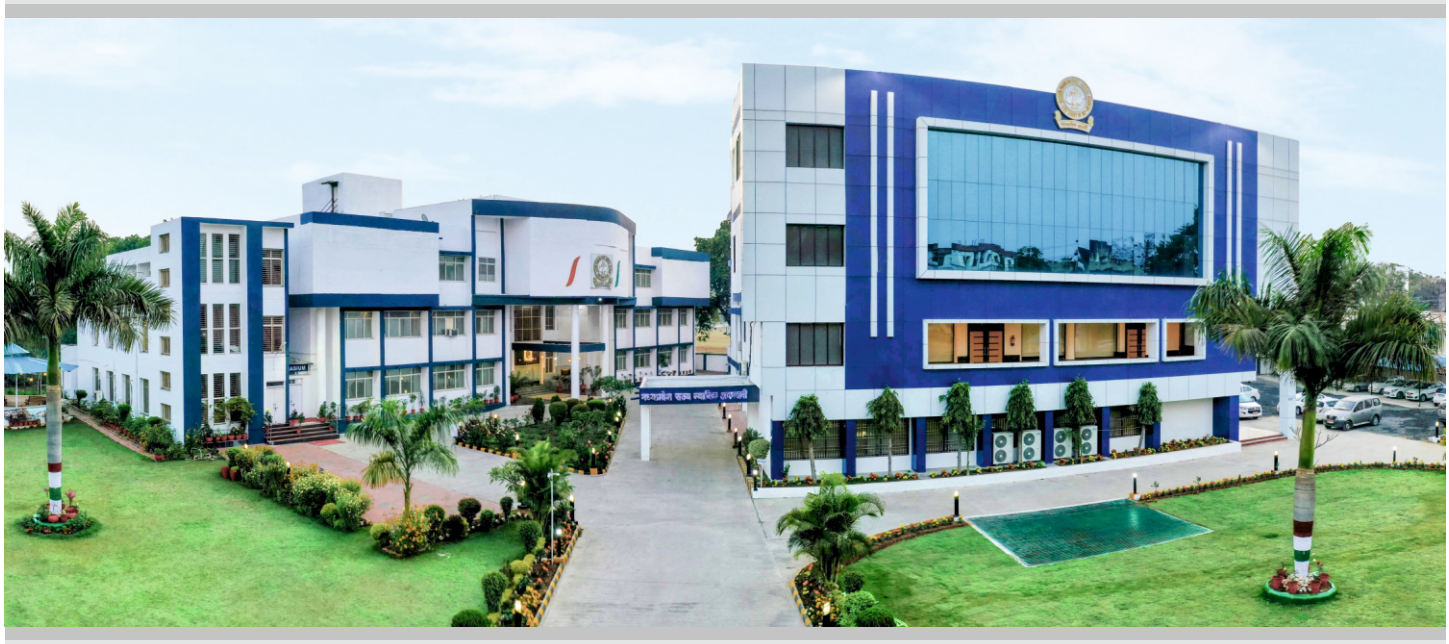
# JOTI JOURNAL

(BI-MONTHLY)



**FEBRUARY 2022**

**MADHYA PRADESH STATE JUDICIAL ACADEMY**
**JABALPUR**

# MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

## GOVERNING COUNCIL

| | |
|---|---|
| *Hon'ble Shri Justice Ravi Malimath* | Chief Justice & Patron |
| *Hon'ble Shri Justice Sujoy Paul* | Chairman |
| *Hon'ble Shri Justice Anand Pathak* | Member |
| *Hon'ble Shri Justice Vivek Agarwal* | Member |
| *Hon'ble Smt. Justice Nandita Dubey* | Member |
| *Hon'ble Shri Justice Rajeev Kumar Shrivastava* | Member |
| *Director, M.P. State Judicial Academy* | Member-Secretary |

●

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

●

**EDITOR**
*Ramkumar Choubey*
Director

●

**ASSOCIATE EDITORS**
*Dhirendra Singh,* Faculty Sr., *Tajinder Singh Ajmani,* OSD,
*Jayant Sharma,* Faculty Jr., *Yashpal Singh,* Dy. Director*, Anu Singh,* OSD

# JOTI JOURNAL FEBRUARY - 2022

# SUBJECT- INDEX

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

# EDITORIAL

Esteemed Readers,

Defining the role of an advocate Justice Krishna Iyer had said; “Counsel in Court are ‘robed’ representatives, within the parameters of the adversary system, geared to the higher cause of justice, not amoral attorneys paid to ventriloquize the case of the principal.”

The judicial system is composed of judges and advocates who assist the judiciary in dispensing justice. For a smooth administration of justice, the Bar and the Bench are two elements of the same system without which justice cannot be efficiently administered in the courts. The advocates play a vital role in this process by assisting the court in the administration of justice. The Apex Court in *P. D. Gupta v. Ram Murti’s case, reported in (1997) 7 SCC 147* opined that “the Administration of justice not only concerns the Bench, it concerns both the Bench and the Bar. Both the judges and the advocates complement each other. The main duty of an advocate is to present the case in court by informing the court about the law and the facts of the case and to help the court in arising at the conclusion of the case. For good administration of justice, an advocate shall possess good advocacy skills.”

Quality judicial education is imperative for advocates so that their legal acumen is developed to the fullest. Hon’ble the Chief Justice and Patron of the Madhya Pradesh State Judicial Academy has expressed the need to impart training to the new advocates at district and tehsil levels. To execute this baronial idea, the Academy prepared an Action Plan of Foundation Training Programme for Advocates at District Level on continuous basis. The first programme was organized on 12th & 13th February in all the 50 districts of the State simultaneously which was inaugurated online by Hon’ble the Chief Justice. Hon’ble Shri Justice Sheel Nagu, Administrative Judge, Hon’ble Shri Justice Sujoy Paul, Chairman of the Academy and other Hon’ble Judges of the High Court of Madhya Pradesh also joined the inaugural session. In this programme, a total of 2352 Advocates from across the State, practicing within the last 5 years were nominated. We strive to make a difference with this initiative of ours.

This year, the Academy, through its Academic Calendar, 2022 has come up with several programmes of judicial education and training for the Judges of the District Judiciary and other stake holders as well. In the initial days of this year, we were again compelled to prorogue some of our programmes proposed to be conducted in physical mode like Colloquium for Principal District & Sessions Judges, Awareness Programme on – Identified Legal Issues and Regional Workshop for Panel Lawyers.

The Academy commenced its academic activities for this year by conducting online Refresher Course for Civil Judges, Senior Division on completion of five years judicial service. Workshop on – Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Workshop on – Key issues relating to the Protection of Children from Sexual Offences Act, 2012 and Special Programme for Advocates on e-Court Project were also organized through virtual mode during this period.

Besides calendar schedule, the Academy in collaboration with NIMHANS, has organized two online deliberations in two phases on topics namely; Dilemmas of implementing Section 15: Preliminary Assessment for Children in conflict with Law for the Principal Magistrates, Juvenile Justice Boards which was held on 9th & 15th January, 2022 and preparatory deliberation of Child Witness Testimony under the POCSO Act, 2012; Judicial Understanding of Competency and Credibility for Special Judges presiding over POCSO Court held on 26th February, 2022. The final deliberation is scheduled for next month. An awareness programme was also conducted on 29th January for the senior police officers and nodal persons of insurer as per the directions issued by the Supreme Court in *Bajaj Allianz General Insurance Company Pvt. Ltd. v. Union of India & ors.* [WP (Civil) No. 534/2020 order dated 16.11.2021].

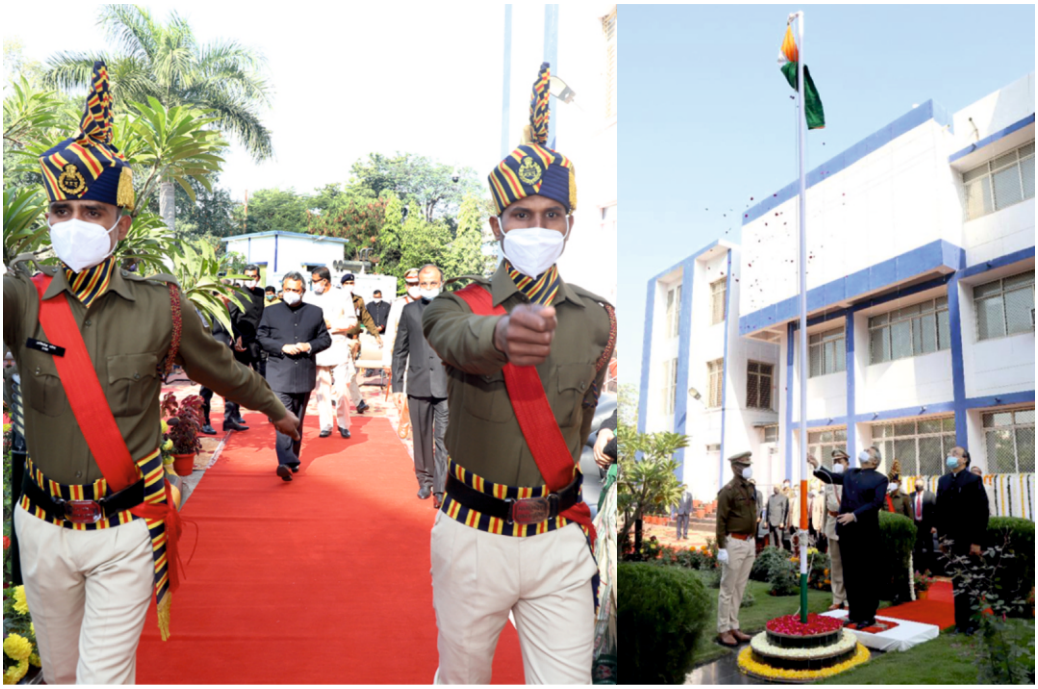
This journal is an evolving compilation of advancements made in the field of judiciary by instrumental members of this field. These instrumental members include our esteemed readers as well to whom this journal is more than just a concept, it is reality. We appreciate and encourage this effort in making our journal an important part of judicial literature and request all of you to kindly continue the effort and support that you put in making this journal a finished product.

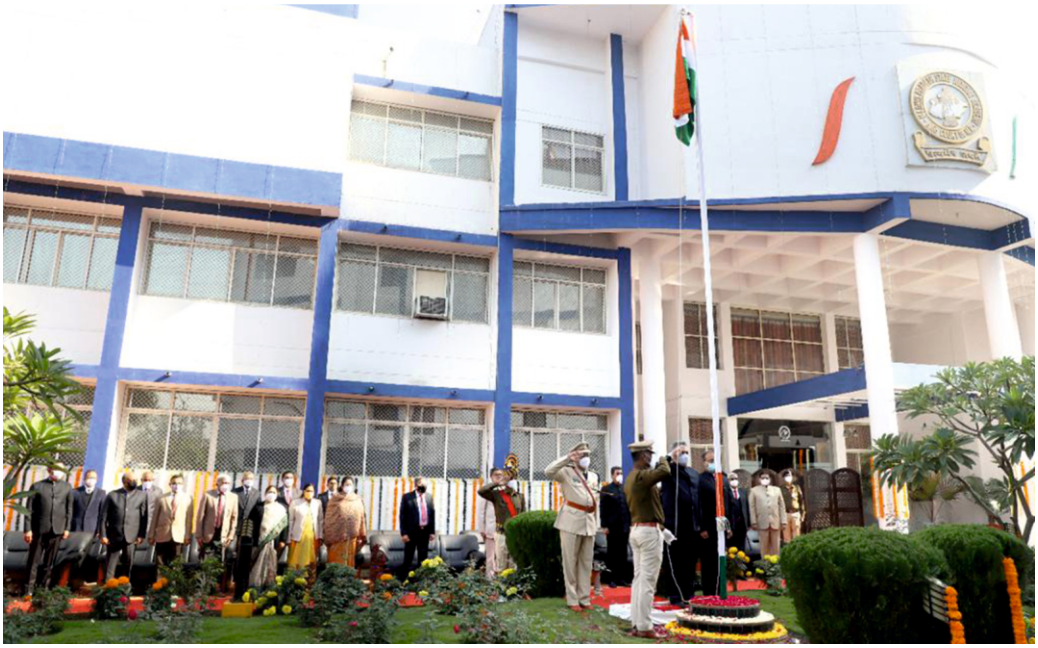
The last two years were very difficult and collectively, we faced the situation with grit and determination. Our efforts have resulted in the minimisation of insurmountable risk over the course of the last two years. By the time this issue reaches your hands, hopefully, we will be in a normal environs all around. Till that time, we have to advance while being vigilant, empathetic to others and motivated consistently.

