Government.

(7) Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card, or who are destitute or homeless shall be entitled to mental health treatment and services free of any charge and at no financial cost at all mental health establishments run or funded by the appropriate Government and at other mental health establishments designated by it.

(8) The appropriate Government shall ensure that the mental health services shall be of equal quality to other general health services and no discrimination be made in quality of services provided to persons with mental illness.

(9) The minimum quality standards of mental health services shall be as specified by regulations made by the State Authority.

(10) Without prejudice to the generality of range of services under sub-section (3) of section 18, the appropriate Government shall notify Essential Drug List and all medicines on the Essential Drug List shall be made available free of cost to all persons with mental illness at all times at health establishments run or funded by the appropriate Government starting from Community Health Centres and upwards in the public health system:

Provided that where the health professional of ayurveda, yoga, unani, siddha, homoeopathy or naturopathy systems recognised by the Central Government are available in any health establishment, the essential medicines from any similar list relating to the appropriate ayurvada, yoga, unani, siddha, homoeopathy or naturopathy systems shall also be made available free of cost to all persons with mental illness.

(11) The appropriate Government shall take measures to ensure that necessary budgetary provisions in terms of adequacy, priority, progress and equity are made for effective implementation of the provisions of this section.

Explanation.—For the purposes of sub-section (11), the expressions––

(i) “adequacy” means in terms of how much is enough to offset inflation;

(ii) “priority” means in terms of compared to other budget heads;

(iii) “equity” means in terms of fair allocation of resources taking into account the health, social and economic burden of mental illness on individuals, their families and care-givers;

(iv) “progress” means in terms of indicating an improvement in the State’s response.

19. Right to community living – (1) Every person with mental illness shall,––

(a) have a right to live in, be part of and not be segregated from society; and

(b) not continue to remain in a mental health establishment merely because he does not have a family or is not accepted by his family or is homeless or due to absence of community based facilities.

(2) Where it is not possible for a mentally ill person to live with his family or relatives, or where a mentally ill person has been abandoned by his family or relatives, the appropriate Government shall provide support as appropriate including legal aid and to facilitate exercising his right to family home and living in the family home.

(3) The appropriate Government shall, within a reasonable period, provide for or support the establishment of less restrictive community based establishments including half-way homes, group homes and the like for persons who no longer require treatment in more restrictive mental health establishments such as long stay mental hospitals.

20. Right to protection from cruel, inhuman and degrading treatment – (1) Every person with mental illness shall have a right to live with dignity.

(2) Every person with mental illness shall be protected from cruel, inhuman or degrading treatment in any mental health establishment and shall have the following rights, namely:—

(a) to live in safe and hygienic environment;

(b) to have adequate sanitary conditions;

(c) to have reasonable facilities for leisure, recreation, education and religious practices;

(d) to privacy;

(e) for proper clothing so as to protect such person from exposure of his body to maintain his dignity;

(f) to not be forced to undertake work in a mental health establishment and to receive appropriate remuneration for work when undertaken;

(g) to have adequate provision for preparing for living in the community;

(h) to have adequate provision for wholesome food, sanitation, space and access to articles of personal hygiene, in particular, women's personal hygiene be adequately addressed by providing access to items that may be required during menstruation;

(i) to not be subject to compulsory tonsuring (shaving of head hair);

(j) to wear own personal clothes if so wished and to not be forced to wear uniforms provided by the establishment; and

(k) to be protected from all forms of physical, verbal, emotional and sexual abuse.

21. Right to equality and non- discrimination – (1) Every person with mental illness shall be treated as equal to persons with physical illness in the provision of all healthcare which shall include the following, namely:–

(a) there shall be no discrimination on any basis including gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class or disability;

(b) emergency facilities and emergency services for mental illness shall be of the same quality and availability as those provided to persons with physical illness;

(c) persons with mental illness shall be entitled to the use of ambulance services in the same manner, extent and quality as provided to persons with physical illness;

(d) living conditions in health establishments shall be of the same manner, extent and quality as provided to persons with physical illness; and

(e) any other health services provided to persons with physical illness shall be provided in same manner, extent and quality to persons with mental illness.

(2) A child under the age of three years of a woman receiving care, treatment or rehabilitation at a mental health establishment shall ordinarily not be separated from her during her stay in such establishment:

Provided that where the treating Psychiatrist, based on his examination of the woman, and if appropriate, on information provided by others, is of the opinion that there is risk of harm to the child from the woman due to her mental illness or it is in the interest and safety of the child, the child shall be temporarily separated from the woman during her stay at the mental health establishment: Provided further that the woman shall continue to have access to the child under such supervision of the staff of the establishment or her family, as may be appropriate, during the period of separation.

(3) The decision to separate the woman from her child shall be reviewed every fifteen days during the woman's stay in the mental health establishment and separation shall be terminated as soon as conditions which required the separation no longer exist: Provided that any separation permitted as per the assessment of a mental health professional, if it exceeds thirty days at a stretch, shall be required to be approved by the respective Authority.

(4) Every insurer shall make provision for medical insurance for treatment of mental illness on the same basis as is available for treatment of physical illness.

22. Right to information –(1) A person with mental illness and his nominated representative shall have the rights to the following information, namely:—

(a) the provision of this Act or any other law for the time being in force under which he has been admitted, if he is being admitted, and the criteria for admission under that provision;

(b) of his right to make an application to the concerned Board for a review of the admission;

(c) the nature of the person's mental illness and the proposed treatment plan which includes information about treatment proposed and the known side effects of the proposed treatment;

(d) receive the information in a language and form that such person receiving the information can understand.

(2) In case complete information cannot be given to the person with mental illness at the time of the admission or the start of treatment, it shall be the duty of the medical officer or psychiatrist in-charge of the person's care to ensure that full information is provided promptly when the individual is in a position to receive it: Provided that where the information has not been given to the person with mental illness at the time of the admission or the start of treatment, the medical officer or psychiatrist in charge of the person's care shall give the information to the nominated representative immediately.

23. Right to confidentiality – (1) A person with mental illness shall have the right to confidentiality in respect of his mental health, mental healthcare, treatment and physical healthcare.

(2) All health professionals providing care or treatment to a person with mental illness shall have a duty to keep all such information confidential which has been obtained during care or treatment with the following exceptions, namely:––

(a) release of information to the nominated representative to enable him to fulfil his duties under this Act;

(b) release of information to other mental health professionals and other health professionals to enable them to provide care and treatment to the person with mental illness;

(c) release of information if it is necessary to protect any other person from harm or violence;

(d) only such information that is necessary to protect against the harm identified shall be released;

(e) release only such information as is necessary to prevent threat to life;

(f) release of information upon an order by concerned Board or the Central Authority or High Court or Supreme Court or any other statutory authority competent to do so; and

(g) release of information in the interests of public safety and security.

24. Restriction on release of information in respect of mental illness – (1) No photograph or any other information relating to a person with mental illness undergoing treatment at a mental health establishment shall be released to the media without the consent of the person with mental illness.

(2) The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.

25. Right to access medical records – (1) All persons with mental illness shall have the right to access their basic medical records as may be prescribed.

(2) The mental health professional in charge of such records may withhold specific information in the medical records if disclosure would result in,––

(a) serious mental harm to the person with mental illness; or

(b) likelihood of harm to other persons.

(3) When any information in the medical records is withheld from the person, the mental health professional shall inform the person with mental illness of his right to apply to the concerned Board for an order to release such information.

26. Right to personal contacts and communication – (1) A person with mental illness admitted to a mental health establishment shall have the right to refuse or receive visitors and to refuse or receive and make telephone or mobile phone calls at reasonable times subject to the norms of such mental health establishment.

(2) A person with mental illness admitted in a mental health establishment may send and receive mail through electronic mode including through e-mail.

(3) Where a person with mental illness informs the medical officer or mental health professional in charge of the mental health establishment that he does not want to receive mail or email from any named person in the community, the medical officer or mental health professional in charge may restrict such communication by the named person with the person with mental illness.

(4) Nothing contained in sub-sections (1) to (3) shall apply to visits from, telephone calls to, and from mail or e-mail to, and from individuals, specified under clauses (a) to (f) under any circumstances, namely:––

(a) any Judge or officer authorised by a competent court;

(b) members of the concerned Board or the Central Authority or the State Authority;

(c) any member of the Parliament or a Member of State Legislature;

(d) nominated representative, lawyer or legal representative of the person;

(e) medical practitioner in charge of the person's treatment;

(f) any other person authorised by the appropriate Government.

27. Right to legal aid – (1) A person with mental illness shall be entitled to receive free legal services to exercise any of his rights given under this Act.

(2) It shall be the duty of magistrate, police officer, person in charge of such custodial institution as may be prescribed or medical officer or mental health professional in charge of a mental health establishment to inform the person with mental illness that he is entitled to free legal services under the Legal Services Authorities Act, 1987 or other relevant laws or under any order of the court if so ordered and provide the contact details of the availability of services.

28. Right to make complaints about deficiencies in provision of services – (1) Any person with mental illness or his nominated representative, shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to,—

(a) the medical officer or mental health professional in charge of the establishment and if not satisfied with the response;

(b) the concerned Board and if not satisfied with the response;

(c) the State Authority.

(2) The provisions for making complaint in sub-section (1), is without prejudice to the rights of the person to seek any judicial remedy for violation of his rights in a mental health establishment or by any mental health professional either under this Act or any other law for the time being in force.

CHAPTER VI

DUTIES OF APPROPRIATE GOVERNMENT

29. Promotion of mental health and preventive programmes – (1) The appropriate Government shall have a duty to plan, design and implement programmes for the promotion of mental health and prevention of mental illness in the country.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the appropriate Government shall, in particular, plan, design and implement public health programmes to reduce suicides and attempted suicides in the country.

30. Creating awareness about mental health and illness and reducing stigma associated with mental illness – The appropriate Government shall take all measures to ensure that,—

(a) the provisions of this Act are given wide publicity through public media, including television, radio, print and online media at regular intervals;

(b) theprogrammes to reduce stigma associated with mental illness are planned, designed, funded and implemented in an effective manner;

(c) the appropriate Government officials including police officers and other officers of the appropriate Government are given periodic sensitisation and awareness training on the issues under this Act.

31. Appropriate Government to take measures as regard to human resource development and training, etc. – (1) The appropriate Government shall take measures to address the human resource requirements of mental health services in the country by planning, developing and implementing educational and training programmes in collaboration with institutions of higher education and training, to increase the human resources available to deliver mental health interventions and to improve the skills of the available human resources to better address the needs of persons with mental illness.

(2) The appropriate Government shall, at the minimum, train all medical officers in public healthcare establishments and all medical officers in the prisons or jails to provide basic and emergency mental healthcare.

(3) The appropriate Government shall make efforts to meet internationally accepted guidelines for number of mental health professionals on the basis of population, within ten years from the commencement of this Act.

32. Co-ordination within appropriate Government – The appropriate Government shall take all measures to ensure effective co-ordination between services provided by concerned Ministries and Departments such as those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.

CHAPTER VII
CENTRAL MENTAL HEALTH AUTHORITY

33. Establishment of Central Authority – The Central Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the Central Mental Health Authority.

34. Composition of Central Authority – (1) The Central Authority shall consist of the following, namely:––

(a) Secretary or Additional Secretary to the Government of India in the Department of Health and Family Welfare––chairperson ex officio;

(b) Joint Secretary to the Government of India in the Department of Health and Family Welfare, in charge of mental health––member ex officio;

(c) Joint Secretary to the Government of India in the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy— member ex officio;

(d) Director General of Health Services––member ex officio;

(e) Joint Secretary to the Government of India in the Department of Disability Affairs of the Ministry of Social Justice and Empowerment–– member ex officio;

(f) Joint Secretary to the Government of India in the Ministry of Women and Child Development–– member ex officio;

(g) Directors of the Central Institutions for Mental Health––members ex officio;

(h) such other ex officio representatives from the relevant Central Government Ministries or Departments;

(i) one mental health professional as defined in item (iii) of clause (r) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the Central Government—member;

(j) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the Central Government––member;

(k) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the Central Government––member;

(l) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the Central Government––member;

(m) two persons representing persons who have or have had mental illness, to be nominated by the Central Government––members;

(n) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the Central Government—members;

(o) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the Central Government––members;

(p) two persons representing areas relevant to mental health, if considered necessary.

(2) The members referred to in clauses (h) to (p) of sub-section (1), shall be nominated by the Central Government in such manner as may be prescribed.

35. Term of office, salaries and allowances of chairperson and members – (1) The members of the Central Authority referred to in clauses (h) to (p) of sub-section (1) of section 34 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment: Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other ex officio members of the Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

36. Resignation – A member of the Central Authority may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon the office or until the expiry of his term of office, whichever is the earliest.

37. Filling of vacancies – The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before

the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

38. Vacancies, etc., not to invalidate proceedings of Central Authority – No act or proceeding of the Central Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person as a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

39. Member not to participate in meetings in certain cases – Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the Central Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Central Authority, and the member shall not take any part in any deliberation or decision of the Authority with respect to that matter.

40. Officers and other employees of Central Authority – (1) There shall be a chief executive officer of the Authority, not below the rank of the Director to the Government of India, to be appointed by the Central Government.

(2) The Authority may, with the approval of the Central Government, determine the number, nature and categories of other officers and employees required by the Central Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority shall be such as may be specified by regulations with the approval of the Central Government.

41. Functions of chief executive officer of Central Authority – (1) The chief executive officer shall be the legal representative of the Central Authority and shall be responsible for—

(a) the day-to-day administration of the Central Authority;

(b) implementing the work programmes and decisions adopted by the Central Authority;

(c) drawing up of proposal for the Central Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the Central Authority.

(2) Every year, the chief executive officer shall submit to the Central Authority for approval—

(a) a general report covering all the activities of the Central Authority in the previous year;

(b) programmes of work;

(c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the Central Authority.

42. Transfer of assets, liabilities of Central Authority – On the establishment of the Central Authority—

(a) all the assets and liabilities of the Central Authority for Mental Health Services constituted under sub-section (1) of section 3 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the Central Authority.

***Explanation.*—**The assets of such Central Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such Unique Identification Authority of India and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such Central Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said Central Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the Central Authority;

(c) all sums of money due to the Central Authority for Mental Health Services immediately before that day shall be deemed to be due to the Central Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such Central Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the Central Authority.

43. Functions of Central Authority – (1) The Central Authority shall––

(a) register all mental health establishments under the control of the Central Government and maintain a register of all mental health establishments in the country based on information provided by all

State Mental Health Authorities of registered establishments and compile update and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments under the Central Government;

(c) supervise all mental health establishments under the Central Government and receive complaints about deficiencies in provision of services;

(d) maintain a national register of clinical psychologists, mental health nurses and psychiatric social workers based on information provided by all State Authorities of persons registered to work as mental health professionals for the purpose of this Act and publish the list (including online on the internet) of such registered mental health professionals;

(e) train all persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) advise the Central Government on all matters relating to mental healthcare and services;

(g) discharge such other functions with respect to matters relating to mental health as the Central Government may decide: Provided that the mental health establishments under the control of the Central Government, before the commencement of this Act, registered under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the Central Authority.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the Central Government.

44. Meetings of Central Authority – (1) The Central Authority shall meet at such times (not less than twice in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the Central Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the Central Authority, the senior-most member shall preside over the meeting of the Authority.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the Central Authority shall be authenticated by the signature of the chairperson or any other member authorised by the Central Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the Central Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part in any deliberation or decision of the Authority with respect to that matter.

CHAPTER VIII
STATE MENTAL HEALTH AUTHORITY

45. Establishment of State Authority– Every State Government shall, within a period of nine months from the date on which this Act receives the assent of the President, by notification, establish, for the purposes of this Act, an Authority to be known as the State Mental Health Authority.

46. Composition of State Authority – (1) The State Authority shall consist of the following chairperson and members:—

(a) Secretary or Principal Secretary in the Department of Health of State Government––chairperson ex officio;

(b) Joint Secretary in the Department of Health of the State Government, in charge of mental health––member ex officio;

(c) Director of Health Services or Medical Education––member ex officio;

(d) Joint Secretary in the Department of Social Welfare of the State Government— member ex officio;

(e) such other ex officio representatives from the relevant State Government Ministries or Departments;

(f) Head of any of the Mental Hospitals in the State or Head of Department of Psychiatry at any Government Medical College, to be nominated by the State Government––member;

(g) one eminent psychiatrist from the State not in Government service to be nominated by the State Government––member;

(h) one mental health professional as defined in item (iii) of clause (q) of sub-section (1) of section 2 having at least fifteen years experience in the field, to be nominated by the State Government—member;

(i) one psychiatric social worker having at least fifteen years experience in the field, to be nominated by the State Government––member;

(j) one clinical psychologist having at least fifteen years experience in the field, to be nominated by the State Government––member;

(k) one mental health nurse having at least fifteen years experience in the field of mental health, to be nominated by the State Government––member;

(l) two persons representing persons who have or have had mental illness, to be nominated by the State Government––member;

(m) two persons representing care-givers of persons with mental illness or organisations representing care-givers, to be nominated by the State Government––members;

(n) two persons representing non-governmental organisations which provide services to persons with mental illness, to be nominated by the State Government— members.

(2) The members referred to in clauses (e) to (n) of sub-section (1), shall be nominated by the State Government in such manner as may be prescribed.

47. Term of office, salaries and allowances of chairperson and other members – (1) The members of the State Authority referred to in clauses (e) to (n) of sub-section (1) of section 46 shall hold office as such for a term of three years from the date of nomination and shall be eligible for reappointment: Provided that a member shall not hold office as such after he has attained the age of seventy years.

(2) The chairperson and other ex officio members of the State Authority shall hold office as such chairperson or member, as the case may be, so long as he holds the office by virtue of which he is nominated.

(3) The salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members shall be such as may be prescribed.

48. Resignation – A member of the State Authority may, by notice in writing under his hand addressed to the State Government, resign his office: Provided that a member shall, unless he is permitted by the State Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon office or until the expiry of his term of office, whichever is the earliest.

49. Filling of vacancies –The State Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of a member of the Authority and three months before the superannuation or completion of the term of office of any member of that Authority, make nomination for filling up of the vacancy.

50. Vacancies, etc., not to invalidate proceedings of State Authority – No act or proceeding of the State Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the State Authority; or

(b) any defect in the appointment of a person as a member of the State Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

51. Member not to participate in meetings in certain cases – Any member having any direct or indirect interest, whether pecuniary or otherwise, in any matter coming up for consideration at a meeting of the State Authority, shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the State Authority, and the member shall not take any part in any deliberation or decision of the State Authority with respect to that matter.

52. Officers and other employees of State Authority – (1) There shall be a chief executive officer of the State Authority, not below the rank of the Deputy Secretary to the State Government, to be appointed by the State Government.

(2) The State Authority may, with the approval of the State Government, determine the number, nature and categories of other officers and employees required by the State Authority in the discharge of its functions.

(3) The salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the State Authority shall be such as may be specified by regulations with the approval of the State Government.

53. Functions of chief executive officer of State Authority – (1) The chief executive officer shall be the legal representative of the State Authority and shall be responsible for—

(a) the day-to-day administration of the State Authority;

(b) implementing the work programmes and decisions adopted by the State Authority;

(c) drawing up of proposal for the State Authority's work programmes;

(d) the preparation of the statement of revenue and expenditure and the execution of the budget of the State Authority.

(2) Every year, the chief executive officer shall submit to the State Authority for approval—

(a) a general report covering all the activities of the Authority in the previous year;

(b) programmes of work;

(c) the annual accounts for the previous year; and

(d) the budget for the coming year.

(3) The chief executive officer shall have administrative control over the officers and other employees of the State Authority.

54.Transfer of assets, liabilities of State Authority –On and from the establishment of the State Authority—

(a) all the assets and liabilities of the State Authority for Mental Health Services constituted under sub-section (1) of section 4 of the Mental Health Act, 1987 shall stand transferred to, and vested in, the State Authority.

Explanation.—The assets of such State Authority for Mental Health Services shall be deemed to include all rights and powers, and all properties, whether movable or immovable, including, in particular, cash balances, deposits and all other interests and rights in, or arising out of, such properties as may be in the possession of such State Authority for Mental Health Services and all books of account and other documents relating to the same; and liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind;

(b) without prejudice to the provisions of clause (a), all data and information collected during enrolment, all details of authentication performed, debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for such State Authority for Mental Health Services immediately before that day, for or in connection with the purpose of the said State Authority for Mental Health Services, shall be deemed to have been incurred, entered into or engaged to be done by, with or for, the State Authority;

(c) all sums of money due to the State Authority for Mental Health Services immediately before that day shall be deemed to be due to the State Authority; and

(d) all suits and other legal proceedings instituted or which could have been instituted by or against such State Authority for Mental Health Services immediately before that day may be continued or may be instituted by or against the State Authority.