The Academy celebrated the 73rd Republic Day with Hon'ble the Chief Justice unfurling the National Flag in the premises of the Academy. The pictorial glimpses of the celebration find part in this issue.

**Ramkumar Choubey**
**Director**

## GLIMPSES OF THE 73rd REPUBLIC DAY CELEBRATION AT MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR



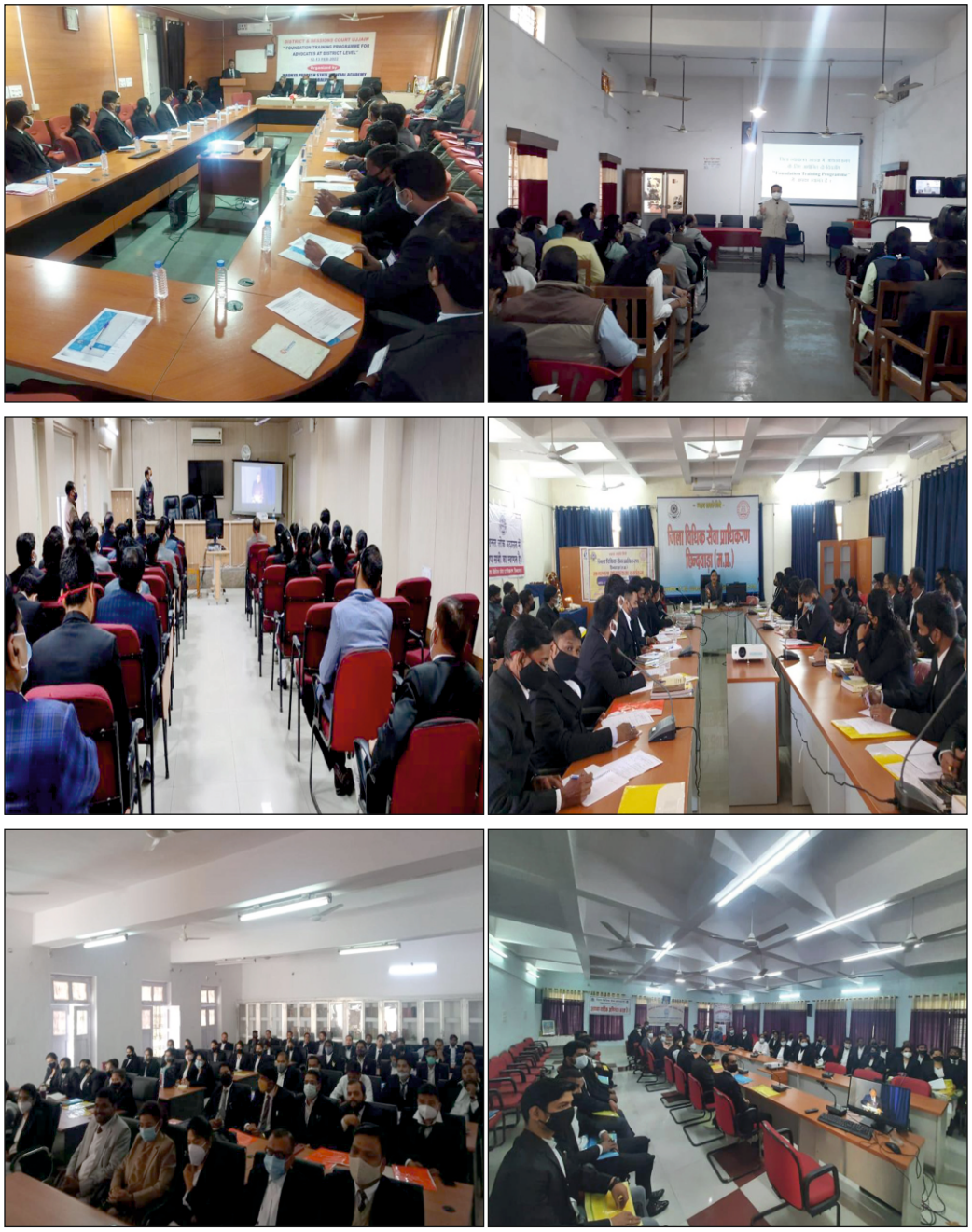


Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh unfurling the National Flag and receiving Guard of Honour

**FOUNDATION TRAINING PROGRAMME FOR ADVOCATES AT DISTRICT LEVEL (12.02.2022 & 13.02.2022) GLIMPSES OF e-INAUGURATION**

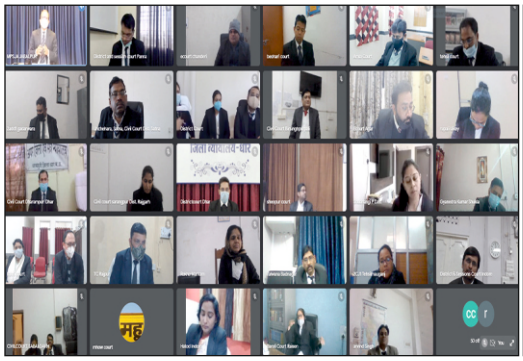

Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh delivering inaugural address

## GLIMPSES OF FOUNDATION TRAINING PROGRAMME FOR ADVOCATES AT DISTRICT LEVEL (12.02.2022 & 13.02.2022)



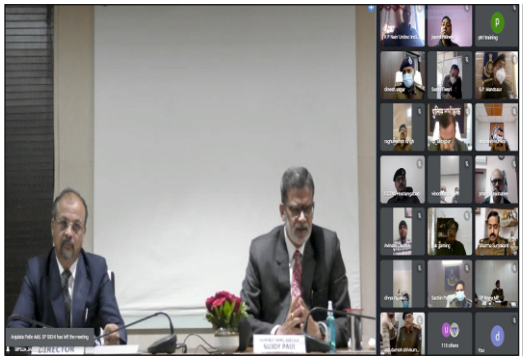
Participant Advocates at different District Headquarters

## GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE

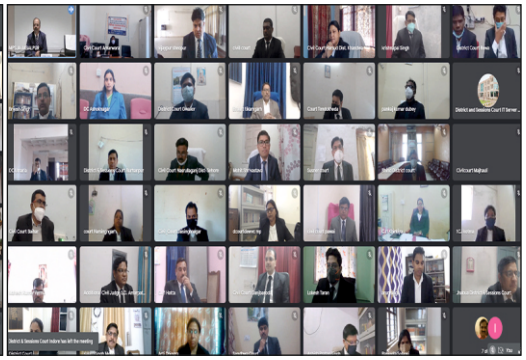


Refresher Course for the Civil Judges, Senior Division (17.01.2022 to 22.01.2022)

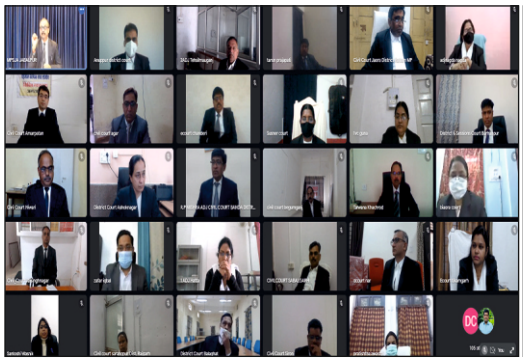
Deliberation on – The dilemmas of implementing Section 15: Preliminary Assessment of Children in conflict with the Law (09.01.2022 & 15.01.2022)



Awareness Programme on – Guidelines issued by the Supreme Court in Bajaj Allianz Case, Judgment dated 16.11.2021 (29.01.2022)



Workshop on – Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (12.02.2022)



Workshop on – Key issues relating to Protection of Children from Sexual Offences Act, 2012 (18.02.2022 & 19.02.2022)

Special Programme for Advocates on e-Court Project (26.02.2022)

## APPOINTMENT OF JUDGES IN HIGH COURT OF MADHYA PRADESH

*Hon'ble Shri Justice Maninder Singh Bhatti, Hon'ble Shri Justice Dwarka Dhish Bansal, Hon'ble Shri Justice Milind Ramesh Phadke, Hon'ble Shri Justice Amarnath (Kesharwani), Hon'ble Shri Justice Prakash Chandra Gupta and Hon'ble Shri Justice Dinesh Kumar Paliwal were administered oath of office by Hon'ble Shri Justice Ravi Malimath, Chief Justice, High Court of Madhya Pradesh on 15th February, 2022 as Judges of the High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court at Jabalpur.*

Hon'ble Shri Justice Maninder Singh Bhatti was born on 3rd November, 1968. After completing school education, His Lordship obtained Masters Degree in Sociology and Bachelors Degree in Law and was enrolled as an Advocate on 18th February, 1993 on the rolls of the State Bar Council of Madhya Pradesh. Was practicing in the High Court of Madhya Pradesh for the last 27 years.

His Lordship represented State of Chhattisgarh in the M.P. State Administrative Tribunal as standing counsel from 1st February, 2002 to 30th July, 2003 and worked as empanelled counsel of statutory bodies like NTPC, M.P. Housing Board, Hindustan Copper Ltd., M.P. Oilseed Growers Federation and Rani Durgawati Vishwavidhyalaya, Jabalpur from 1994 to 2000. Also represented M.P. Bhoomi Vikas Bank, Ashok Leyland Finance Ltd., Asset Reconstruction Co. India Ltd. (ARCIL), M.P. Khadi Gram and Udyog Board, M/s Sigma Construction Kolkata, M.P. M/s Royal Telecom Pvt. Ltd., Mumbai, M.P. Housing of Infrastructure, M.P. Police Housing Corporation, National Council of Technical Training Institute, Maharishi Vedic Vishwavidhyalaya, Birla Corporation Ltd., Satna, M/s. Sisco Systems Ltd., Chennai, D.K. Scientific Pvt. Ltd., Ahmedabad.

●

Hon'ble Shri Justice Dwarka Dhish Bansal was born on 17th February, 1968. After completing school education, His Lordship obtained Masters Degree in Arts and Bachelors Degrees in Commerce and Law. Was enrolled as an Advocate on 28th August, 1993 on the rolls of the State Bar Council of Madhya Pradesh and has been practicing in the High Court of Madhya Pradesh at Gwalior for the last 28 years.

Prior to elevation, His Lordship was appointed as Government Advocate for the State of Madhya Pradesh on 17th January, 2021 and was empanelled counsel for Municipal Corporation, Gwalior and Gwalior Dugdha Sangh, Gwalior.

●

Hon'ble Shri Justice Milind Ramesh Phadke was born on 6th November, 1971. After completing school education, His Lordship obtained Bachelors Degrees in Science and Law. Was enrolled as an Advocate on 1st March, 1997 on the rolls of the State Bar Council of Madhya Pradesh and has been practicing in the High Court of Madhya Pradesh at Indore for the last 24 years.

His Lordship also worked as Government Advocate from June, 2015 to May, 2017 and was appointed as Assistant Solicitor General, Government of India at Indore in the month of March, 2019 and continued in the post till elevation.

●

Hon'ble Shri Justice Amar Nath (Kesharwani) was born on 15th August, 1962. His Lordship joined Judicial Services on 11th November, 1987 and was appointed as Civil Judge Class-I on 29th July, 1995. His Lordship was promoted as officiating District Judge in Higher Judicial Services on 28th January, 2002. Was granted Selection

Grade Scale with effect from 19th December, 2008 and Super Time Scale with effect from 1st July, 2017.

During His Lordship's tenure as Judicial Officer, he was posted at Shahdol, Raipur, Satna, Bhopal, Lakhnadon (Seoni), Korba (Bilaspur), Sohagpur (Hoshangabad), Jabalpur, Rewa, Guna, Waidhan (Singrauli), Betul and Balaghat.

His Lordship also worked as Deputy Welfare Commissioner, Bhopal Gas Victims and Principal Judge, Family Court, Guna. Before elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Balaghat.

●

Hon'ble Shri Justice Prakash Chandra Gupta was born on 1st April, 1963. His Lordship joined Judicial Services on 31st July, 2002 as officiating District Judge in Higher Judicial Service. His Lordship was granted Selection Grade Scale with effect from 30th September, 2009 and Super Time Scale with effect from 1st June, 2017.

During His Lordship's tenure as Judicial Officer, was posted at Jabalpur, Shajapur, Umaria, Mandla, Manawar (Dhar), Panna, Sidhi, Morena, Gwalior and Ujjain.

His Lordship also worked as Principal Registrar (Vigilance), High Court of Madhya Pradesh, Jabalpur and District Judge (Inspection), Gwalior. Before elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Ujjain.

●

Hon'ble Shri Justice Dinesh Kumar Paliwal was born on 10th August, 1963. His Lordship joined Judicial Services on 31st May, 1990 and was appointed as Civil Judge, Class-I on 23rd May, 1996. His Lordship was promoted as officiating District Judge in Higher Judicial Services on 10th October, 2003. Was granted Selection

Grade Scale with effect from 1st March, 2011 and Super Time Scale with effect from 1st January, 2018.

During His Lordship's tenure as Judicial Officer, was posted at Gwalior, Bhind, Gohad (Bhind), Shivpuri, Guna, Aaron (Guna), Raisen, Dr. Ambedkar Nagar (Indore), Jabalpur, Indore, Chhatarpur, Bhopal, Shahdol and Dewas.

His Lordship also worked as Officer-on-Special Duty (Vigilance), Jabalpur and Indore, President, District Consumer Forum, Jabalpur and District Judge (Inspection), Indore. Before elevation as Judge of the High Court of Madhya Pradesh, His Lordship was posted as Principal District & Sessions Judge, Indore.

**We on behalf of JOTI Journal wish Their Lordships a very happy and successful tenure.**

●

*"Language, both on the Bench and in judgments, must comport with judicial propriety. Language is an important instrument of a judicial process which is sensitive to constitutional values. Judicial language is a window to a conscience sensitive to constitutional ethos. Bereft of its understated balance, language risks losing its symbolism as a protector of human dignity."*

**- Dr. D.Y. Chandrachud, J.**
***Chief Election Commissioner of India v. M.R Vijayabhaskar, 2021 SCC OnLine SC 364***

# PART - I

# न्यायालय फीस तथा क्षेत्राधिकार के प्रयोजन से वाद का मूल्यांकनः मार्गदर्शी सिद्धांत

**जयंत शर्मा**
संकाय सदस्य (कनिष्ठ)
मध्यप्रदेश राज्य न्यायिक अकादमी

न्यायालय में प्रस्तुत वाद पत्र में आदेश 7 नियम 1(झ) सिविल प्रक्रिया संहिता, 1908 के अनुसार वादी को न्यायालय फीस और अधिकारिता के प्रयोजन के लिए वाद का मूल्यांकन करना होता है। वाद का मूल्यांकन वाद की विषयवस्तु के अनुसार होगा जिसका तात्पर्य चाहे गए अनुतोष से है न कि विवादित संपत्ति से। वाद के मूल्यांकन के लिए न्यायालय फीस की गणना हेतु न्यायालय फीस अधिनियम, 1870 तथा क्षेत्राधिकार के प्रयोजन हेतु वाद मूल्यांकन अधिनियम, 1887 के प्रावधान लागू होते हैं। वस्तुतः दोनों अधिनियमों का आपस में कोई अंतर–संबंध नहीं है सिवाय इसके कि वाद मूल्यांकन अधिनियम की धारा 8 आधिपत्य, अग्रक्रयाधिकार, मोचन तथा पंचाट के वादों के अतिरिक्त अन्य सभी वादों के सम्बंध में न्यायालय फीस के प्रयोजन के लिए तथा अधिकारिता के प्रयोजन के लिए एक ही मूल्यांकन की अपेक्षा करती है। धारा 8 के अनुसार वाद का मूल्यांकन जो न्यायालय फीस के प्रयोजन के लिए किया गया है आधिपत्य, अग्रक्रयाधिकार, मोचन तथा पंचाट के वादों को छोड़कर शेष में क्षेत्राधिकार के प्रयोजन से भी वही मूल्यांकन स्वीकार किया जावेगा। अतः यह स्पष्ट है कि वाद का मूल्यांकन पहले न्यायालय फीस के प्रयोजन से किया जावेगा और यदि वह धारा 8 वाद मूल्यांकन अधिनियम के दायरे में आता है तो उन मामलों में फिर क्षेत्राधिकार के प्रयोजन से वाद का पृथक मूल्यांकन करने की आवश्यकता नहीं होगी।

**न्यायालय फीस अधिनियम, 1870**

न्यायालय फीस अधिनियम में कुल 36 धाराएं तथा 3 अनुसूचियां है। इनमें सर्वाधिक महत्वपूर्ण धारा 7 है जो विभिन्न प्रकृति के वादों के सम्बंध में न्यायालय फीस के प्रयोजन से वाद के मूल्यांकन विषयक प्रावधान करती है। अधिनियम की धारा धारा 7 मूल्यानुसार न्यायालय फीस से सम्बंधित है अतः धारा 7 का प्रत्यक्ष सम्बंध प्रथम अनुसूची से है तथा दूसरी अनुसूची का सम्बंध नियत न्यायालय फीस से है जो अनुसूची के अनुच्छेद 17 के अन्तर्गत देय होती है। अधिनियम की धारा 7 में कुल 12 प्रकार के वादों के मूल्यांकन की पद्धति बताई गई है लेकिन सामान्य रूप से सिविल न्यायालय के समक्ष जो वाद संस्थित किए जाते है उनमें धन सम्बंधी वाद, घोषणा तथा पारिणामिक अनुतोष, व्यादेश, अधिपत्य प्राप्ति, विभाजन, संविदा का विनिर्दिष्ट पालन एवं निष्कासन के वाद हैं। न्यायदृष्टांत ***पंजाब राव विरूद्ध मध्यप्रदेश राज्य, 1971 जेएलजे नोट 69*** में दिये अभिमत अनुसार मूल्यांकन हेतु केवल वाद पत्र के अभिवचन को विचार में लिया जाता है जिस रूप में वाद प्रस्तुत किया गया है उसी अनुसार मूल्यांकन होगा न कि जिस रूप में वाद प्रस्तुत किया जाना चाहिए था।

**(1) धन सम्बंधी वाद** – धन सम्बंधी वादों का मूल्यांकन उतनी राशि के अनुसार किया जाता है जो वाद की विषय वस्तु है जैसे यदि **ए** ने **बी** के विरूद्ध 10 हजार रूपये की वसूली हेतु वाद प्रस्तुत किया है तब ऐसे वाद का मूल्यांकन 10 हजार रूपये के मूल्यानुसार करना होगा। किन्तु कई बार वसूली रोकने सम्बंधी वाद व्यादेश के स्वरूप में प्रस्तुत किए जाते है। उदाहरण स्वरूप **ए** के द्वारा राष्ट्रीयकृत बैंक **बी** के विरूद्ध एक वाद इस आशय का प्रस्तुत किया कि बैंक द्वारा उसके ऋण के संबंध में 2 लाख रूपये का ब्याज जोड़ा गया है। जिसकी शिकायत उसके द्वारा की गई है। **बी** उक्त शिकायत के निराकरण के पूर्व वसूली की कार्यवाही करने हेतु अग्रसर है। अतएव **बी** के विरूद्ध स्थाई निषेधाज्ञा जारी की जावे कि उसकी शिकायत के निराकरण तक ब्याज की राशि वसूल न करें। इस समस्या में यह प्रश्न उत्पन्न होता है कि ऐसे वाद का मूल्यांकन न्यायालय फीस अधिनियम की धारा 7(i) के अनुसार किया जाए या धारा 7(iv)(d) के अनुसार। ऐसी स्थिति में यह देखना आवश्यक है कि क्या वादपत्र तैयार करते समय चतुराई से अभिवचन किए गए है यह देखने के लिए वास्तविक धनीय मूल्य परीक्षण (real money value test) करना होता है। अतः यदि कोई वाद किसी धन की वसूली को रोकने के लिए भी प्रस्तुत किया गया है तब भी उसका वास्तविक धनीय मूल्य (real money value) उतनी राशि के बराबर है जितनी राशि के सम्बंध में व्यादेश चाहा गया है। अतः वाद भले ही धारा 7(iv)(d) के अन्तर्गत प्रस्तुत किया गया हो वादी को वाद का मूल्यांकन धारा 7(i) के अन्तर्गत उतनी धन राशि के अनुसार ही करना होगा। इस सम्बंध में न्यायदृष्टांत ***बद्रीलाल भोलाराम विरूद्ध मध्यप्रदेश राज्य, 1963 एमपीएलजे 717, राजकुमार विरूद्ध कायनेटिक गैलरी एवं अन्य, 2000 (ii) एमपीएलजे 72*** एवं ***संतोष चंद जैन विरूद्ध चेयरमैन, एमपीइबी, एआईआर 2001 एमपी 88*** अवलोकनीय है।

कभी–कभी मध्यवर्ती अथवा अन्तर्वर्ती लाभ के संबंध में अनुतोष चाहा जाता है। मध्यवर्ती अथवा अन्तर्वर्ती लाभ धन के रूप में मांगा एवं दिया जाता है। ऐसी स्थिति में वाद प्रस्तुत दिनांक तक के ऐसे लाभ की गणना कर वाद का मूल्यांकन न्यायालय फीस अधिनियम की धारा 7(i) के अन्तर्गत उतनी धन राशि के अनुसार ही करना होगा। यदि वाद प्रस्तुत दिनांक से आगे का लाभ प्रदान किया गया है तो उस आधिक्य की राशि पर भी धारा 7(i) के अन्तर्गत ही न्यायालय फीस देय होगी। न्यायालय फीस के अन्तर की राशि को धारा 11 के अनुसार डिक्री के निष्पादन करने वाले न्यायालय में जमा किया जा सकता है।

**(2) पारिणामिक अनुतोष सहित या इसके बिना घोषणा के वाद** – यह प्रावधान तब लागू होता है जब दो अनुतोष चाहे गए हैं। मूल अनुतोष घोषणा का है तथा दूसरा घोषणा के अनुतोष का पारिणामिक है। अर्थात दूसरा अनुतोष स्वतंत्र रूप से प्रदान नहीं किया जा सकता है वह घोषणा के अनुतोष पर निर्भर है। यदि अनुतोष स्वतंत्र रूप से प्रदान किया जा सकता है तब उसे पारिणामिक अनुतोष नहीं माना जाएगा और उसका स्वतंत्र मूल्यांकन अपेक्षित है लेकिन यदि अनुतोष पारिणामिक है तब दोनों अनुतोषों को मूल्यांकन के प्रयोजन से एक ही यूनिट माना जाएगा और एक ही मूल्यांकन करना होगा। इस सम्बंध में न्यायदृष्टांत ***अब्दुल शकूर विरूद्ध बदरूद्दीन, एआईआर 1936 इलाहाबाद 874*** एवं ***हरिपदा दत्ता विरूद्ध मधुसूदन दत्ता एवं अन्य, एआईआर 1985 गोवाहाटी***

***93*** अवलोकनीय है। उदाहरण स्वरूप **ए** तथा **बी**, महंत **सी** के शिष्य है। महंत **सी** की मृत्यु के उपरांत **ए** द्वारा **बी** के विरूद्ध इस आशय का वाद प्रस्तुत किया कि उसे महंत **सी** के स्थान पर महंत घोषित किया जावे तथा **बी** के विरूद्ध इस आशय की स्थाई निषेधाज्ञा जारी कि जावे की वह महंत के रूप में उसके कामकाज में हस्तक्षेप नहीं करे। इस समस्या में **बी** के विरूद्ध तब तक व्यादेश जारी नहीं किया जा सकता जब तक **ए** के पक्ष में महंत होने की घोषणा नहीं कर दी जाती यहां व्यादेश का अनुतोष घोषणा के अनुतोष का पारिणामिक अनुतोष है। अतः मूल्यांकन न्यायालय फीस अधिनियम की धारा 7(iv)(c) के अन्तर्गत किया जायेगा। यहां यह ध्यान रखना होगा कि जहां घोषणा के दो पृथक अनुतोष चाहे गए हैं वहां घोषणा का एक अनुतोष, दूसरे का पारिणामिक अनुतोष नहीं होगा। वादी को पृथक–पृथक प्रत्येक घोषणा के अनुतोष के लिए मूल्यांकन करना होगा और तदनुसार न्यायालय फीस देना होगी। इस सम्बंध में न्यायदृष्टांत ***सबिना विरूद्ध मो. अब्दुल वासित, एआईआर 1997 एमपी 25*** एवं ***जमना देवी विरूद्ध राम प्रसाद, आईएलआर (2013) एमपी 1004*** अवलोकनीय है।