55. Functions of State Authority – (1) The State Authority shall––

(a) register all mental health establishments in the State except those referred to in section 43 and maintain and publish (including online on the internet) a register of such establishments;

(b) develop quality and service provision norms for different types of mental health establishments in the State;

(c) supervise all mental health establishments in the State and receive complaints about deficiencies in provision of services;

(d) register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals, and publish the list of such registered mental health professionals in such manner as may be specified by regulations by the State Authority;

(e) train all relevant persons including law enforcement officials, mental health professionals and other health professionals about the provisions and implementation of this Act;

(f) discharge such other functions with respect to matters relating to mental health as the State Government may decide:

Provided that the mental health establishments in the State (except those referred to in section 43), registered, before the commencement of this Act, under the Mental Health Act, 1987 or any other law for the time being in force, shall be deemed to have been registered under the provisions of this Act and copy of such registration shall be furnished to the State Authority.

(2) The procedure for registration (including the fees to be levied for such registration) of the mental health establishments under this section shall be such as may be prescribed by the State Government.

56. Meetings of State Authority – (1) The State Authority shall meet at such times (not less than four times in a year) and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be specified by regulations made by the State Authority.

(2) If the chairperson, for any reason, is unable to attend a meeting of the State Authority, the senior- most member shall preside over the meetings of the Authority.

(3) All questions which come up before any meeting of the State Authority shall be decided by a majority of votes by the members present and voting and in the event of an equality of votes, the chairperson or in his absence the member presiding over shall have a second or casting vote.

(4) All decisions of the State Authority shall be authenticated by the signature of the chairperson or any other member authorised by the State Authority in this behalf.

(5) If any member, who is a director of a company and who as such director, has any direct or indirect pecuniary interest in any manner coming up for consideration at a meeting of the State Authority, he shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority, and the member shall not take part inany deliberation or decision of the State Authority with respect to that matter.

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

57. Grants by Central Government to Central Authority – The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

58. Central Mental Health Authority Fund – (1) There shall be constituted a Fund to be called the Central Mental Health Authority Fund and there shall be credited thereto—

(i) any grants and loans made to the Authority by the Central Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary,allowances and other remuneration of the chairperson, other members, chief executive officer,other officers and employees of the Authority and the expenses of the Authority incurred inthe discharge of its functions and for purposes of this Act.

59. Accounts and audit of Central Authority – (1) The Central Authority shall maintain proper accounts and other relevant recordsand prepare an annual statementof accounts in such form as may be prescribed by theCentral Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditureincurred in connection with such audit shall be payable by the Authority to the Comptrollerand Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed byhim in connection with the audit of the accounts of the Authority shall have the same rightsand privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, inparticular, shall have the right to demand the production of books, accounts, connectedvouchers and other documents and papers and to inspect any of the office of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor-Generalof India or any other person appointed by him in this behalf together with the audit reportthereon, shall be forwarded annually to the Central Government by the Authority and theCentral Government shall cause the same to be laid before each House of Parliament.

60. Annual report of Central Authority – The Central Authority shall prepare in every year, in such form and at such time as may be prescribed by the Central Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the Central Government and the Central Government shall cause the same to be laid before both Houses of Parliament.

61. Grants by State Government – The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the State Authority grants of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

62. State Mental Health Authority Fund – (1) There shall be constituted a Fund to be called the State Mental Health Authority Fund and there shall be credited thereto—

(i) any grants and loans made to the State Authority by the State Government;

(ii) all fees and charges received by the Authority under this Act; and

(iii) all sums received by the State Authority from such other sources as may be decided upon by the State Government.

(2) The Fund referred to in sub-section (1) shall be applied for meeting the salary, allowances and other remuneration of the chairperson, other members, chief executive officer, other officers and employees of the State Authority and the expenses of the State Authority incurred in the discharge of its functions and for purposes of this Act.

63. Accounts and audit of State Authority – (1) The State Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the State Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the State Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the State Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the office of the State Authority.

64. Annual report of State Authority – The State Authority shall prepare in every year, in such form and at such time as may be prescribed by the State Government, an annual report giving a full account of its activities during the previous year, and copies thereof along with copies of its annual accounts and auditor's report shall be forwarded to the State Government and the Government shall cause the same to be laid before the State Legislature.

CHAPTER X

MENTAL HEALTH ESTABLISHMENTS

65. Registration of mental health establishment – (1) No person or organisation shall establish or run a mental health establishment unless it has been registered with the Authority under the provisions of this Act.

Explanation.– For the purposes of this Chapter, the expression "Authority" means—

(a) in respect of the mental health establishments under the control of the Central Government, the Central Authority;

(b) in respect of the mental health establishments in the State [not being the health establishments referred to in clause (a)], the State Authority.

(2) Every person or organisation who proposes to establish or run a mental health establishment shall register the said establishment with the Authority under the provisions of this Act:

Provided that the Central Government, may, by notification, exempt any category or class of existing mental health establishments from the requirement of registration under this Act.

Explanation.– In case a mental health establishment has been registered under the Clinical Establishments (Registration and Regulation) Act, 2010 or any other law for the time being in force in a State, such mental health establishment shall submit a copy of the said registration along with an application in such form as may be prescribed to the Authority with an undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority for the specific category of mental health establishment.

(3) The Authority shall, on receipt of application under sub-section (2), on being satisfied that such mental health establishment fulfils the standards specified by the Authority, issue a certificate of registration in such form as may be prescribed:

Provided that till the period the Authority specifies the minimum standards for different categories of mental health establishments, it shall issue a provisional certificate of registration to the mental health establishment:

Provided further that on specifying the minimum standards for different categories of mental health establishments, the mental health establishment referred to in the first proviso shall, within a period of six months from the date

such standards are specified, submit to the Authority an undertaking stating therein that such establishment fulfils the specified minimum standards and on being satisfied that such establishment fulfils the minimum standards, the Authority shall issue a certificate of registration to such mental health establishment.

(4) Every mental health establishment shall, for the purpose of registration and continuation of registration, fulfil––

(a) the minimum standards of facilities and services as may be specified by regulations made by the Authority;

(b) the minimum qualifications for the personnel engaged in such establishment as may be specified by regulations made by the Authority;

(c) provisions for maintenance of records and reporting as may be specified by regulations made by the Authority; and

(d) any other conditions as may be specified by regulations made by the Authority.

(5) The Authority may––

(a) classify mental health establishments into such different categories, as may be specified by regulations made by the Central Authority;

(b) specify different standards for different categories of mental health establishments;

(c) while specifying the minimum standards for mental health establishments, have regard to local conditions.

(6) Notwithstanding anything in this section, the Authority shall, within a period of eighteen months from the commencement of this Act, by notification, specify the minimum standards for different categories of mental health establishments.

66. Procedure for registration, inspection and inquiry of mental health establishments – (1) The mental health establishment shall, for the purpose of registration, submit an application, in such form, accompanied with such details and fees, as may be prescribed, to the Authority.

(2) The mental health establishment may submit the application in person or by post or online.

(3) Every mental health establishment, existing on the date of commencement of this Act, shall, within a period of six months from the date of constitution of the Authority, submit an application for its provisional registration to the Authority.

(4) The Authority shall, within a period of ten days from the date of receipt of such application, issue to the mental health establishment a certificate of

provisional registration in such form and containing such particulars and information as may be prescribed.

(5) The Authority shall not be required to conduct any inquiry prior to issue of provisional registration.

(6) The Authority shall, within a period of forty-five days from the date of provisional registration, publish in print and in digital form online, all particulars of the mental health establishment.

(7) A provisional registration shall be valid for a period of twelve months from the date of its issue and be renewable.

(8) Where standards for particular categories of mental health establishments have been specified under this Act, the mental health establishments in that category shall, within a period of six months from date of notifying such standards, apply for that category and obtain permanent registration.

(9) The Authority shall publish the standards in print and online in digital format.

(10) Until standards for particular categories of mental health establishments are specified under this Act, every mental health establishment shall, within thirty days before the expiry of the validity of certificate of provisional registration, apply for a renewal of provisional registration.

(11) If the application is made after the expiry of provisional registration, the Authority shall allow renewal of registration on payment of such fees, as may be prescribed.

(12) A mental health establishment shall make an application for permanent registration to the Authority in such form and accompanied with such fees as may be specified by regulations.

(13) The mental health establishment shall submit evidence that the establishment has complied with the specified minimum standards in such manner as may be specified by regulations by the Authority.

(14) As soon as the mental health establishment submits the required evidence of the mental health establishment having complied with the specified minimum standards, the Authority shall give public notice and display the same on its website for a period of thirty days, for filing objections, if any, in such manner as may be specified by regulations.

(15) The Authority shall, communicate the objections, if any, received within the period referred to in sub-section (14), to the mental health establishment for response within such period as the Authority may determine.

(16) The mental health establishment shall submit evidence of compliance with the standards with reference to the objections communicated to such establishment under sub-section (15), to the Authority within the specified period.

(17) The Authority shall on being satisfied that the mental health establishment fulfills the specified minimum standards for registration, grant permanent certificate of registrationto such establishment.

(18) The Authority shall, within a period of forty-five days after the expiry of the periodspecified under this section, pass an order, either––

(a) grant permanent certificate of registration; or

(b) reject the application after recording the reasons thereof:

Provided that in case the Authority rejects the application under clause (b), it shallgrant such period not exceeding six months, to the mental health establishment for rectificationof the deficiencies which have led to rejection of the application and such establishment mayapply afresh for registration.

(19) Notwithstanding anything contained in this section, if the Authority has neithercommunicated any objections received by it to the mental health establishment undersub-section (15), nor has passed an order under sub-section (18), the registration shall bedeemed to have been granted by the Authority and the Authority shall provide a permanentcertificate of registration.

67. Audit of mental health establishment – (1) The Authority shall cause to be conducted an audit of all registered mentalhealth establishments by such person or persons (including representatives of the localcommunity) as may be prescribed, every three years, so as to ensure that such mental healthestablishments comply with the requirements of minimum standards for registration as amental health establishment.

(2) The Authority may charge the mental health establishment such fee as may beprescribed, for conducting the audit under this section.

(3) The Authority may issue a show cause notice to a mental health establishment asto why its registration under this Act not be cancelled, if the Authority is satisfied that––

(a) the mental health establishment has failed to maintain the minimum standardsspecified by the Authority; or

(b) the person or persons or entities entrusted with the management of themental health establishment have been convicted of an offence under this Act; or

(c) the mental health establishment violates the rights of any person with mentalillness.

(4) The Authority may, after giving a reasonable opportunity to the mental healthestablishment, if satisfied that the mental health establishment falls under clause (a) orclause (b) or clause (c) of sub-section (3), without prejudice to any other action which it maytake against the mental health establishment, cancel its registration.