**(3) व्यादेश सम्बंधी वाद** – व्यादेश का अनुतोष चाहे निषेधात्मक हो या आदेशात्मक, दोनों के लिए न्यायालय फीस अधिनियम की धारा 7(iv)(d) के अन्तर्गत मूल्यांकन किया जाएगा। इस प्रावधान में वादी चाहे गए अनुतोष के मूल्य का कथन करने हेतु स्वतंत्र होता है। उदाहरण के लिए यदि **ए**, **बी** के अधिपत्य में उसकी सम्पत्ति पर हस्तक्षेप कर रहा है तब **बी**, **ए** के विरूद्ध व्यादेश हेतु वाद प्रस्तुत करता है यहां **बी** अनुतोष का मूल्यांकन करने हेतु स्वतंत्र है और सामान्यतः वादी द्वारा किये गए मूल्यांकन में हस्तक्षेप नहीं किया जाना चाहिए। किन्तु ऐसा मूल्यांकन मनमाना नहीं हो सकता है। वास्तविक धनीय मूल्य परीक्षण (real money value test) लगाना होता है। इस सम्बंध में न्यायदृष्टांत ***सथप्पा चेट्टियार विरूद्ध रामनाथन चेट्टियार, एआईआर 1958 एससी 245*** एवं ***तारा देवी विरूद्ध ठाकुर राधाकृष्ण, एआईआर 1987 एससी 2085*** अवलोकनीय है।

**(4) आधिपत्य प्राप्ति के लिए वाद** – न्यायालय फीस अधिनियम की धारा 7 की उपधारा (v) आधिपत्य प्राप्ति से सम्बंधित वादों के मूल्यांकन का प्रावधान करती है। यहां सम्पत्ति को दो भागों में विभाजित किया जा सकता है एक कृषि भूमि तथा दूसरा कृषि भूमि अलावा अचल सम्पत्ति। कृषि भूमि के सम्बंध में चाही गई आधिपत्य के अनुतोष का मूल्यांकन भूमि पर नियत भू–राजस्व के अनुसार तथा यदि भू–राजस्व नियत नहीं है तब उपधारा (v) में उल्लेखित अनुसार किया जाता है। कृषि भूमि से अतिरिक्त अचल सम्पत्ति के आधिपत्य के वाद का मूल्यांकन विषयवस्तु के मूल्य के अनुसार किया जाता है। न्यायदृष्टांत ***राजकुमार विरूद्ध कायनेटिक गैलरी*** (पूर्वोक्त) के अनुसार जहां सम्पत्ति का मूल्य उल्लेखित है इसे इस सम्पत्ति का बाजार मूल्य माना जा सकता है। कभी–कभी विषयवस्तु के मूल्य को दर्शित करने के लिए उस सम्पत्ति से सम्बंधित विक्रय पत्र प्रस्तुत किया जाता है किन्तु विषयवस्तु का मूल्य अथवा बाजार मूल्य वाद प्रस्तुत दिनांक को उस सम्पत्ति का मूल्य होता है। बाजार मूल्य तथा प्रतिफल में अन्तर होता है विक्रय विलेख में प्रतिफल के रूप में उल्लेखित राशि को बाजार मूल्य के निर्धारण के प्रयोजन के लिए प्रयोग नहीं किया जा सकता है। इस सम्बंध में न्यायदृष्टांत ***राजकुमार जैन विरूद्ध सावित्री देवी एवं अन्य, 2010 (I) एमपीडब्ल्यूएन 63*** अवलोकनीय है।

जब आधिपत्य प्राप्ति तथा घोषणा के अनुतोष हेतु वाद प्रस्तुत किया जाता है तब प्रश्न उत्पन्न होता है कि मूल्यांकन न्यायालय फीस अधिनियम की धारा 7(v) के अंतर्गत किया जाए या धारा 7(iv)(c) के अन्तर्गत। यहां यह उल्लेखनीय है कि ऐसी स्थिति में मुख्य अनुतोष परीक्षण (main relief test) करना होता है। जहां घोषणा का अनुतोष मुख्य है वहां मूल्यांकन धारा 7(iv)(c) के अन्तर्गत किया जायेगा लेकिन यदि आधिपत्य का अनुतोष मुख्य अनुतोष है तब मूल्यांकन न्यायालय फीस अधिनियम की धारा 7(v) के अन्तर्गत किया जायेगा। इस सम्बंध में न्यायदृष्टांत ***दुर्गा सिंह विरूद्ध रामकली 1982 जेएलजे नोट 72 एवं कचरूलाल विरूद्ध स्टेट बैंक ऑफ इंदौर, 1989 (I) एमपीडब्ल्यूएन 124*** अवलोकनीय है। उदाहरण के लिए **ए** ने **बी** के विरूद्ध एक वाद अपने 10 एकड़ के बगीचे के सम्बंध में स्वत्व घोषणा एवं रिक्त आधिपत्य प्राप्ति हेतु प्रस्तुत किया है। **ए** का अभिवचन है कि जब वह एक वर्ष से शहर के बाहर था तब **बी** ने उसके बगीचे पर अवैध रूप से आधिपत्य कर लिया है। इस समस्या में **ए** तथा **बी** के मध्य स्वत्व को लेकर विवाद नहीं है ऐसी स्थिति में मुख्य अनुतोष आधिपत्य के लिए है। अतः मूल्यांकन धारा 7(v) के अन्तर्गत किया जायेगा। लेकिन यदि **ए** ने **बी** के विरूद्ध विवादित बगीचे के सम्बंध में स्वत्व घोषणा, विक्रय पत्र को शून्य घोषित किये जाने तथा बगीचे का रिक्त आधिपत्य प्राप्त करने के अनुतोषों के लिए इस आधार पर वाद प्रस्तुत किया कि प्रतिवादी ने धोखे या कपट से विक्रय पत्र निष्पादित कराया है, **ए** ने कभी भी बगीचा **बी** को विक्रय नहीं किया है। इस समस्या में **ए** को बगीचे का आधिपत्य तब तक नहीं दिलवाया जा सकता जब तक विक्रय पत्र के शून्य होने की घोषणा नहीं कर दी जाती। अतः इस समस्या में घोषणा का अनुतोष मुख्य है तथा आधिपत्य का अनुतोष पारिणामिक अनुतोष है इसलिए मूल्यांकन धारा 7(iv)(c) के अन्तर्गत किया जायेगा।

**(5) विभाजन** – विभाजन के वाद में न्यायालय फीस अधिनियम की धारा 7(vi)(a) के अनुसार अंशधारी के संपत्ति में अंश के अनुसार वाद का मूल्यांकन किया जाता है। यदि अंशधारी का विवादित सम्पत्ति पर आधिपत्य है तो उसके भाग के आधे के अनुसार और यदि अंशधारी का विवादित सम्पत्ति पर आधिपत्य नहीं है और उसके स्वत्व से इंकार किया गया है तब उसके भाग के मूल्य के अनुसार मूल्यांकन किया जाता है। जहां एक सहस्वामी स्वयं को विभाजन योग्य सम्पत्ति के आधिपत्य में नहीं होना बताता है वहां विभाजन के वाद तथा स्वत्व के आधार पर आधिपत्य प्राप्ति के वाद में कोई अंतर नहीं है इस कारण ऐसे वाद में आधिपत्य के अनुतोष की तरह ही मूल्यांकन होगा। इस सम्बंध में न्यायदृष्टांत ***नारायण प्रसाद विरूद्ध जगदीश एवं अन्य, एआईआर (2011) एमपी 792*** अवलोकनीय है।

संयुक्त सम्पत्ति में सभी सहस्वामियों का भूमि पर आधिपत्य माना जाता है। अतः केवल अंश की घोषणा का वाद भी प्रचलनशील है। इस हेतु अंशधारी को विभाजन का अनुतोष मांगना आवश्यक नहीं है इस सम्बंध में न्यायदृष्टांत ***मनीष पाराशर विरूद्ध प्रताप, 2018 (IV) एमपीजेआर एसएन 2*** अवलोकनीय है। जिस प्रकार आधिपत्य प्राप्ति के वाद में कृषि भूमि के सम्बंध में वाद का मूल्यांकन भू–राजस्व के अनुसार तथा यदि भू–राजस्व नियत नहीं है तब उपधारा (v) में उल्लेखित

अनुसार करना होता है इसी प्रकार न्यायदृष्टांत ***भगवती विरूद्ध चमर राय, 1980 (II) एमपीडब्ल्यूएन 22*** के अनुसार विभाजन के वाद में भी यदि विभाजन कृषि भूमि का होना है तब मूल्यांकन भू–राजस्व के अनुसार तथा यदि भू–राजस्व नियत नहीं है तब उपधारा (v) में उल्लेखित अनुसार किया जाना चाहिए।

**(6) संविदा के विनिर्दिष्ट पालन का वाद** – संविदा के विनिर्दिष्ट पालन के वाद में मूल्यांकन संविदा के अन्तर्गत प्रतिफल की राशि के अनुसार होता है एवं न्यायालय फीस अधिनियम की धारा 7(x) में न्यायालय फीस अनुसूची 1 के अन्तर्गत मूल्यानुसार देय होती है। उदाहरण के लिए **ए** ने **बी** के विरूद्ध संविदा के विनिर्दिष्ट पालन का वाद प्रस्तुत किया। **ए** और **बी** के बीच सम्पत्ति का विक्रय पांच लाख रूपये में होना तय था। अतः वाद का मूल्यांकन पांच लाख रूपये होगा और इस पर मूल्यानुसार न्यायालय फीस देना होगी। संविदा के विनिर्दिष्ट पालन के अनुतोष के अतिरिक्त भी कोई अनुतोष चाहा जा सकता है जैसे आधिपत्य दिलाया जावे। वस्तुतः यह अनुशांगिक अनुतोष है। न्यायालय फीस अधिनियम की धारा 17 के अुनसार अनुषांगिक अनुतोष के लिए पृथक मूल्यांकन करने और न्यायालय फीस देने की आवश्यकता नहीं होगी।

**(7) निष्कासन का वाद** – सामान्य रूप से निष्कासन के मामले मध्यप्रदेश स्थान नियंत्रण अधिनियम, 1961 के अन्तर्गत प्रस्तुत किये जाते हैं। न्यायालय फीस अधिनियम की धारा 7(xi)(cc) के अनुसार वाद प्रस्तुत दिनांक से ठीक पूर्ववर्ती वर्ष के वार्षिक किराये के अनुसार वाद का मूल्यांकन किया जाता है। यहां ध्यान रखने योग्य यह है कि स्थान नियंत्रण अधिनियम की धारा 12 की उपधारा (1) में निष्कासन के 16 आधार दिये हैं। एक वाद में एक से अधिक आधार लिए जा सकते हैं। ऐसी स्थिति में भी केवल वार्षिक किराये की राशि के अनुसार मूल्यांकन होगा क्योंकि अंतिम अनुतोष निष्कासन का ही है जिसका मूल्यांकन किया जाना है भले ही निष्कासन के एक से अधिक आधार लिये गये हो।

बहुधा निष्कासन के वाद में किराया राशि के अवशेष की मांग भी की जाती है। स्थान नियंत्रण अधिनियम के अन्तर्गत किराये की राशि की वसूली के सम्बंध में कोई अलग से प्रावधान नहीं है। चूंकि किराया राशि के अवशेष की वसूली धन की वसूली के समतुल्य है अतः अवशेष किराये की वसूली हेतु धन राशि के अनुसार धारा 7(1) के अन्तर्गत मूल्यांकन करते हुए पृथक से न्यायालय फीस अदा की जाएगी। उदाहरण स्वरूप **ए** आवासीय मकान के संबंध में पांच हजार रूपये प्रति माह की दर से **बी** का किरायेदार है। **बी** के अनुसार **ए** ने विगत तीन वर्षों से किराया अदा नहीं किया है। **बी** ने **ए** के विरूद्ध एक लाख अस्सी हजार रूपये बकाया किराये की राशि प्राप्त करने तथा विवादित मकान की स्वयं के निवास हेतु आवश्यकता के आधार पर निष्कासन का वाद प्रस्तुत किया है। इस समस्या में **ए** को धारा 7(xi)(cc) के अन्तर्गत निष्कासन के लिए वाद प्रस्तुत दिनांक के पूर्ववर्ती वर्ष के वार्षिक किराये के अनुसार साठ हजार रूपये तथा तीन वर्ष के किराये के सम्बंध में धारा 7(1) के अन्तर्गत 1 लाख 80 हजार रूपये इस प्रकार दोनों सहायताओं के योग अनुसार वादी को 2 लाख 40 हजार रूपये वाद का मूल्यांकन करते हुये मूल्यानुसार न्यायालय फीस देनी होगी।