(5) Every order made under sub-section (4) shall take effect––

(a) where no appeal has been preferred against such order, immediately on theexpiry of the period specified for preferring of appeal; and

(b) where the appeal has been preferred against such an order and the appealhas been dismissed, from the date of the order of dismissal.

(6) The Authority shall, on cancellation of the registration for reasons to be recordedin writing, restrain immediately the mental health establishment from carrying on its operations,if there is imminent danger to the health and safety of the persons admitted in the mentalhealth establishment.

(7) The Authority may cancel the registration of a mental health establishment ifrecommended by the Board to do so.

68. Inspection and inquiry – (1) The Authority may, suomotu or on a complaint received from any person with respect to non-adherence of minimum standards specified by or under this Act or contravention of any provision thereof, order an inspection or inquiry of any mental health establishment, to be made by such person as may be prescribed.

(2) The mental health establishment shall be entitled to be represented at such inspection or inquiry.

(3) The Authority shall communicate to the mental health establishment the results of such inspection or inquiry and may after ascertaining the opinion of the mental health establishment, order the establishment to make necessary changes within such period as may be specified by it.

(4) The mental health establishment shall comply with the order of the Authority made under sub-section (3).

(5) If the mental health establishment fails to comply with the order of the Authority made under sub-section (3), the Authority may cancel the registration of the mental health establishment.

(6) The Authority or any person authorised by it may, if there is any reason to suspect that any person is operating a mental health establishment without registration, enter and search in such manner as may be prescribed, and the mental health establishment shall co-operate with such inspection or inquiry and be entitled to be represented at such inspection or inquiry.

69. Appeal to High Court against order of Authority – Any mental health establishment aggrieved by an order of the Authority refusing to grant registration or renewal of registration or cancellation of registration, may, within a period of thirty days from such order, prefer an appeal to the High Court in the State:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

70. Certificates, fees and register of mental health establishments – (1) Every mental health establishment shall display the certificate of registration in a conspicuous place in the mental health establishment in such manner so as to be visible to everyone visiting the mental health establishment.

(2) In case the certificate is destroyed or lost or mutilated or damaged, the Authority may issue a duplicate certificate on the request of the mental health establishment and on the payment of such fees as may be prescribed.

(3) The certificate of registration shall be non-transferable and valid in case of change of ownership of the establishment.

(4) Any change of ownership of the mental health establishment shall be intimated to the Authority by the new owner within one month from the date of change of ownership.

(5) In the event of change of category of the mental health establishment, such establishment shall surrender the certificate of registration to the Authority and the mental health establishment shall apply afresh for grant of certificate of registration in that category.

71. Maintenance of register of mental health establishment in digital format – The Authority shall maintain in digital format a register of mental health establishments, registered by the Authority, to be called the Register of Mental Health Establishments and shall enter the particulars of the certificate of registration so granted in a separate register to be maintained in such form and manner as may be prescribed.

72. Duty of mental health establishment to display information – (1) Every mental health establishment shall display within the establishment at conspicuous place (including on its website), the contact details including address and telephone numbers of the concerned Board.

(2) Every mental health establishment shall provide the person with necessary forms to apply to the concerned Board and also give free access to make telephone calls to the Board to apply for a review of the admission.

CHAPTER XI

MENTAL HEALTH REVIEW BOARDS

73. Constitution of Mental Health Review Boards – (1) The State Authority shall, by notification, constitute Boards to be called the Mental Health Review Boards, for the purposes of this Act.

(2) The requisite number, location and the jurisdiction of the Boards shall be specified by the State Authority in consultation with the State Governments concerned.

(3) The constitution of the Boards by the State Authority for a district or group of districts in a State under this section shall be such as may be prescribed by the Central Government.

(4) While making rules under sub-section (3), the Central Government shall have regard to the following, namely:—

(a) the expected or actual workload of the Board in the State in which such Board is to be constituted;

(b) number of mental health establishments existing in the State;

(c) the number of persons with mental illness;

(d) population in the district in which the Board is to be constituted;

(e) geographical and climatic conditions of the district in which the Board is to be constituted.

74. Composition of Board – (1) Each Board shall consist of––

(a) a District Judge, or an officer of the State judicial services who is qualified to be appointed as District Judge or a retired District Judge who shall be chairperson of the Board;

(b) representative of the District Collector or District Magistrate or Deputy Commissioner of the districts in which the Board is to be constituted;

(c) two members of whom one shall be a psychiatrist and the other shall be a medical practitioner.

(d) two members who shall be persons with mental illness or care-givers or persons representing organisations of persons with mental illness or care-givers ornon-governmental organisations working in the field of mental health.

(2) A person shall be disqualified to be appointed as the chairperson or a member of aBoard or be removed by the State Authority, if he––

(a) has been convicted and sentenced to imprisonment for an offence whichinvolves moral turpitude; or

(b) is adjudged as an insolvent; or

(c) has been removed or dismissed from the service of the Government or a bodycorporate owned or controlled by the Government; or

(d) has such financial or other interest as is likely to prejudice the discharge ofhis functions as a member; or

(e) has such other disqualifications as may be prescribed by the CentralGovernment.

(3) A chairperson or member of a Board may resign his office by notice in writing underhis hand addressed to the Chairperson of the State Authority and on such resignation beingaccepted, the vacancy shall be filled by appointment of a person, belonging to the categoryunder sub-section (1) of section 74.

75. Terms and conditions of service of chairperson and membersof Board – (1) The chairperson and members of the Board shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and

shall be eligible for reappointment for another term of five years or up to the age of seventy years whichever is earlier.

(2) The appointment of chairperson and members of every Board shall be made by the Chairperson of the State Authority.

(3) The honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board shall be such as may be prescribed by the Central Government.

76. Decisions of Authority and Board – (1) The decisions of the Authority or the Board, as the case may be, shall be by consensus, failing which by a majority of votes of members present and voting and in the event of equality of votes, the president or the chairperson, as the case may be, shall have a second or casting vote.

(2) The quorum of a meeting of the Authority or the Board, as the case may be, shall be three members.

77. Applications to Board – (1) Any person with mental illness or his nominated representative or a representative of a registered non-governmental organisation, with the consent of such a person, being aggrieved by the decision of any of the mental health establishment or whose rights under this Act have been violated, may make an application to the Board seeking redressal or appropriate relief.

(2) There shall be no fee or charge levied for making such an application.

(3) Every application referred to in sub-section (1) shall contain the name of applicant, his contact details, the details of the violation of his rights, the mental health establishment or any other place where such violation took place and the redressal sought from the Board.

(4) In exceptional circumstances, the Board may accept an application made orally or over telephone from a person admitted to a mental health establishment.

78. Proceedings before Board to be judicial proceedings – All proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

79. Meetings – The Board shall meet at such times and places and shall observe such rules ofprocedure in regard to the transaction of business at its meetings as may be specified byregulations made by the Central Authority.

80. Proceedings before Board – (1) The Board, on receipt of an application under sub-section (1) of section 85,shall, subject to the provisions of this section, endeavour to hear and dispose of the samewithin a period of ninety days.

(2) The Board shall dispose of an application––

(a) for appointment of nominated representative under clause (d) of sub-section (4)of section 14;

(b) challenging admission of a minor under section 87;

(c) challenging supported admission under sub-section (10) or sub-section (11)of section 89,within a period of seven days from the date of receipt of such applications.

(3) The Board shall dispose of an application challenging supported admission undersection 90 within a period of twenty-one days from the date of receipt of the application.

(4) The Board shall dispose of an application, other than an application referred to in sub-section (3), within a period of ninety days from the date of filing of the application.

(5) The proceeding of the Board shall be held in camera.

(6) The Board shall not ordinarily grant an adjournment for the hearing.

(7) The parties to an application may appear in person or be represented by a counsel or a representative of their choice.

(8) In respect of any application concerning a person with mental illness, the Board shall hold the hearings and conduct the proceedings at the mental health establishment where such person is admitted.

(9) The Board may allow any persons other than those directly interested with the application, with the permission of the person with mental illness and the chairperson of the Board, to attend the hearing.

(10) The person with mental illness whose matter is being heard shall have the right to give oral evidence to the Board, if such person desires to do so.

(11) The Board shall have the power to require the attendance and testimony of such other witnesses as it deems appropriate.

(12) The parties to a matter shall have the right to inspect any document relied upon by any other party in its submissions to the Board and may obtain copies of the same.

(13) The Board shall, within five days of the completion of the hearing, communicate its decision to the parties in writing.

(14) Any member who is directly or indirectly involved in a particular case, shall not sit on the Board during the hearings with respect to that case.

81. Central Authority to appoint Expert Committee to prepare guidance document – (1) The Central Authority shall appoint an Expert Committee to prepare a guidance document for medical practitioners and mental health professionals, containing procedures for assessing, when necessary or the capacity of persons to make mental health care or treatment decisions.

(2) Every medical practitioner and mental health professional shall, while assessing capacity of a person to make mental healthcare or treatment decisions, comply with the guidance document referred to in sub-section (1) and follow the procedure specified therein.

82. Powers and functions of Board – (1) Subject to the provisions of this Act, the powers and functions of the Board shall, include all or any of the following matters, namely:––

(a) to register, review, alter, modify or cancel an advance directive;

(b) to appoint a nominated representative;

(c) to receive and decide application from a person with mental illness or his nominated representative or any other interested person against the decision of medical officer or mental health professional in charge of mental health establishment or mental health establishment under section 87 or section 89 or section 90;

(d) to receive and decide applications in respect non-disclosure of information specified under sub-section (3) of section 25;

(e) to adjudicate complaints regarding deficiencies in care and services specified under section 28;

(f) to visit and inspect prison or jails and seek clarifications from the medical officer in-charge of health services in such prison or jail.

(2) Where it is brought to the notice of a Board or the Central Authority or State Authority, that a mental health establishment violates the rights of persons with mental illness, the Board or the Authority may conduct an inspection and inquiry and take action to protect their rights.

(3) Notwithstanding anything contained in this Act, the Board, in consultation with the Authority, may take measures to protect the rights of persons with mental illness as it considers appropriate.

(4) If the mental health establishment does not comply with the orders or directions of the Authority or the Board or wilfully neglects such order or direction, the Authority or the Board, as the case may be, may impose penalty which may extend up to five lakh rupees on such mental health establishment and the Authority on its own or on the recommendations of the Board may also cancel the registration of such mental health establishment aftergiving an opportunity of being heard.

83. Appeal to High Court against order of Authority or Board – Any person or establishment aggrieved by the decision of the Authority or a Board may, within a period of thirty days from such decision, prefer an appeal to the High Court of the State in which the Board is situated:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

84. Grants by Central Government – (1) The Central Government may, make to the Central Authority grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

(2) The grants referred to in sub-section (1) shall be applied for,—

(a) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Central Authority;

(b) meeting the salary, allowances and other remuneration of the chairperson, members, officers and other employees of the Boards; and

(c) the expenses of the Central Authority and the Boards incurred in the dischargeof their functions and for the purposes of this Act.

CHAPTER XII

ADMISSION, TREATMENT AND DISCHARGE

85. Admission of person with mental illness as independent patient in mental health establishment – (1) For the purposes of this Act, "independent patient or an independent admission"refers to the admission of person with mental illness, to a mental health establishment, whohas the capacity to make mental healthcare and treatment decisions or requires minimalsupport in making decisions.

(2) All admissions in the mental health establishment shall, as far as possible, beindependent admissions except when such conditions exist as make supported admissionunavoidable.

86. Independent admission and treatment – (1) Any person, who is not a minor and who considers himself to have a mentalillness and desires to be admitted to any mental health establishment for treatment mayrequest the medical officer or mental health professional in charge of the establishment to beadmitted as an independent patient.

(2) On receipt of such request under sub-section (1), the medical officer or mental health professional in charge of the establishment shall admit the person to the establishment if the medical officer or mental health professional is satisfied that––

(a) the person has a mental illness of a severity requiring admission to a mental health establishment;

(b) the person with mental illness is likely to benefit from admission and treatment to the mental health establishment;

(c) the person has understood the nature and purpose of admission to the mental health establishment, and has made the request for admission of his own free will, without any duress or undue influence and has the capacity to make mental healthcare and treatment decisions without support or requires minimal support fromothers in making such decisions.

(3) If a person is unable to understand the purpose, nature, likely effects of proposed treatment and of the probable result of not accepting the treatment or requires a very high level of support approaching hundred per cent. support in making decisions, he or she shall be deemed unable to understand the purpose of the admission and therefore shall not be admitted as independent patient under this section.

(4) A person admitted as an independent patient to a mental health establishment shall be bound to abide by order and instructions or bye-laws of the mental health establishment.

(5) An independent patient shall not be given treatment without his informed consent.

(6) The mental health establishment shall admit an independent patient on his own request, and shall not require the consent or presence of a nominated representative or a relative or care-giver for admitting the person to the mental health establishment.

(7) Subject to the provisions contained in section 88 an independent patient may get himself discharged from the mental health establishment without the consent of the medical officer or mental health professional in charge of such establishment.

87. Admission of Minor – (1) A minor may be admitted to a mental health establishment only after following the procedure laid down in this section.

(2) The nominated representative of the minor shall apply to the medical officer in charge of a mental health establishment for admission of the minor to the establishment.

(3) Upon receipt of such an application, the medical officer or mental health professional in charge of the mental health establishment may admit such a minor to the establishment, if two psychiatrists, or one psychiatrist and one mental health professional or one psychiatrist and one medical practitioner, have independently examined the minor on the day of admission or in the preceding seven days and both independently conclude based on the examination and, if appropriate, on information provided by others, that,—

(a) the minor has a mental illness of a severity requiring admission to a mental health establishment;

(b) admission shall be in the best interests of the minor, with regard to his health,well-being or safety, taking into account the wishes of the minor if ascertainable andthe reasons for reaching this decision;

(c) the mental healthcare needs of the minor cannot be fulfilled unless he isadmitted; and

(d) all community based alternatives to admission have been shown to havefailed or are demonstrably unsuitable for the needs of the minor.

(4) A minor so admitted shall be accommodated separately from adults, in anenvironment that takes into account his age and developmental needs and is at least of thesame quality as is provided to other minors admitted to hospitals for other medical treatments.

(5) The nominated representative or an attendant appointed by the nominatedrepresentative shall under all circumstances stay with the minor in the mental healthestablishment for the entire duration of the admission of the minor to the mental healthestablishment.

(6) In the case of minor girls, where the nominated representative is male, a female attendant shall be appointed by the nominated representative and under all circumstances shall stay with the minor girl in the mental health establishment for the entire duration of her admission.

(7) A minor shall be given treatment with the informed consent of his nominated representative.

(8) If the nominated representative no longer supports admission of the minor under this section or requests discharge of the minor from the mental health establishment, the minor shall be discharged by the mental health establishment.

(9) Any admission of a minor to a mental health establishment shall be informed by the medical officer or mental health professional in charge of the mental health establishment to the concerned Board within a period of seventy-two hours.

(10) The concerned Board shall have the right to visit and interview the minor or review the medical records if the Board desires to do so.

(11) Any admission of a minor which continues for a period of thirty days shall be immediately informed to the concerned Board.

(12) The concerned Board shall carry out a mandatory review within a period of seven days of being informed, of all admissions of minors continuing beyond thirty days and every subsequent thirty days.

(13) The concerned Board shall at minimum, review the clinical records of the minor and may interview the minor if necessary.

88. Discharge of Independent patients – (1) The medical officer or mental health professional in charge of a mental health establishment shall discharge from the mental health establishment any person admitted under section 86 as an independent patient immediately on request made by such person or if the person disagrees with his admission under section 86 subject to the provisions of sub-section (3).

(2) Where a minor has been admitted to a mental health establishment under section 87 and attains the age of eighteen years during his stay in the mental health establishment, the medical officer in charge of the mental health establishment shall classify him as an independent patient under section 86

and all provisions of this Act as applicable to independent patient who is not minor, shall apply to such person.

(3) Notwithstanding anything contained in this Act, a mental health professional may prevent discharge of a person admitted as an independent person under section 86 for a period of twenty-four hours so as to allow his assessment necessary for admission under section 89 if the mental health professional is of the opinion that––

(a) such person is unable to understand the nature and purpose of his decisions and requires substantial or very high support from his nominated representative; or

(b) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(c) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(d) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself.

(4) The person referred to in sub-section (3) shall be either admitted as a supported patient under section 89, or discharged from the establishment within a period of twenty-four hours or on completion of assessments for admission for a supported patient under section 89, whichever is earlier.

89. Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, up to thirty days (supported admission) – (1) The medical officer or mental health professional in charge of a mental health establishment shall admit every such person to the establishment, upon application by the nominated representative of the person, under this section, if––

(a) the person has been independently examined on the day of admission or in the preceding seven days, by one psychiatrist and the other being a mental health professional or a medical practitioner, and both independently conclude based on the examination and, if appropriate, on information provided by others, that the person has a mental illness of such severity that the person,––

(i) has recently threatened or attempted or is threatening or attempting to cause bodily harm to himself; or

(ii) has recently behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(iii) has recently shown or is showing an inability to care for himself to a degree that places the individual at risk of harm to himself;

(b) the psychiatrist or the mental health professionals or the medical practitioner, as the case may be, certify, after taking into account an advance directive, if any, that admission to the mental health establishment is the least restrictive care option possible in the circumstances; and

(c) the person is ineligible to receive care and treatment as an independent patient because the person is unable to make mental healthcare and treatment decisions independently and needs very high support from his nominated representative in making decisions.

(2) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period of thirty days.

(3) At the end of the period mentioned under sub-section (2), or earlier, if the person no longer meets the criteria for admission as stated in sub-section (1), the patient shall no longer remain in the establishment under this section.

(4) On the expiry of the period of thirty days referred to in sub-section (2), the person may continue to remain admitted in the mental health establishment in accordance with the provisions of section 90.

(5) If the conditions under section 90 are not met, the person may continue to remain in the mental health establishment as an independent patient under section 86 and the medical officer or mental health professional in charge of the mental health establishment shall inform the person of his admission status under this Act, including his right to leave the mental health establishment.

(6) Every person with mental illness admitted under this section shall be provided treatment after taking into account,––

(a) an advance directive if any; or

(b) informed consent of the patient with the support of his nominated representative subject to the provisions of sub-section (7).

(7) If a person with the mental illness admitted under this section requires nearly hundred per cent. support from his nominated representative in making a decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(8) In case where consent has been given under sub-section (7), the medical officer or mental health professional in charge of the mental health establishment shall record such consent in the medical records and review the capacity of the patient to give consent every seven days.

(9) The medical officer or mental health professional in charge of the mental health establishment shall report the concerned Board,––

(a) within three days the admissions of a woman or a minor;

(b) within seven days the admission of any person not being a woman or minor.

(10) A person admitted under this section or his nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or mental health professional in charge of the mental health establishment to admit the person to the mental health establishment under this section.

(11) The concerned Board shall review the decision of the medical officer or mental health professional in charge of the mental health establishment and give its findings thereon within seven days of receipt of request for such review which shall be binding on all the concerned parties.

(12) Notwithstanding anything contained in this Act, it shall be the duty of the medical officer or mental health professional in charge of the mental health establishment to keep the condition of the person with mental illness admitted under this section on going review.

(13) If the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the conditions specified under sub-section (1) are no longer applicable, he shall terminate the admission under this section, and inform the person and his nominated representative accordingly.

(14) Non applicability of conditions referred to in sub-section (13) shall not preclude the person with mental illness remaining as an independent patient.

(15) In a case, a person with the mental illness admitted under this section has been discharged, such person shall not be readmitted under this section within a period of seven days from the date of his discharge.

(16) In case a person referred to in sub-section (15) requires readmission within a period of seven days referred to in that sub-section, such person shall be considered for readmission in accordance with the provisions of section 90.

(17) If the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the person with mental illness admitted under this section in the mental health establishment requires or is likely to require further treatment beyond the period of thirty days, then such medical officer or mental health professional shall be duty bound to refer the matter to be examined by two psychiatrists for his admission beyond thirty days.

90. Admission and treatment of persons with mental illness, with high support needs, in mental health establishment, beyond thirty days (supported admission beyond thirty days) – (1) If a person with mental illness admitted under section 89 requires continuous admission and treatment beyond thirty days or a person with mental illness discharged under sub-section (15) of that section requires readmission within seven days of such discharge, he shall be admitted in ccordance with the provisions of this section.

(2) The medical officer or mental health professional in charge of a mental health establishment, upon application by the nominated representative of a

person with mental illness, shall continue admission of such person with mental illness, if—

(a) two psychiatrists have independently examined the person with mental illness in the preceding seven days and both independently conclude based on the examination and, on information provided by others that the person has a mentalillness of a severity that the person––
    (i) has consistently over time threatened or attempted to cause bodily harm to himself; or
    (ii) has consistently over time behaved violently towards another person or has consistently over time caused another person to fear bodily harm from him; or
    (iii) has consistently over time shown an inability to care for himself to a degree that places the individual at risk of harm to himself;
(b) both psychiatrists, after taking into account an advance directive, if any, certify that admission to a mental health establishment is the least restrictive care option possible under the circumstances; and
(c) the person continues to remain ineligible to receive care and treatment as a independent patient as the person cannot make mental healthcare and treatment decisions independently and needs very high support from his nominated representative, in making decisions.