**(8) बाहुल्यतापूर्ण वाद** – जब भी कोई वाद प्रस्तुत किया जाता है तो वह एक ही अनुतोष के लिए प्रस्तुत किया जाये यह आवश्यक नहीं है। अधिकांशतः एक वाद में एक से अधिक अनुतोष चाहे जाते हैं इसी को बाहुल्यतापूर्ण वाद कहा जाता है। न्यायालय फीस अधिनियम की धारा 17 इस सम्बंध में प्रावधान करती है। जिसके अनुसार यदि वाद कारणों का संयोजन किया गया है और प्रत्येक वाद कारण पर पृथक वाद प्रस्तुत किया जा सकता है वहां प्रत्येक वाद कारण अनुसार चाहे गए पृथक अनुतोषों के योग अुनसार वाद का मूल्यांकन होगा तथा न्यायालय फीस देय होगी। इसी तरह एक ही वाद कारण के आधार पर एक से अधिक अनुतोष चाहे गए हैं तब भी प्रत्येक अनुतोष के योग अनुसार मूल्यांकन होगा तथा न्यायालय फीस देय होगी। लेकिन जहां अनुषांगिक अनुतोष चाहा गया है वहां केवल मुख्य अनुतोष का मूल्यांकन होगा तथा उसी पर न्यायालय फीस देय होगी। यहां अनुषांगिक अनुतोष से तात्पर्य ऐसे अनुतोष से है जो मुख्य अनुतोष से इस प्रकार जुड़ा है कि वह प्रदान किया जाएगी भले ही पृथक से ऐसा अनुतोष न भी मांगा जाए। जैसे संविदा के विनिर्दिष्ट पालन के वाद में यदि आधिपत्य प्राप्ति का अनुतोष न भी मांगा जाए तब भी यह अनुतोष प्रदान किया जाएगा। जैसे यदि **ए**, **बी** के विरूद्ध संविदा के विनिर्दिष्ट पालन के लिए वाद में अनुतोष चाहता है कि **ए** के पक्ष में विक्रय पत्र निष्पादित करवा कर संविदा का पालन करवाया जावे और प्रतिवादी को निर्देशित किया जावे कि वह विवादित संपत्ति का आधिपत्य वादी को सौंपे। यह दो अनुतोष चाहे गए हैं किन्तु मुख्य अनुतोष संविदा के विनिर्दिष्ट पालन की है। अतः केवल वादी को मुख्य अनुतोष अर्थात संविदा के पालन के अनुतोष का मूल्यांकन करने तथा उसी अनुसार न्यायालय फीस देने की आवश्यकता है।

वैकल्पिक अनुतोष अनुषांगिक अनुतोष से भिन्न है। जहां एक से अधिक अनुतोषों में कोई अनुतोष वैकल्पिक रूप में चाहा गया है वहां सभी चाहे गए अनुतोषों में से जो सबसे बड़ा यानि सबसे अधिक फीस देय वाला है उसी के आधार पर मूल्यांकन कर न्यायालय फीस देय होगी शेष के लिए मूल्यांकन करने न्यायालय फीस देने की आवश्यकता नहीं होगी। जैसे **ए** ने **बी** के विरूद्ध पांच लाख रूपए मूल्य की संपत्ति के विक्रय की संविदा के पालन का वाद प्रस्तुत किया और विकल्प में अग्रिम अदा की गई दो लाख रूपए की राशि वापस दिलाए जाने का अनुतोष चाहा। यहां पांच लाख रूपए मूल्य के अनुसार मूल्यांकन होगा तथा वैकल्पिक अनुतोष के लिए वाद मूल्यांकन व न्यायफीस अपेक्षित नहीं होगा। यदि वादी द्वारा अनावश्यक अनुतोष चाहे गये है तब भी वादी को ऐसे वांछित अनावश्यक अनुतोष पर न्यायालय फीस देना होगी।

न्यायालय फीस अधिनियम की द्वितीय अनुसूची का अनुच्छेद 1(b) परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत चेक अनादरण हेतु देय न्यायालय फीस का प्रावधान करता है। फीस को चेक की राशि के अनुसार वर्गीकृत किया गया है। ऐसे में प्रश्न उत्पन्न होता है कि एक से अधिक चेक के अनादरण के सम्बंध में एक ही परिवाद प्रस्तुत किया गया है तब न्यायालय फीस प्रत्येक चेक के अनुसार देय होगी अथवा सभी चेक की राशि के योग के अनुसार देय होगी? माननीय मध्यप्रदेश उच्च न्यायालय द्वारा ***पृथ्वीराज सिंह विरूद्ध मध्यप्रदेश राज्य, एमसीआरसी क्र. 5197–2017*** आदेश दिनांक 05.09.2017 में अभिमत दिया गया कि मांग का सूचना पत्र भेजने से वादकारण का उत्पन्न होना जुड़ा है यदि परिवाद में शामिल प्रत्येक चेक के लिए पृथक सूचना पत्र भेजा गया है तब

पृथक–पृथक वादकारण उत्पन्न होगा और प्रत्येक चेक के लिए अलग न्यायालय फीस देय होगी लेकिन यदि सभी चेक के लिए एक ही मांग का सूचनापत्र भेजा गया है तब एक ही वादकारण उत्पन्न होगा और चेक की सकल राशि के येाग पर न्यायालय फीस देय होगी।

**(9) बाजार मूल्य तथा अन्तर्वर्ती/मध्यवर्ती लाभ का निर्धारण** – न्यायालय फीस अधिनियम की धाराएं 7(v) तथा 7(vi)(a) में सम्पत्ति का मूल्य शब्द प्रयोग किया गया है। यदि धारा 9 का अवलोकन करें तो यह विषयवस्तु का मूल्य बाजार मूल्य होगा। यह प्रश्न उत्पन्न होता है कि वाद प्रस्तुति दिनांक को विषयवस्तु का मूल्य अर्थात उसका बाजार मूल्य क्या होगा? मध्यप्रदेश भूराजस्व संहिता, 1959 की धारा 2(ण क) के अन्तर्गत परिभाषित 'बाजार मूल्य' के अनुसार मध्यप्रदेश बाजार मूल्य मार्गदर्शक सिद्धांत के अन्तर्गत कलेक्टर द्वारा निर्धारित मूल्य को बाजार मूल्य के रूप में लिया जा सकता है। सामान्य भाषा में यदि देखें तो कलेक्टर द्वारा जारी गाइड लाईन में सम्पत्ति के मूल्य को उस सम्पत्ति का बाजार मूल्य माना जा सकता है। यदि विचारण के दौरान सम्पत्ति के बाजार मूल्य को लेकर विवाद हो और न्यायालय को उस सम्पत्ति का बाजार मूल्य अवधारित करना आवश्यक हो जाए तो धारा 9 के अन्तर्गत सक्षम प्राधिकारी को इस हेतु कमिश्नर नियुक्त किया जा सकता है। इसी प्रकार अन्तर्वर्ती/मध्यवर्ती लाभ के निर्धारण हेतु भी धारा 9 के अन्तर्गत सक्षम प्राधिकारी को कमिश्नर नियुक्त किया जा सकता है।

**(10) फीस की वसूली** – न्यायालय फीस अधिनियम की धारा 6 के अनुसार अधिनियम की अनुसूचियों में उल्लेखित प्रत्येक दस्तावेज जिनको न्यायालय फीस से प्रभार्य बनाया गया है पर तब तक आगे कार्यवाही नहीं की जाएगी जब तक फीस अदा नहीं की जाती। इसका तात्पर्य यह है कि न्यायालय फीस का भुगतान प्राथमिक शर्त है। यद्यपि परिस्थिति अनुसार सिविल प्रक्रिया संहिता की धारा 149 के अंतर्गत फीस के भुगतान हेतु समय दिया जा सकता है। किन्तु मामले में आगे कार्यवाही तभी करना चाहिए जब वांछित फीस भुगतान कर दी गई हो। प्रकरण के किसी भी स्तर पर यदि न्यायालय यह पाता है कि फीस कम भुगतान की गई है तब वह धारा न्यायालय फीस अधिनियम की धारा 28 के अन्तर्गत किसी भी समय ऐसी कम भुगतान की गई फीस ली जा सकती है। यदि निर्णय के समय यह पाया जाता है कि फीस कम दी गई है तब डिक्री में यह शर्त अधिरोपित की जा सकती है कि डिक्री तब प्रभावी होगी जब देय फीस का पूर्ण भुगतान कर दिया जाए। ऐसी फीस निष्पादन न्यायालय में जमा की जा सकती है। दूसरा, शेष फीस भू–राजस्व के बकाया की तरह वसूल करने के निर्देश के साथ डिक्री की प्रति जिले के कलेक्टर को भेज सकता है। इस सम्बंध में न्यायदृष्टांत ***जीवन लाल विरूद्ध दीपचंद, 2013 (3) एमपीएलजे 150*** अवलोकनीय है।

न्यायालय से यह अपेक्षित है कि प्रकरण के निराकरण के उपरांत अभिलेख को अभिलेखागार में जमा कराए जाने से पूर्व इस बात की संतुष्टि कर ले कि कहीं कोई फीस शेष तो नहीं है। अन्यथा धारा 28–ए के अनुसार प्रकरण का अभिलेख अभिलेखागार से पुनः वसूली हेतु न्यायालय को लौटाया जा सकता है।

**(11) न्यूनतम तथा अधिकतम न्यायालय फीस** – अधिनियम की प्रथम अनुसूची के अनुसार अधिकतम न्यायालय फीस एक लाख पचास हजार रूपये है। कोई भी वाद एक सौ रूपये से कम फीस पर प्रस्तुत नहीं किया जा सकता है। यहां यह उल्लेख करना आवश्यक है कि न्यायालय फीस अधिनियम की धारा 7(iv) जिसमें खण्ड (a) से (e) तक के अनुतोष के लिए वादी को इप्सित अनुतोष की रकम का कथन करना होता है, इस तरह के वादों में जहां (a) से (e) तक अनुतोषों में से कोई अनुतोष चाहा गया है वहां उस अनुतोष के लिए पृथक से न्यूनतम एक सौ रूपये के अध्यधीन रहते हुये न्यायालय फीस देय होगी। इस सम्बंध में न्यायादृष्टांत ***रामबाई वोटरी विरूद्ध शिवप्रसाद वोटरी, एआईआर 1976 एमपी 1*** अवलोकनीय है।

**विक्रय पत्र के सम्बंध में घोषणा के अनुतोष का वाद**

विक्रय पत्र के निष्पादन में दो पक्षकार होते है एक विक्रेता तथा दूसरा क्रेता। बहुधा विक्रेता या तीसरा पक्ष विक्रय पत्र के निष्पादन को चुनौती देता है। यद्यपि विक्रेता यह कहकर कि उसने अमुक विक्रय पत्र का निष्पादन किया था किन्तु अब वह उस विक्रय पत्र को निरस्त करना चाहता है, सामान्यतः वाद नहीं ला सकता है। किसी विक्रय पत्र को अवैध या प्रभाव शून्य घोषित करने अथवा निष्पादन से इंकार किए बिना विक्रय पत्र को किसी आधार पर निरस्त करने के लिए वाद लाए जाते हैं। प्रश्न है कि विक्रय पत्र को अवैध या प्रभाव शून्य घोषित करने के वाद में मूल्यानुसार न्यायालय फीस देय होगी या केवल नियत न्यायालय फीस देय होगी?

न्यायदृष्टांत ***सुरहीद सिंह विरूद्ध रणधीर सिंह, (2010) 12 एससी 112*** के अनुसार विक्रय पत्र एक संविदा है और संविदा 'शून्य' तथा 'शून्यकरणीय' होती है। शून्य संविदा वह संविदा है जो संविदा के दोनों पक्षकारों के लिए आरंभतः शून्य है। जबकि शून्यकरणीय संविदा तब तक वैध संविदा है जब तक उसे सक्षम न्यायालय द्वारा शून्य घोषित नहीं कर दिया जाता। शून्यकरणीय संविदा कतिपय आधारों पर ही शून्य घोषित की जा सकती है। जैसे विक्रय पत्र का निष्पादन स्वीकार किया गया है किन्तु 'स्वतंत्र सहमति' के अभाव के आधार पर विक्रय संव्यवहार को चुनौती दी गई है। यहां जब तक 'स्वतंत्र सहमति' का अभाव साबित नहीं कर दिया जाता और इस आधार पर विक्रय संव्यवहार शून्य घोषित नहीं कर दिया जाता विक्रय पत्र वैध एवं प्रभावी होगा। शून्य संविदा अर्थात् आरंभतः शून्य विक्रय पत्र को शून्य घोषित करने के वाद में मूल्यानुसार न्यायालय फीस दिए जाने की आवश्यकता नहीं होगी। जबकि शून्यकरणीय संविदा में मूल्यानुसार फीस दिया जाना आवश्यक है। यद्यपि न्यायालय फीस का निर्धारण वाद पत्र में किए गए अभिवचनों के आधार पर होता है लेकिन यहां यह देखना आवश्यक है कि वाद शून्य संविदा यानि आरंभतः शून्य विक्रय पत्र को शून्य घोषित करने के लिए है अथवा शून्यकरणीय संविदा आधारित घोषणा के लिए।

विक्रय पत्र के मामलों में जो व्यक्ति उसे चुनौती दे रहा है यदि वह विक्रय पत्र का पक्षकार अथवा पक्षकार से हित प्राप्त करने वाला नहीं है तो उसे मूल्यानुसार फीस देने की आवश्यकता नहीं होती है लेकिन हित प्रतिनिधि को मूल्यानुसार फीस देना होगी। जैसे पिता द्वारा निष्पादित विक्रय पत्र को पुत्र चुनौती देता है तब ऐसी स्थिति में वह सीधे विक्रय पत्र का पक्षकार नहीं होते हुए भी पक्षकार यानि

पिता का 'हित प्रतिनिधि' (representative in interest) है। अतः उसे प्रतिफल के मूल्यानुसार न्यायालय फीस का भुगतान करना होगा। इस सम्बंध में न्यायदृष्टांत ***इशरत जहाँ विरूद्ध रजिया बेगम, 2010 (1) एमपीएलजे 50 (डीबी)*** अवलोकनीय है। इसी प्रकार यदि संयुक्त परिवार के कर्ता द्वारा किए अंतरण को सहअंशधारी चुनौती देता है तब भी मूल्यानुसार न्यायालय फीस देय होगी। इस सम्बंध में न्यायदृष्टांत ***अशोक कुमार बाफना विरूद्ध केवल चंद, एआईआर 2012 एमपी 113***, तथा ***शमशेर सिंह विरूद्ध रजिंदर प्रसाद, एआईआर 1973 एससी 2384*** अवलोकनीय है। मुख्तयारनामा द्वारा किए अंतरण को मूल स्वामी चुनौती देता है तब भी मूल्यानुसार न्यायालय फीस देय होगी। इस सम्बंध में न्यायदृष्टांत ***हरीश पटेल विरूद्ध संजय कुमार, आईएलआर 2015 एमपी 1676*** अवलोकनीय है।

विक्रय पत्र से सम्बंधित मामलों में वाद का मूल्यांकन विक्रय पत्र में उल्लेखित प्रतिफल की राशि के अनुसार करना चाहिए न कि बाजार मूल्य के अनुसार। इस सम्बंध में न्यायदृष्टांत ***राजकुमार जैन विरूद्ध सावित्री देवी, 2010 (2) एमपीएलजे 138 (डीबी)*** अवलोकनीय है जिसमें 'विक्रय मूल्य' तथा 'बाजार मूल्य' में अन्तर को भी समझाया गया है।

**वाद मूल्यांकन अधिनियम, 1887 की धारा 8 के अन्तर्गत आधिपत्य, अग्रक्रयाधिकार, मोचन तथा पंचाट के वादों के सम्बंध में अधिकारिता के प्रयोजन के लिए मूल्यांकन**

अधिनियम की धारा 3 में भूमि के मूल्य के अवधारण के लिए राज्य सरकार द्वारा नियम बनाने का प्रावधान करती है। राज्य सरकार द्वारा 1942 में वाद मूल्यांकन अधिनियम के तहत नियम बनाए गए है जो राजपत्र दिनांक 13 मार्च, 1942 के भाग 3 में प्रकाशित हुये है, जिसका नियम 2 महत्वपूर्ण है जो भूमि के सम्बंध में भू–राजस्व के अनुसार मूल्यांकन करने का प्रावधान करता है।

अधिनियम की धारा 9 के प्रावधान धारा 3 से भिन्न वर्ग के ऐसे वादों के सम्बंध में हैं जिनका मूल्यांकन किया जाना संभव नहीं होता है। जैसे दाम्पत्य अधिकारों की पुर्नस्थापना, विवाह विच्छेद, बच्चों की अभिरक्षा तथा दस्तक सम्बंधी वाद। इनका क्षेत्राधिकार के प्रयोजन से मूल्यांकन क्या होगा, इस हेतु सन् 1911 में नियम बनाए गए है जो राजपत्र दिनांक 30 सितम्बर, 1911 के भाग 1 में प्रकाशित हुये है, जिसके अनुसार वादों में मूल्यांकन 400 रूपये होगा लेकिन यदि सम्पत्ति का स्वत्व भी अन्तर्वलित है तब विषयवस्तु के मूल्य के अनुसार मूल्यांकन होगा।

इसके अतिरिक्त जहां न्यायालय फीस अधिनियम के अन्तर्गत मूल्यानुसार फीस देना आवश्यक नहीं है और केवल द्वितीय अनुसूची के अनुच्छेद 17 में निर्धारित फीस दी जा रही है वहां न्यायालय फीस के प्रयोजन से उस अनुतोष का मूल्यांकन किया जाना आवश्यक नहीं होता है किन्तु क्षेत्राधिकार के प्रयोजन से ऐसे अनुतोष का मूल्यांकन उसकी विषयवस्तु के मूल्य के अनुसार होगा। इस सम्बंध में न्यायदृष्टांत ***कल्याण सिंह विरूद्ध नारायण सिंह, 2001 (5) एमपीएचटी 374, सरदार सिंह विरूद्ध शैतान सिंह 2018 (11) एमपीजेआर 30*** तथा ***शीलब्रत विरूद्ध कौशल्या, 1977 (2) एमपीडब्ल्यूएन 138*** अवलोकनीय है।

●

# SOME GUIDING PRINCIPLES OF APPRECIATION OF EVIDENCE IN CIVIL CASES

**Yashpal Singh**
**Deputy Director, MPSJA**

A judgment contains reasons for the decision based on sound judicial principles of appreciation of evidence; both statutory and precedents justifying the conclusion. There are various statutory provisions which contain principles of appreciation of evidence. At the same time, different principles have developed through precedents. This article is an attempt to compile some guiding principles of appreciation of evidence in civil cases. Though, no such compilation can be exhaustive in nature, it is just tried to bring in to the notice some general principles oftenly confronting while adjudicating civil matters.

## 1. STANDARD AND BURDEN OF PROOF IN CIVIL CASES

### Standard of proof

Black's Law Dictionary defines 'standard of proof' as the degree or level of proof demanded in a specific case such as beyond reasonable doubt or preponderance of probability. In ***R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami, (2003) 8 SCC 752***, it is held that civil cases may be proved by preponderance of probability, due regard being had to the burden of proof. But what is preponderance of probability? Black's Law Dictionary defines it in following terms –

> "Preponderance of evidence is the greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the others."

In simple words, it is such degree of probability as would satisfy the mind of a reasonable prudent person as to the existence of a fact.

### Burden of proof

The law regarding burden of proof deals with the question by which party and in what manner any fact is to proved. Sections 101 to 106 of the Evidence Act lay down rules relating to burden of proof. The rules are as follows –

(1) Whoever desires any court to render judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that hose facts exist.

(2) When a person seeks to prove the existence of any facts, it is said that the burden of proof lies on that person who would fail if no evidence at all were given on either side.

(3) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on a particular person.

(4) The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

(5) When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proof has two district meanings – the burden of establishing a case which never shifts and the onus of proof i.e., burden of leading evidence which shifts constantly as evidence is led by either party.

In ***A. Raghavamma v. A. Chenchamma, AIR 1964 SC 136***, the Apex Court has held that there is an essential distinction between burden of proof and onus of proof; burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence.

Nevertheless, at the same time, it is also well settled as to when both the parties lead evidence in civil cases, the question of burden of proof looses importance. The same view has been enunciated by High Court of Madhya Pradesh in ***Chief Municipal Officer Vidisha v. Champalal & another, 2007 RN 271 (HC)*** while relying upon the ratio of the Apex Court in ***Lakhan Sao v. Dharamu Chaudhary, (1991) 3 SCC 331***.

**A party cannot take advantage of weakness in case of opposite party**

Indubitably, plaintiff has to stand his case on his own legs rather than to rely upon the shortcomings of defendant. In ***Daulat Singh v. Devi Singh, 2011 (2) MPLJ 328***, it is held that plaintiff (defendant in case of counter claim) is required to prove his case on the basis of his own pleadings and he cannot take any advantage of weakness of defendant. In ***Ratnagiri Nagar Parishad v. Gangaram Narayan Ambekar and ors., (2020) 7 SCC 275***, it has been laid down that weakness in defence cannot be the basis to grant relief to the plaintiffs and to shift the burden on defendant.

## 2. NO EVIDENCE WITHOUT PLEADINGS

The core golden thread running through the Code of Civil Procedure, 1908 ensures that no party is surprised by evidence of adversary during trial. That is the objective of rules of pleadings and documents.

The High Court of Madhya Pradesh in ***Chandrabhan Singh v. Ganpat Singh, ILR (2012) MP 1917*** has considered this aspect and held that the object and purpose of the pleadings is to enable the adversary to know the case of the other party. In order to have a fair trial, it is imperative that party should state the essential material facts, so that other party cannot be taken by surprise.

It is settled law that evidence howsoever cogent but contrary to pleadings cannot be relied on (See ***Janak Dulari Devi & anr. v. Kapildeo Rai & anr., (2011) 6 SCC 555***). In ***Nandkishore Lalbhai Mehta v. New Era Fabrics Private Limited and ors., (2015) 9 SCC 755*** it is held that fresh evidence which is in variation to the original pleadings cannot be taken unless the pleadings are incorporated by way of amendment. In a more recent judgment of ***Biraji @ Brijraji and anr. v. Surya Pratap and ors., (2020) 10 SCC 729*** (Three Judge Bench) application to summon records was filed after conclusion of evidence when case was fixed for final arguments. There were no pleadings on the issue on which evidence was sought. Apex Court held that in absence of pleading, no amount of evidence will help the party and thus, such an application is not maintainable.

However, there may be cases where though specific plea on an issue is not taken but parties may lead evidence about it knowing that in substance the said plea is being tried. In such cases formal requirement of pleadings can be relaxed. In this regard, the law laid down by the Apex Court in ***Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735*** is relevant to refer here -

> "But cases may occur in which though a particular plea is not specifically included in the issues, parties might know that in substance the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed by one or the other of the parties, was in substance, at issue between them and that both of them have had opportunity to lead evidence about it at the trial that the formal requirement of pleadings can be relaxed..."

For example, in a partition suit specific share of sister may not be pleaded, the Court is absolutely empowered to reckon her share in the property of deceased. She keeps her right of share in deceased's property in the eyes of Hindu Succession Act, 1956, and she would not be ousted from her share unless she waives her right of share in consonance with law.

## 3. ADMISSION IS THE BEST EVIDENCE

An admission is a statement against the interests of the maker and prejudicial to him. Admission may be either in pleadings or in evidence, oral or documentary. Evidential admissions may also contain in previous statements and writings. It is a cardinal rule of adjudication in a civil dispute that when admission emanates from the mouth of opposite party, it would be treated as a best evidence.

Regarding nature of admissions, High Court of Madhya Pradesh in ***Awadh Bihari Asati & ors. v. Shyam Bihari Asati & ors., 2004 (1) MPLJ 225*** has held that it is well settled that admission made by the opposite party is the best evidence on which other party can rely upon. Supreme Court in ***Ahmedsaheb v. Sayed Ismail, AIR 2012 SC 3320*** has also observed that it is needless to emphasize that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration.

Admission through pleading is regarded on higher footing than evidentiary admissions and is accepted as unimpeachable and infallible. The observation of Madhya Pradesh High Court in ***Ramsajivan v. Laljiram, 2012 RN 346*** would be condign to refer here –

> "According to me, the admissions in pleadings or judicial admissions admissible u/s 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves, can be made the foundation of the rights of the parties..."