(3) The medical officer or mental health professional in charge of the mental health establishment shall report all admissions or readmission under this section, within a period of seven days of such admission or readmission, to the concerned Board.

(4) The Board shall, within a period of twenty-one days from the date of last admission or readmission of person with mental illness under this section, permit such admission or readmission or order discharge of such person.

(5) While permitting admission or readmission or ordering discharge of such person under sub-section (4), the Board shall examine––

(a) the need for institutional care to such person;
(b) whether such care cannot be provided in less restrictive settings based in the community.

(6) In all cases of application for readmission or continuance of admission of a person with mental illness in the mental health establishment under this section, the Board may require the medical officer or psychiatrist in charge of treatment of such person with mental illness to submit a plan for community based treatment and the progress made, or likely to be made, towards realising this plan.

(7) The person referred to in sub-section (4) shall not be permitted to continue in the mental health establishment in which he had been admitted or his readmission in such establishment merely on the ground of non-existence of community based services at the place where such person ordinarily resides.

(8) The admission of a person with mental illness to a mental health establishment under this section shall be limited to a period up to ninety days in the first instance.

(9) The admission of a person with mental illness to a mental health establishment under this section beyond the period of ninety days may be extended for a period of one hundred and twenty days at the first instance and hereafter for a period of one hundred and eighty days each time after complying with the provisions of sub-sections (1) to (7).

(10) If the Board refuses to permit admission or continuation thereof or readmission under sub-section (9), or on the expiry of the periods referred to in sub-section (9) or earlier if such person no longer falls within the criteria for admission under sub-section (1), such person shall be discharged from such mental health establishment.

(11) Every person with mental illness admitted under this section shall be provided treatment, after taking into account—

(a) an advance directive; or

(b) informed consent of the person with the support from his nominated representative subject to the provision of sub-section (12).

(12) If a person with mental illness admitted under this section, requires nearly hundred per cent. support from his nominated representative, in making decision in respect of his treatment, the nominated representative may temporarily consent to the treatment plan of such person on his behalf.

(13) In a case where consent has been given under sub-section (12), the medical officer or mental health professional in charge of the mental health establishment shall record such consent in the medical records of such person with mental illness and review on the expiry of every fortnight, the capacity of such person to give consent.

(14) A person with mental illness admitted under this section, or his nominated representative or a representative of a registered non-governmental organisation with the consent of the person, may apply to the concerned Board for review of the decision of the medical officer or mental health professional in charge of medical health establishment to admit such person in such establishment and the decision of the Board thereon shall be binding on all parties.

(15) Notwithstanding anything contained in this Act, if the medical officer or mental health professional in charge of the mental health establishment is of the opinion that the conditions under sub-section (1) are no longer applicable, such medical officer or mental health professional shall discharge such person from such establishment and inform such person and his nominated representative accordingly.

(16) The person with mental illness referred to in sub-section (15) may continue to remain in the mental health establishment as an independent patient.

91. Leave of Absence – The medical officer or mental health professional in charge of the mental health establishment may grant leave to any person with mental illness admitted under section 87 or section 89 or section 90, to be absent from the establishment subject to such conditions, if any, and for such duration as such medical officer or psychiatrist may consider necessary.

92. Absence without leave or discharge – If any person to whom section 103 applies absents himself without leave or without discharge from the mental health establishment, he shall be taken into protection by any Police Officer at the request of the medical officer or mental health professional in-charge of the mental health establishment and shall be sent back to the mental health establishment immediately.

93. Transfer of persons with mental illness from one mental health establishment to another mental health establishment –(1) A person with mental illness admitted to a mental health establishment under section 87 or section 89 or section 90 or section 103, as the case may be, may subject to any general or special order of the Board be removed from such mental health establishment and admitted to another mental health establishment within the State or with the consent of the Central Authority to any mental health establishment in any other State:

Provided that no person with mental illness admitted to a mental health establishment under an order made in pursuance of an application made under this Act shall be so removed unless intimation and reasons for the transfer have been given to the person with mental illness and his nominated representative.

(2) The State Government may make such general or special order as it thinks fit directing the removal of any prisoner with mental illness from the place where he is for the time being detained, to any mental health establishment or other place of safe custody in the State or to any mental health establishment or other place of safe custody in any other State with the consent of the Government of that other State.

94. Emergency treatment – (1) Notwithstanding anything contained in this Act, any medical treatment, including treatment for mental illness, may be provided by any registered medical practitioner to a person with mental illness either at a health establishment or in the community, subject to the informed consent of the nominated representative, where the nominated representative is available, and where it is immediately necessary to prevent—

(a) death or irreversible harm to the health of the person; or

(b) the person inflicting serious harm to himself or to others; or

(c) the person causing serious damage to property belonging to himself or to others where such behaviour is believed to flow directly from the person's mental illness.

Explanation.— For the purposes of this section, "emergency treatment" includes transportation of the person with mental illness to a nearest mental health establishment for assessment.

(2) Nothing in this section shall allow any medical officer or psychiatrist to give to the person with mental illness medical treatment which is not directly related to the emergency treatment specified under sub-section (1).

(3) Nothing in this section shall allow any medical officer or psychiatrist to use electroconvulsive therapy as a form of treatment.

(4) The emergency treatment referred to in this section shall be limited to seventy-two hours or till the person with mental illness has been assessed at a mental health establishment, whichever is earlier:

Provided that during a disaster or emergency declared by the appropriate Government, the period of emergency treatment referred to in this sub-section may extend up to seven days.

95. Prohibited procedures – (1) Notwithstanding anything contained in this Act, the following treatments shall not be performed on any person with mental illness—

(a) electro-convulsive therapy without the use of muscle relaxants and an aesthesia;

(b) electro-convulsive therapy for minors;

(c) sterilisation of men or women, when such sterilisation is intended as a treatment for mental illness;

(d) chained in any manner or form whatsoever.

(2) Notwithstanding anything contained in sub-section (1), if, in the opinion of psychiatrist in charge of a minor's treatment, electro-convulsive therapy is required, then, such treatment shall be done with the informed consent of the guardian and prior permission of the concerned Board.

96. Restriction on psychosurgery for persons with mental illness – (1) Notwithstanding anything contained in this Act, psychosurgery shall not be performed as a treatment for mental illness unless—

(a) the informed consent of the person on whom the surgery is being performed; and

(b) approval from the concerned Board to perform the surgery, has been obtained.

(2) The Central Authority may make regulations for the purpose of carrying out the provisions of this section.

97. Restraints and seclusion – (1) A person with mental illness shall not be subjected to seclusion or solitary confinement, and, where necessary, physical restraint may only be used when,—

(a) it is the only means available to prevent imminent and immediate harm to person concerned or to others;

(b) it is authorised by the psychiatrist in charge of the person's treatment at the mental health establishment.

(2) Physical restraint shall not be used for a period longer than it is absolutely necessary to prevent the immediate risk of significant harm.

(3) The medical officer or mental health professional in charge of the mental health establishment shall be responsible for ensuring that the method, nature of restraint justification for its imposition and the duration of the restraint are immediately recorded in the person's medical notes.

(4) The restraint shall not be used as a form of punishment or deterrent in any circumstance and the mental health establishment shall not use restraint merely on the ground of shortage of staff in such establishment.

(5) The nominated representative of the person with mental illness shall be informed about every instance of restraint within a period of twenty-four hours.

(6) A person who is placed under restraint shall be kept in a place where he can cause no harm to himself or others and under regular ongoing supervision of the medical personnel at the mental health establishment.

(7) The mental health establishment shall include all instances of restraint in the report to be sent to the concerned Board on a monthly basis.

(8) The Central Authority may make regulations for the purpose of carrying out the provisions of this section.

(9) The Board may order a mental health establishment to desist from applying restraint if the Board is of the opinion that the mental health establishment is persistently and willfully ignoring the provisions of this section.

98. Discharge planning – (1) Whenever a person undergoing treatment for mental illness in a mental health establishment is to be discharged into the community or to a different mental health establishment or where a new psychiatrist is to take responsibility of the person's care and treatment, the psychiatrist who has been responsible for the person's care and treatment shall consult with the person with mental illness, the nominated representative, the family member or care-giver with whom the person with mental illness shall reside on discharge from the hospital, the psychiatrist expected to be responsible for the person's care and treatment in the future, and such other persons as may be appropriate, as to what treatment or services would be appropriate for the person.

(2) The psychiatrist responsible for the person's care shall in consultation with the persons referred to in sub-section (1) ensure that a plan is developed as to how treatment or services shall be provided to the person with mental illness.

(3) The discharge planning under this section shall apply to all discharges from a mental health establishment.

99. Research – (1) The professionals conducting research shall obtain free and informed consent from all persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medicinal interventions.

(2) In case of research involving any psychological, physical, chemical or medicinal interventions to be conducted on person who is unable to give free and informed consent but does not resist participation in such research, permission to conduct such research shall be obtained from concerned State Authority.

(3) The State Authority may allow the research to proceed based on informed consent being obtained from the nominated representative of persons with mental illness, if the State Authority is satisfied that––

(a) the proposed research cannot be performed on persons who are capable of giving free and informed consent;

(b) the proposed research is necessary to promote the mental health of the population represented by the person;

(c) the purpose of the proposed research is to obtain knowledge relevant to the particular mental health needs of persons with mental illness;

(d) a full disclosure of the interests of persons and organisations conducting the proposed research is made and there is no conflict of interest involved; and

(e) the proposed research follows all the national and international guidelines and regulations concerning the conduct of such research and ethical approval has been obtained from the institutional ethics committee where such research is to be conducted.

(4) The provisions of this section shall not restrict research based study of the case notes of a person who is unable to give informed consent, so long as the anonymity of the persons is secured.

(5) The person with mental illness or the nominated representative who gives informed consent for participation in any research under this Act may withdraw the consent at any time during the period of research.

CHAPTER XIII

RESPONSIBILITIES OF OTHER AGENCIES

100. Duties of police officers in respect of persons with mental illness – (1) Every officer in-charge of a police station shall have a duty––

(a) to take under protection any person found wandering at large within the limits of the police station whom the officer has reason to believe has mental illness and is incapable of taking care of himself; or

(b) to take under protection any person within the limits of the police station whom the officer has reason to believe to be a risk to himself or others by reason of mental illness.

(2) The officer in-charge of a police station shall inform the person who has been taken into protection under sub-section (1), the grounds for taking him into such protection or his nominated representative, if in the opinion of the officer such person has difficulty in understanding those grounds.