The evidentiary value of admissions was highlighted in the Apex Court judgment of ***Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors., AIR 1960 SC 100***, wherein it was held that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. In relation to documents, Madhya Pradesh High Court in ***Ramdevi Bai v. Kanak Singh, ILR (2014) MP 184*** has held that it is equally well settled legal proposition that an admission of a document is an admission of a facts contained in the document.

However, plea of admission by vendor cannot be taken to defeat the interests of purchaser. Any admission made after parting with the interest in property is not admissible. In ***Nanku @ Nagendra Singh v. Ramdaras Singh, 2000 (II) MPWN 215***, it was held that no admission could be made after parting with the interest, it could be relevant if made during subsistence of the interest, no admission is admissible in derogation to the right of purchaser if made after selling property to him as per section 18 of the Evidence Act.

## 4. EVIDENTIARY VALUE OF REGISTERED DOCUMENTS

Registration of document is an official act. It has the backing of presumption u/s 114 of the Evidence Act. In ***Prem Singh v. Birbal, (2006) 5 SCC 353*** it has been held by the Supreme Court that there is a presumption that registered document is validly executed. A registered document therefore *prima facie* would be valid in law.

In ***Shanti Budhiya Vesta Patel v. Nirmala Jayprakash Tiwari, AIR 2010 SC 2132*** the Apex Court has held that we cannot lose sight of the fact that a registered document has a lot of sanctity attached to it and this sanctity cannot be allowed to be lost without following the proper procedure. Similarly, in ***Rajendra Prasad Dwivedi v. Atul Kumar Dwivedi and ors., 2005 (5) MPHT 383*** Madhya Pradesh High Court has held that as per section 114 of the Evidence Act, there is presumption that judicial and official acts have been regularly performed and therefore, if the sale deed is registered by a sub-registrar under Indian Registration Act in his official capacity it would deem that it is duly executed unless and until it is refuted by some cogent evidence.

However, registration of Will does not absolve the propounder to prove the execution thereof.

## 5. A PARTY CANNOT APPROBATE OR REPROBATE AT THE SAME TIME

It is also one of the fundamental principles of appreciation of evidence that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate" at the same time. In this regard, the ratio rendered in ***R.N. Gosain v. Yashpal Dhir, AIR 1993 SC 352***, is relevant to refer as under –

> "Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

In ***Cauvery Coffee Traders, Mangalore v. Hornor Resources (International) Company Limited, (2011) 10 SCC 420***, it was held that where one knowingly accepts the benefits of a contract or conveyance or an order, he is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity. The rule is further elaborated in ***B. Bhagwat Sharan (Dead thr. LRs.) v. Purushottam & ors., (2020) 6 SCC 387*** by holding that in respect of Will, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will. Any party who takes advantage of any instrument must accept all that is mentioned in the said document.

## 6. DOCTRINE OF ESTOPPEL

Doctrine of estoppel is based on concept of fair play and secures justice between the parties by promotion of honesty and good faith. It is contained u/s 116-117 of the Evidence Act. The doctrine of estoppel deals with questions of fact and not of rights. A person having a certain right cannot be estoppel from claiming that right merely because earlier he has stated that he will not claim that right.

In ***Chhaganlal Keshavlal Mehta v. Patel Narandas Haribhai, (1982) 1 SCC 223***, the Apex Court laid down essential ingredients for applicability of this principle in following terms –

"To bring the case within the scope of estoppel as defined in section 115 of the Evidence Act :

(1) there must be a representation by a person or his authorised agent to another in any form - a declaration, act or omission;

(2) the representation must have been of the existence of a fact and not of promises *de future* or intention which might or might not be enforceable in contract;

(3) the representation must have been meant to be relied upon;

(4) there must have been belief on the part of the other party in its truth;

(5) there must have been action on the faith of that declaration, act or omission, that is to say, the declaration, act or omission must have actually caused another to act on the faith of it, and to alter his former position to his prejudice or detriment;

(6) the misrepresentation or conduct or omission must have been the proximate cause of leading the other party to act to his prejudice;

(7) the person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge, there can be no estoppel.

(8) Only the person to whom representation was made or for whom it was designed can avail himself of it. A person is entitled to plead estoppel in his own individual character and not as a representative of his assignee."

It was also held in this case that there can be no estoppel against an statute.

In ***Kale & ors. v. Dy. Director of Consolidation, AIR 1976 SC 807***, a compulsorily registrable family arrangement though not registered was held to operate as estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it.

## 7. PROOF OF DOCUMENTS

The law relating to proof of document is contained u/s 67 to 100 of the Evidence Act. Admission of document is not proof thereof. A document after its admission by Court is required to be proved by the party who wish to rely upon it. However, there are some provisions such as sections 79 and 90 of the Evidence Act which raise presumption of genuineness in favour of certified copy of public documents or documents 30 years old.

General rule is laid down by Apex Court in ***Sait Tarajee Khimchand v. Yelamarti Satyam, AIR 1971 SC 1865***, where it was held that mere marking of a document as an exhibit does not dispense with its proof.

### Execution of document – How proved?

The landmark judgment of Madhya Pradesh High Court in ***Gwalior Ceramic and Potteries Pvt. Ltd. v. Karamchand Thapar and Bros. Coal Sales Ltd., 1996 MPLJ 772*** may be referred where law relating to proof of documents was discused in detail. The principles laid down therein may be summarised in following points –

(1) A reading of section 47 and 67 together shows that reasonable inference is that the signature of the executer must be proved either by examining the person in whose presence the signature was affixed or writing executed or examining another person who is acquainted with the handwriting.

(2) Of course, a document or signature can also be proved by calling a hand writing expert but unless the requirement of law is fulfilled, a document can not be said to have been proved.

(3) If document is alleged to have been executed or signed by a particular person, it must be proved by witness who has either seen it being executed or who is within the meaning of the explanation appended to section 47.

(4) If a person merely says that a particular document or a particular signature is of particular person, it is not the compliance of law and cannot be said to be proper evidence of the fact required to be proved under section 47 of the Indian Evidence Act. Thus, unless the requirement of the law is fulfilled, the mere statement that the document is in the hand writing of a particular person is not sufficient proof under the law.

(5) If document is exhibited it by itself does not go to show that the requirement of law has been dispensed with.

**Proof of documents more than 30 years old**

Section 90 of the Evidence Act raises presumption in favour of documents which are more than 30 years old. It is founded on necessity and convenience because it is extremely difficult and sometimes not possible to lead evidence to prove handwriting, signature or execution of old documents after lapse of thirty years.

Section 90 dispenses with proof of document as required in sections 67 and 68 and what is required to be done is deemed to have been done by operation of law. In ***Om Prakash v. Shanti Devi, AIR 2015 SC 976*** it has been held that once it is satisfactorily proved that the document is thirty years or more in age, section 90 thereupon dispenses with the formalities of producing the executant and and or the attestators thereto.

However, presumption of genuineness may be raised only if the document in question is produced from proper custody. The extent of the presumption relates only to the signature, execution or attestation of a document that is to say, its genuineness. In ***Chhogamal v. Mangilal, 1988 (I) MPWN 238*** Madhya Pradesh High Court considered the extent of presumption u/s 90 and held that four presumptions arise in respect of such document, namely —

(1) That the signature and every other part of the document, which purports to be in the handwriting of any particular person, is in that person's handwriting;

(2) That the document was executed by the person by whom it purports to have been executed;

(3) That document was attested by person by whom it purports to have been attested; and

(4) That the document was prepared at the time when it purports to have been prepared.

It is the discretion of the Court to accept the presumption flowing from section 90. In ***Lakhi Baruah v. Padma Kanta Kalita, AIR 1980 SC 1252*** it has been held that judicial discretion u/s 90 should not be exercised arbitrarily. In ***Ghasitibai v. Ramgopal Singh, 2009 (1) MPLJ 666***, it is held that the drawing of the presumption does not connote the idea that the contents of the documents are true or that they have been acted upon. Presumption is restricted to the genuineness of document, not as to the truthness of its contents.

In ***Bharpur Singh and ors. v. Shamsher Singh, (2009) 3 SCC 687*** Apex Court has laid down that presumption regarding 30 years old documents is not applicable to Will. A Will must be proved in terms of section 63 (c) of the Indian Succession Act and section 68 of the Evidence Act.

**Effect of proof of execution of document**

The effect of proof of execution of document was considered by the Apex Court in ***Grasim Industries Ltd. v. Agarwal Steel, ILR (2009) MP 3252 (SC)***. It is held that when a person signs a document, there is a presumption, unless there is a proof of force or fraud, that he read the document properly and understood it and only then he has affixed his signatures thereon, otherwise no signature on a document can ever be accepted. This aspect has been further clarified in ***Madan Mohan Singh v. Ved Prakash Arya, (2021) 5 SCC 456*** by holding that when the parties sign a document, they cannot wish away the consequences which flow from the signing of document.

**Admissibility of document is one thing and its probative value another**

In ***State of Bihar v. Radha Krishna Singh and ors., AIR 1983 SC 684***, Apex Court has held that admissibility of a document is one thing and its probative value quite another – these two aspects cannot be combined. A document may be admissible and yet may not carry any conviction and weight or its probative value may be nil. In ***Dhaniram v. Karan Singh 1985 MPWN 540***, it is held that where executant of a document is illiterate or rustic, the opposite party has burden to prove that the document was read over and properly explained to him.

Similarly, in ***Narendra Kante v. Anuradha Kante, AIR 2010 SC (Supp) 278*** it is held that deed of family settlement seeking to partition joint family property cannot be relied upon unless signed by all the co-sharers.

**Objection as to admissibility of document**

Objection as to admissibility of a document must be raised at the time of recording of evidence. Object of this provision is to afford an opportunity to the party to rectify the defect and and resort to such mode of proof as would be regular. A party cannot be permitted to surprise the adversary at the fag end of trial. In ***P.C. Purushothama v. S. Perumal, AIR 1972 SC 608***, Apex Court has held that it is not open to a party to object to the admissibility of documents which were marked as exhibits without any objection from such party.

It is also apposite to refer to the celebrated judgment of the Apex Court in ***R.V.E. Venkatachala Gounder*** (supra) where it was held that –

> "Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit," an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play.
>
> The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof."

In ***Ranvir Singh v. Union of India, AIR 2005 SC 3467***, the xerox copy of the sale deeds were marked exhibits without any objection having been taken. It was held that such an objection cannot, therefore, be taken for the first time before the appellate Court. The said deeds of sale cannot be rejected only on the ground that only xerox copies thereof had been brought on records.

**Output of electronic records and requirement of certificate u/s 65B Evidence Act**

Relying upon the judgment of the Apex Court in ***R.V.E. Venkatachala Gounder*** (supra), Apex Court in ***Sonu @ Amar v. State of Haryana, AIR 2017 SC 3441*** has held that requirement of certificate as contemplated u/s 65B of the Evidence Act is also a requirement of mode or method of proof and has to be raised at the time of marking of the document as an exhibit and not later, particularly at the appellate stage.

## 8. ADVERSE INFERENCE AND BEST EVIDENCE RULE

One of the cardinal principles of law of evidence is that party in possession of best evidence must produce it, otherwise as per section 114 (g) of Evidence

Act adverse inference may be drawn against him. Nature of presumption u/s 114 (g) of Evidence Act is discretionary. The Court may or may not raise such a presumption.

In ***Gopal Krishnaji v. Mohd. Haji Latif, AIR 1968 SC 1413***, the Apex Court has held that where a party had not produced the best evidence, which could have thrown fight on the issue in controversy, the Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him. The party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

**Non-examination of a party lead to adverse inference**

In ***Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat, AIR 1970 MP 225***, it was held that when a material fact is within the knowledge of a party and he does not go into the witness box without any plausible reason, an adverse inference must be drawn against him. A presumption must be drawn against a party who having knowledge of the fact in dispute does not go into the witness box particularly when a prima facie case has been made out against him. In ***Jagdish Prasad & ors. v. Smt. Meera Devi & ors., ILR (2011) MP 1259***, it was held that the question of drawing an adverse inference on account of non-examination of a party has to be decided in the facts of each case. U/s 114 of the Evidence Act, presumption which may be raised, is discretionary. The Court may or may not raise such a presumption.