(3) Every person taken into protection under sub-section (1) shall be taken to the nearest public health establishment as soon as possible but not later than twenty-four hours from the time of being taken into protection, for assessment of the person's healthcare needs.

(4) No person taken into protection under sub-section (1) shall be detained in the police lock up or prison in any circumstances.

(5) The medical officer in-charge of the public health establishment shall be responsible for arranging the assessment of the person and the needs of the person with mental illness will be addressed as per other provisions of this Act as applicable in the particular circumstances.

(6) The medical officer or mental health professional in-charge of the public mental health establishment if on assessment of the person finds that such person does not have a mental illness of a nature or degree requiring admission to the mental health establishment, he shall inform his assessment to the police officer who had taken the person into protection and the police officer shall take the person to the person's residence or in case of homelesspersons, to a Government establishment for homeless persons.

(7) In case of a person with mental illness who is homeless or found wandering in the community, a First Information Report of a missing person shall be lodged at the concerned police station and the station house officer shall have a duty to trace the family of such person and inform the family about the whereabouts of the person.

101. Report to Magistrate of person with mental illness in private residence who is ill-treated or neglected – (1) Every officer in-charge of a police station, who has reason to believe that any person residing within the limits of the police station has a mental illness and is being illtreated or neglected, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the person with mental illness resides.

(2) Any person who has reason to believe that a person has mental illness and is being ill-treated or neglected by any person having responsibility for care of such person, shall report the fact to the police officer in-charge of the police station within whose jurisdiction the person with mental illness resides.

(3) If the Magistrate has reason to believe based on the report of a police officer or otherwise, that any person with mental illness within the local limits of his jurisdiction is being ill-treated or neglected, the Magistrate may cause the person with mental illness to be produced before him and pass an order in accordance with the provisions of section 102.

102. Conveying or admitting person with mental illness to mental health establishment by Magistrate – (1) When any person with mental illness or who may have a mental illness appears or is brought before a Magistrate, the Magistrate may, order in writing––

(a) that the person is conveyed to a public mental health establishment for assessment and treatment, if necessary and the mental health establishment shall deal with such person in accordance with the provisions of the Act; or

(b) to authorise the admission of the person with mental illness in a mental health establishment for such period not exceeding ten days to enable the medical officer or mental health professional in charge of the mental health establishment to carry out an assessment of the person and to plan for necessary treatment, if any.

(2) On completion of the period of assessment referred to in sub-section (1), the medical officer or mental health professional in charge of the mental health establishment shall submit a report to the Magistrate and the person shall be dealt with in accordance with the provisions of this Act.

103. Prisoners with mental illness – (1) An order under section 30 of the Prisoners Act, 1900 or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the admission of a prisoner with mental illness into any suitable mental health establishment, shall be sufficient authority for the admission of such person in such establishment to which such person may be lawfully transferred for care and treatment therein:

Provided that transfer of a prisoner with mental illness to the psychiatric ward in the medical wing of the prison shall be sufficient to meet the requirements under this section:

Provided further that where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Board.

(2) The method, modalities and procedure by which the transfer of a prisoner under this section is to be effected shall be such as may be prescribed.

(3) The medical officer of a prison or jail shall send a quarterly report to the concerned Board certifying therein that there are no prisoners with mental illness in the prison or jail.

(4) The Board may visit the prison or jail and ask the medical officer as to why the prisoner with mental illness, if any, has been kept in the prison or jail and not transferred for treatment to a mental health establishment.

(5) The medical officer in-charge of a mental health establishment wherein any person referred to in sub-section (1) is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained.

(6) The appropriate Government shall setup mental health establishment in the medical wing of at least one prison in each State and Union territory and prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.

(7) The mental health establishment setup under sub-section (5) shall be registered under this Act with the Central or State Mental Health Authority, as the case may be, and shall conform to such standards and procedures as may be prescribed.

104. Persons in custodial institutions– (1) If it appears to the person in-charge of a State run custodial institution (including beggars homes, orphanages, women's protection homes and children homes) that any resident of the institution has, or is likely to have, a mental illness, then, he shall take such resident of the institution to the nearest mental health establishment run or funded by the appropriate Government for assessment and treatment, as necessary.

(2) The medical officer in-charge of a mental health establishment shall be responsible for assessment of the person with mental illness, and the treatment required by such persons shall be decided in accordance with the provisions of this Act.

105. Question of mental illness in judicial process – If during any judicial process before any competent court, proof of mental illness is produced and is challenged by the other party, the court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the court.

CHAPTER XIV
RESTRICTION TO DISCHARGE FUNCTIONS BY PROFESSIONALS NOT COVERED BY PROFESSION

106. Restriction to discharge functions by professionals not covered by profession – No mental health professional or medical practitioner shall discharge any duty or perform any function not authorised by this Act or specify or recommend any medicine or treatment not authorised by the field of his profession.

CHAPTER XV
OFFENCES AND PENALTIES

107. Penalties for establishing or maintaining mental health establishment in contravention of provisions of this Act – (1) Whoever carries on a mental health establishment without registration shall be liable to a penalty which shall not be less than five thousand rupees but which may extend to fifty thousand rupees for first contravention or a penalty which shall not be less than fifty thousand rupees but which may extend to two lakh rupees for a second contravention or a penalty which shall not be less than two lakh rupees but which may extend to five lakh rupees for every subsequent contravention.

(2) Whoever knowingly serves in the capacity as a mental health professional in a mental health establishment which is not registered under this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

(3) Save as otherwise provided in this Act, the penalty under this section shall be adjudicated by the State Authority.

(4) Whoever fails to pay the amount of penalty, the State Authority may forward the order to the Collector of the district in which such person owns any property or resides or carries on his business or profession or where the mental health establishment is situated, and the Collector shall recover from such persons or mental health establishment the amount specified thereunder, as if it were an arrear of land revenue.

(5) All sums realised by way of penalties under this Chapter shall be credited to the Consolidated Fund of India.

108. Punishment for contravention of provisions of the Act or rules or regulations made thereunder – Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

109. Offences by Companies – (1) Where an offence under this Act has been committed by a company, everyperson who at the time the offence was committed was in-charge of, and was responsible to,the company for the conduct of the business of the company, as well as the company, shallbe deemed to be guilty of the offence and shall be liable to be proceeded against andpunished accordingly:

Provided that nothing contained in this sub-section shall render any such personliable to any punishment provided in this Act, if he proves that the offence was committedwithout his knowledge or that he has exercised all due diligence to prevent the commissionof such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence underthis Act has been committed by a company and it is proved that the offence has beencommitted with the consent or connivance of, or is attributable to, any neglect on the part ofany director, manager, secretary or other officer of the company, such director, manager,secretary or other officer shall also be deemed to be guilty of the offence and shall be liableto be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other associationof individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVI
MISCELLANEOUS

110. Power to call for information – (1) The Central Government may, by a general or special order, call upon theAuthority or the Board to furnish, periodically or as and when required any informationconcerning the activities carried on by the Authority or the Board, as the case may be, insuch form as may be prescribed, to enable that Government, to carry out the purposes of this Act.

(2) The State Government may, by a general or special order, call upon the StateAuthority or the Board to furnish, periodically or as and when required any informationconcerning the activities carried on by the State Authority or the Board in such form as maybe prescribed, to enable that Government, to carry out the purposes of this Act.

111. Power of Central Government to issue directions – (1) Without prejudice to the foregoing provisions of this Act, the Authority shall,in exercise of its powers or the performance of its functions under this Act, be bound by suchdirections on questions of policy, other than those relating to technical and administrativematters, as the Central Government may give in writing to it from time to time:

Provided that the Authority shall, as far as practicable, be given an opportunity toexpress its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or notshall be final.

112. Power of Central Government to supersede Central Authority – (1) If at any time the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Central Authority,it is unable to discharge the functions or perform the duties imposed on it by or underthe provisions of this Act; or

(b) that the Central Authority has persistently defaulted in complying with anydirection given by the Central Government under this Act or in the discharge of thefunctions or performance of the duties imposed on it by or under the provisions of thisAct; or

(c) that circumstances exist which render it necessary in the public interest so todo, the Central Government may, by notification and for reasons to be specified therein, supersede the Central Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Central Authority to make representations against the proposed supersession and shall consider representations, if any, of the Central Authority.

(2) Upon the publication of a notification under sub-section (1), superseding the Central Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Governmentmay specify in this behalf;

(c) all properties owned or controlled by the Central Authority shall, until the Central Authority is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Central Authority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

113. Power of State Government to supersede State Authority – (1) If at any time the State Government is of the opinion—

(a) that on account of circumstances beyond the control of the State Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the State Authority has persistently defaulted in complying with any direction given by the State Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act; or

(c) that circumstances exist which render it necessary in the public interest so to do, the State Government may, by notification and for reasons to be specified therein, supersede the State Authority for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the State Government shall give a reasonable opportunity to the State Authority to make representations against the proposed supersession and shall consider representations, if any, of the State Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the State Authority,—

(a) the chairperson and other members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the State Authority shall, until the State Authority is reconstituted under sub-section (3), be exercised and discharged by the State Government or such authority as the State Government may specify inthis behalf;

(c) all properties owned or controlled by the State Authority shall, until the State Authority is reconstituted under sub-section (3), vest in the State Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government shall reconstitute the StateAuthority by a fresh appointment of its chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The State Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before the State Legislature at the earliest.

114. Special provisions for States in north-east and hill States – (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, taking into consideration the communication, travel and transportation difficulties, apply to the States of Assam, Meghalaya, Tripura, Mizoram, Manipur, Nagaland, Arunachal Pradesh and Sikkim, with following modifications, namely:—

(a) under sub-section (3) of section 73, the chairperson of the Central Authority may constitute one or more Boards for all the States;

(b) in sub-section (2) of section 80, reference to the period of “seven days”, and in sub-section (3) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days”, respectively;

(c) in sub-section (9) of section 87, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”, and in sub-sections (3) and (12) of that section, reference to a period of “seven days” shall be construed as “ten days”;

(d) in sub-section (3) of section 88, reference to the period of “twenty-four hours” shall be construed as “seventy-two hours”;

(e) in clauses (a) and (b) of sub-section (9) of section 89, reference to the period of “three days” and “seven days” shall be construed as “seven days” and “ten days” respectively;

(f) in sub-section (3) of section 90, reference to the period of “seven days” and in sub-section (4) of that section, reference to the period of “twenty-one days” shall be construed as “ten days” and “thirty days” respectively;

(g) in sub-section (4) of section 94, reference to the period of “seventy-two hours” shall be construed as “one hundred twenty hours”.

(2) The provisions of clauses (b) to (g) of sub-section (1) shall also apply to the States of Uttarakhand, Himachal Pradesh and Jammu and Kashmir and the Union territories of Lakshadweep and Andaman and Nicobar Islands.

(3) The provisions of this section shall cease to have effect on the expiry of a period of ten years from the commencement of this Act, except as respects things done or omitted to be done before such cesser, and upon such cesser section 6 of the General Clauses Act, 1897, shall apply as if this Act had then been repealed by a Central Act.

115. Presumption of severe stress in case of attempt to commit suicide – (1) Notwithstanding anything contained in section 309 of the Indian Penal Code any person who attempts to commit suicide shall be presumed, unless proved otherwise, tohave severe stress and shall not be tried and punished under the said Code.

(2) The appropriate Government shall have a duty to provide care, treatment is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

117. Transitory Provisions – The Central Government may, if it considers so necessary in the interest of persons with mental illness being governed by the Mental Health Act, 1987, take appropriate interim measures by making necessary transitory schemes.

118. Chairperson, members and staff of Authority and Board to be public servants – The chairperson, and other members and the officers and other employees of the Authority and Board shall be deemed to be public servants within the meaning of section 21of the Indian Penal Code.

119. Protection of action taken in good faith– No suit, prosecution or other legal proceeding shall lie against the appropriate Government or against the chairperson or any other member of the Authority or the Board, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or regulation made thereunder in the discharge of official duties.

120. Act to have Overriding effect –The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

121. Power of Central Government and State Governments to make rules – (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Subject to the provisions of sub-section (1), the State Government may, with the previous approval of the Central Government, by notification, make rules for carrying out the provisions of this Act:

Provided that the first rules shall be made by the Central Government, by notification.

(3) In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (1) may provide for all or any of the following matters, namely:—

(a) qualifications relating to clinical psychologist under sub-clause (ii) of clause (f) of sub-section (1) of section 2;

(b) qualifications relating to psychiatric social worker under clause (w) of sub-section (1) of section 2;

(c) the manner of nomination of members of the Central Authority under sub-section (2) of section 34;

(d) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the Central Authority under sub-section (3) of section 35;

(e) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 43;

(f) the manner of nomination of members of the State Authority under sub-section (2) of section 46;

(g) the salaries and allowances payable to, and the other terms and conditions of service of, the chairperson and other members of the State Authority under sub-section (3) of section 47;

(h) the procedure for registration (including the fees to be levied for such registration) of the mental health establishments under sub-section (2) of section 55;

(i) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 59;

(j) the form in, and the time within which, an annual report shall be prepared under section 60;

(k) the form of accounts and other relevant records and annual statement of accounts under sub-section (1) of section 63;

(l) the form in, and the time within which, an annual report shall be prepared under section 64;

(m) manner of constitution of the Board by the State Authority for a district or groups of districts in a State;

(n) other disqualifications of chairperson or members of the Board under clause (e) of sub-section (2) of section 82;

(o) any other matter which is required to be, or may be, specified by rules or in respect for which provision is to be made by rules.

(4) In particular, and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may provide for all or any of the following matters, namely:—

(a) the manner of proof of mental healthcare and treatment under sub-section (1) of section 4;

(b) provision of half-way homes, sheltered accommodation and supported accommodation under clause (b) of sub-section (4) of section 18;

(c) hospitals and community based rehabilitation establishment and services under clause (d) of sub-section (4) of section 18;

(d) basic medical records of which access is to be given to a person with mental illness under sub-section (1) of section 25;

(e) custodial institutions under sub-section (2) of section 27;

(f) the form of application to be submitted by the mental health establishment with the undertaking that the mental health establishment fulfils the minimum standards, if any, specified by the Authority, under the Explanation to sub-section (2) of section 65;

(g) the form of certificate of registration under sub-section (3) of section 65;

(h) the form of application, the details, the fees to be accompanied with it under sub-section (1) of section 66;

(i) the form of certificate of provisional registration containing particulars and information under sub-section (4) of section 66;

(j) the fees for renewal of registration under sub-section (11) of section 66;

(k) the person or persons (including representatives of the local community) for the purpose of conducting an audit of the registered mental health establishments under sub-section (1) and fees to be charged by the Authority for conducting such audit under sub-section (2) of section 67;

(l) the person or persons for the purpose of conducting and inspection or inquiry of the mental health establishments under sub-section (1) of section 68;

(m) the manner to enter and search of a mental health establishment operating without registration under sub-section (6) of section 68;

(n) the fees for issuing a duplicate certificate under sub-section (2) of section 70;

(o) the form and manner in which the Authority shall maintain in digital format a register of mental health establishments, the particulars of the certificate of registration so granted in a separate register to be maintained under section 71;

(p) constitution of the Boards under sub-section (3) of section 73;

(q) the honorarium and other allowances payable to, and the other terms and conditions of service of, the chairperson and members of the Board under sub-section (3) of section 75;

(r) method, modalities and procedure for transfer of prisoners under sub-section (2) of section 103;

(s) the standard and procedure to which the Central or State Health Authority shall confirm under sub-section (6) of section 103;

(t) the form for furnishing periodical information under section 110; and

(u) any other matter which is required to be, or may be, specified by rules or in respect for which provision is to be made by rules.

122. Power of Central Authority to make regulations – (1) The Central Authority may, by notification, make regulations, consistent with the provisions of this Act and the rules made thereunder, to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) manner of making an advance directive under section 6;

(b) additional regulations, regarding the procedure of advance directive to protect the rights of persons with mental illness under sub-section (3) of section 12;

(c) the salaries and allowances payable to, and the other terms and conditions of service (including the qualifications, experience and manner of appointment) of, the chief executive officer and other officers and employees of the Central Authority under sub-section (3) of section 40;

(d) the times and places of meetings of the Central Authority and rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) under sub-section (1) of section 44;

(e) the minimum standards of facilities and services under clause (a) of sub-section (4) of section 65;

(f) the minimum qualifications for the personnel engaged in mental health establishment under clause (b) of sub-section (4) of section 65;

(g) provisions for maintenance of records and reporting under clause (c) of sub-section (4) of section 65;

(h) any other conditions under clause (d) of sub-section (4) of section 65;

(i) categories of different mental health establishment under clause (a) of sub-section (5) of section 65;

(j) the form of application to be made by the mental health establishment and the fees to be accompanied with it under sub-section (12) of section 66;

(k) manner of submitting evidence under sub-section (13) of section 66;

(l) the manner of filing objections under sub-section (14) of section 66;

(m) the time and places and rules of procedure in regard to the transaction ofbusiness at its meetings to be observed by the Central Authority and the Board undersection 87;

(n) regulations under sub-section (2) of section 96 and under sub-section (8) ofsection 97;

(o) any other matter which is required to be, or may be, specified by regulationsor in respect of which provision is to be made by regulations.

123. Power of State Authority to make regulations – (1) The State Authority may, by notification, make regulations, consistent withthe provision of this Act and the rules made thereunder, to carry out the provisions ofthis Act.

(2) In particular, and without prejudice to the generality of the foregoing power, suchregulations may provide for all or any of the following matters, namely:—

(a) the minimum quality standards of mental health services under sub-section (9)of section 18;

(b) the salaries and allowances payable to, and the other terms and conditions ofservice (including the qualifications, experience and manner of appointment) of thechief executive officer and other officers and employees of the State Authority undersub-section (3) of section 52;

(c) the manner in which the State Authority shall publish the list of registeredmental health professionals under clause (d) of sub-section (1) of section 55;

(d) the times and places of meetings of the State Authority and rules of procedurein regard to the transaction of business at its meetings (including quorum at suchmeetings) under sub-section (1) of section 56;

(e) the form of application to be made by the mental health establishment andthe fees to be accompanied with it under sub-section (12) of section 66;

(f) the manner of filing objections under sub-section (14) of section 66;

(g) any other matter which is required to be, or may be, specified by regulationsor in respect of which provision is to be made by regulations.

124. Laying of rules and regulations – (1) Every rule made by the Central Government and every regulation made by theCentral Authority under this Act shall be laid, as soon as may be after it is made, before eachHouse of Parliament while it is in session, for a total period of thirty days which may becomprised in one session or in two or more successive sessions, and if, before the expiry ofthe session immediately following the session or the successive sessions aforesaid, bothHouses agree in making any modification in the rule or regulation, as the case may be, orboth Houses agree that the rule or regulation, as the case may be, should not be made, therule or regulation, as the case may be, shall thereafter have effect only in such modified formor be of no effect, as the case may be; so, however, that any such modification or annulmentshall be without prejudice to the validity of anything previously done under that rule orregulation, as the case may be.

(2) Every rule made by the State Government and every regulation made by the StateAuthority under this Act shall be laid, as soon as may be after it is made, before each Houseof the State Legislature where it consists of two Houses, or where such Legislature consistsof one House, before that House.

125. Power to remove difficulties– (1) If any difficulty arises in giving effect to the provisions of this Act, the CentralGovernment may, by order, published in the Official Gazette, make such provisions, notinconsistent with the provisions of this Act, as may appear to be necessary or expedient forremoving the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

126. Repeal and saving – (1) The Mental Health Act, 1987 is hereby repealed. (2) Notwithstanding such repeal,––

(a) anything done or any action taken or purported to have been done or taken (including any rule, notification, inspection, order or declaration

made or any document or instrument executed or any direction given or any proceedings taken or any penalty or fine imposed) under the repealed Act shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;

(b) the Central Authority for Mental Health Services, and the State Authority for Mental Health Services established under the repealed Act shall, continue to function under the corresponding provisions of this Act, unless and until the Central Authority and the State Authority are constituted under this Act;

(c) any person appointed in the Central Authority for Mental Health Services, or the State Authority for Mental Health Services or any person appointed as the visitor under the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold theirrespective offices under the corresponding provisions of this Act, unless they are removed or until superannuated;

(d) any person appointed under the provisions of the repealed Act and holding office as such immediately before the commencement of this Act, shall, on such commencement continue to hold his office under the corresponding provisions of this Act, unless they are removed or until superannuated;

(e) anylicence granted under the provisions of the repealed Act, shall be deemed to have been granted under the corresponding provisions of this Act unless the same are cancelled or modified under this Act;

(f) any proceeding pending in any court under the repealed Act on the commencement of this Act may be continued in that court as if this Act had not been enacted;

(g) any appeal preferred from the order of a Magistrate under the repealed Act but not disposed of before the commencement of this Act may be disposed of by the court as if this Act had not been enacted.

(3) The mention of the particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

DR. G. NARAYANA RAJU
Secretary to the Govt. of India

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