In ***International Electricals and anr. v. Smt. Sunital Jain, 2008 (2) MPLJ 118*** proprietor of defendant neither entered in the witness box nor any explanation in this regard was put forth on record, whereas in order to prove the alleged defence of the tenancy he was the only witness who could have proved such fact. Therefore, non-examination of the defendant was held to be material circumstance to draw the inference against him that there was no such relationship of landlord and tenant. In ***Vimal Chand Ghevarchand Jain and ors. v. Ramakant Eknath Jadoo, (2009) 5 SCC 713***, the defendant (son of the vendor) was the attesting witness of the sale deed. In his written statement, he categorically denied execution of the said sale deed. He also denied that he had attested the document. He even did not examined himself before the trial Court. It was held that adverse inference, thus, should have been drawn against him.

In ***Iqbal Basith and ors. v. N. Subbalakshmi and ors., (2021) 2 SCC 718*** (Three Judge Bench), the defendents raised no genuine objection to the validity or genuineness of the government documents and the registered sale deeds produced by the appellants in support of their lawful possession of the suit property. Defendant 1 did not appear in person to depose, and be cross-examined. His younger brother deposed on the basis of a power of attorney, acknowledging that the latter had separated from his elder brother. No explanation was furnished why the original defendant did not appear in person to depose. Held, there is no reason not to draw an adverse inference against defendant 1 in the circumstances.

However, the above rule admits an exception in form of power of attorney holder having full knowledge of facts. In ***Jagdish Prasad*** (supra), plaintiff had not entered the witness box and her son was examined on her behalf as her attorney. The power of attorney was given to conduct the suit and to do all other acts which were necessary. Plaintiffs' son deposed that he had the information about the case which was not rebutted in cross-examination. It was held that an attorney can appear as a witness as well and no adverse inference can be drawn on account of non-production of the plaintiff.

**Husband is competent witness for wife**

Section 120 of the Evidence Act provides that in all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

In ***Smt. Rajni Tiwari v. Smt. Bhagwati Bai, 2012 (2) MPHT 203*** it has been held that u/s 120 of the Evidence Act, the husband of a party to the suit is competent witness, therefore, he is entitled to depose about the facts about which he or his wife has the knowledge. The husband of the petitioner being the competent witness for the wife can also be permitted to exhibit the document and there is no need to execute the power of attorney.

In cases where husband holding special power of attorney of wife comes to depose on her behalf, reference may be made to ***Murlidhar Pinjani & anr. v Smt. Sheela Tandon & anr., ILR (2007) MP 785*** where it has been held that husband is competent to depose for his wife as provided u/s 120, thus, no adverse inference can be drawn due to non-examination of plaintiff/wife.

**Non-production of document lead to adverse inference**

In ***Manisha Lalwani (Smt.) v. Dr. D.V. Paul, ILR (2012) MP SN 60*** it was held that non-production of document when called upon by Court to produce would lead the Court to draw an adverse inference.

## 9. COMPETENCY OF POWER OF ATTORNEY HOLDER

Civil litigation often involves question of competency of power attoney holders to depose on behalf of principal. General principle is that a power of attorney holder cannot depose in place and instead of principal. However, he can always appear as a witness for the principal.

The extent of competenacy of power of attorney holder came up for consideration before the Apex Court in ***Janki Vashdeo Bhojwani v. Indusind Bank Ltd., AIR 2005 SC 439***. It was held that Order, 3 Rules 1 and 2 CPC empower the holder of power of attorney to 'act' on behalf of the principal. The term 'act' would not include deposing in place and instead of the principal. However, if the power of attorney holder has rendered some 'acts' in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only

the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

In ***Man Kaur (Dead) By Lrs. v. Hartar Singh Sangha, (2010) 10 SCC 512*** the Apex Court has summarised the position as to the competency of power of attorney to give evidence –

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder.

***Example*** : A landlord who seeks eviction of his tenant on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category.

There is, however, a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible

to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/ wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

## 10. JOINT HINDU FAMILY AND JOINT PROPERTY

### Presumption of joint Hindu family

There is a presumption of jointness of Hindu family. In ***State Bank of Travancore v. A.K. Panicker, AIR 1971 SC 996*** it was held that a Hindu family is presumed to be joint unless the contrary is established. However, there is no presumption of such joint family holding joint property. In ***Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade, AIR 2007 SC 218*** it was held that –

> "So far the legal proposition is concerned, there is no gainsaying that whenever a suit for partition and determination of share and possession thereof is filed, then the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and after initial discharge of the burden, it shifts on the defendants to show that the property claimed by them was not purchased out of the joint family nucleus and it was purchased independent of them."

A three Judge Bench judgment of the Supreme Court in ***Achuthan Nair v. Chinnammu Amma & ors., AIR 1966 SC 411*** is also worth to refer here where it was observed that under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint property to establish it.

### Property purchased from the funds of HUF is deemed to be of HUF

In ***Gopi Nath v. Shivprasad, 2012 RN 323*** Madhya Pradesh High Court has held that according to Article 231(1) of the Mulla's Hindu Law there is a presumption of Joint Hindu Family, but, according to sub-para (2) of the said Article there cannot be any presumption that joint family possess a joint property and it is for the person who claims it to be joint has to prove that from the funds of HUF it was purchased. If it is proved that it was purchased from the funds of HUF irrespective of the fact it was purchased in the name of only one member, it would be deemed that the same is the HUF property.

### No adverse possession against co-sharers

In ***Darshan Singh v. Gujjar Singh, 2002 LawSuit (SC) 10***, the Apex Court held that the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers.

**Purchasers' right in undivided and joint property**

The crux of law laid down in ***Baital Singh v. Shrilal, 2007 (4) MPLJ 477***, ***Ramdas v. Sitabai, 2009 (4) MPLJ 597 (SC)*** and ***Govind Singh v. Hamir Singh, 2013 (III) MPWN 57*** is that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the coparcener whose share he had purchased. Undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court.

## 11. DOCUMENT BROUGHT IN LIGHT AFTER UNDUE DELAY

A document which is not shown light after its execution for long time raises suspicion on its genuineness. A person gaining from a document would naturally show such document to affected persons and would use it to further his interest. Keeping silent about it is against the common course of human conduct.

In ***Punjraj v. Hemsingh, 1994 RN 168***, it was held that section 109 of the MP Land Revenue Code provides that if a person lawfully acquires a right or interest in the land he shall report orally or in writing his acquisition of such right to the Patwari within six months from the date of such acquisition. In absence of any endorsement by the Patwari or any of the Revenue Officers it can very well be assumed that it was never produced before the authorities who are required to deal with recording of the possession of the agricultural land. A document which is not brought in light for a considerable period to time creates serious doubt over its truthfulness and veracity.

This principle has been further enunciated in ***Ramrao son of Karujibaghale v. Natthu son of Karujibaghale & ors. AIR 2011 MP 195***, by Madhya Pradesh High Court on similar issue as under –

> "The second suspicious circumstance is that although the plaintiff was having Will in his possession and the said Will has been executed on 3.2.1984 and testator Karuji died on 24.11.1985, but, the plaintiff was keeping silent and did not act upon on the basis of Will for years together which is against his natural conduct."

However, in an appropriate case where the document is otherwise proved to be a genuine one and party successfully explain the delay, the document may be relied upon.

## 12. NOTICE RECEIVED AND NOT REPLIED

There is a presumption in favour of person issuing notice that the noticee has nothing in defence where even after due receipt of notice, no reply is given to the sender thereof. Such an inference may be drawn on the basis of common course of human conduct.

In ***Mool Chand v. S.P. Kapoor, 2010 (4) MPLJ 543*** Madhya Pradesh High Court has held that it is settled position of law that whenever a notice is given by a party to the other party and in spite of service of the same if it is not replied by the other party then, such a circumstance is sufficient to draw inference against such other party that he did not have any proper defence to challenge or rebut the case of the party who issued such notice. ***Ramesh v. Smt. Mansi, 2008 (I) MPJR SN 4*** may also be referred on this point.

## 13. WITNESS NOT APPEARING FOR CROSS-EXAMINATION

It often happen in civil cases that after filing examination-in-chief on affidavit, the deponent do not appear for cross-examination. What will be the value of such affidavit, was the question considered by Apex Court in ***A.T. Corpn. Ltd. v. Shapoorji Data Processing Ltd., AIR 2004 SC 355*** (Three Judge Bench) where it was held that examination-in-chief of a witness can be produced in the form of affidavit, yet, same can not be ordered to form part of evidence unless the deponent thereof enters the witness box and confirms that the contents thereof are as per his say and the affidavit is under his signature and his statement being made on oath.

Therefore, unless the deponent appears in the witness box, proves the affidavit to be his examination-in-chief and renders himself available for cross examination, his affidavit cannot be read in evidence.

## 14. AFFIDAVITS ARE NOT EVIDENCE

In many cases parties file previous affidavit of persons to prove the statements in their favour. The term 'evidence' defined u/s 3 of the Evidence Act specifically excludes 'affidavit' and therefore, affidavits are not evidence. However, affidavits may be relevant and may be proved as 'admission' against the deponent himself. In ***Kalusingh v. Nirmala, 2015 (3) MPHT 218***, it is held that unless Court orders under Order XIX, Rule 1 CPC or unless the adversary is permitted to cross-examine the deponent on affidavit, affidavit cannot be accepted as evidence.

## 15. ABSENCE OF CROSS EXAMINATION – EFFECT OF

Statement not challenged in cross examination is to be accepted as admitted. The Apex Court in ***Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204*** has observed that there cannot be any dispute with respect to the settled legal proposition that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. If a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is

impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit.

In ***Anita Sharma and ors. v. New India Assurance Company Ltd. and anr., (2021) 1 SCC 171***, Apex Court has held that failure to cross-examine a witness despite adequate opportunity leads to an inference of tacit admission.

In ***Mohammed Sayed & anr. v. M/s Hindustan Petroleum & ors., 2004 (I) JLJ 199***, it has been reiterated that when a statement is not challenged in cross-examination, it has to be accepted as admitted.

## 16. DESCRIPTION IN DEED IS NOT DECISIVE OF TRUE CHARACTER

Civil disputes often involves the question of interpretation of documents to ascertain its true character. In such cases, title of the deed may not always correspond to the contents thereof. In such cases observation of the Apex Court in ***Mangala Kunhamina v. Puthiyaveettil Peru Amma, AIR 1971 SC 1575*** may come to the aid where it was observed that Court is required to consider circumstances and conduct of the parties to ascertain the true character and conduct of the transaction evidenced by any document. The mere description of the deed, held, to be not decisive of the essence of the transaction.

## 17. IDENTITY OF PROPERTY – DISPUTE BETWEEN PLOT NUMBER AND BOUNDARIES

Nagpur High Court in ***Pannalal v. Bhaiyyalal, AIR 1937 Nag 281*** had observed that substantial description of property such as boundaries must prevail over measurement in a deed of conveyance, as measurements in deeds are seldom accurate.

The Apex Court in ***Sheodhyan Singh v. Sanichara Kuer, AIR 1963 SC 1879*** has held that where both the boundaries and the plot number are availble on record, boundaries must prevail and the mistake in the plot number must be treated as a mere misdescription which does not affect the identity of the property sold. The same has also been followed in ***Raj Bai v. Uday Pratap Singh, 2014 (II) MPWN 78 (DB)***.

## 18. NOMINEE IS AGENT OF ACTUAL SUCCESSORS

In family disputes and matters relating to succession certificate, question arises as to the status of nominee. On one hand several persons may claim the benefits on the basis of law of succession applicable to the parties, and on the other hand widow may claim the entire benefits on the basis of being nominee of the deceased.

So far as the rights of nominee are concerned, it is well settled that nominee is only an agent of actual successors. In this respect, the verdict rendered in ***Sarbati Devi v. Usha Devi, AIR 1984 SC 346***, is condign to quote here –

> "12....We approve the views expressed by the other High Courts on the meaning of section 39 of the Act (LIC of India Act, 1956) and hold that a mere nomination made under section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

## 19. PRESUMPTION OF CORRECTNESS OF ORDER SHEET OF COURT

Illustration (e) of section 114 of the Evidence Act raises a presumption that judicial and official acts have been regularly performed. Assertion of facts contrary to the order sheet is impermissible. Record of Court speaks for itself and terms of a judicial order reflect what has been decided.

In a recent judgment of ***Committee of Creditors of Amtek Auto Ltd. through Corporation Bank v. Dinkar T. Venkatasubramanian and ors., (2021) 4 SCC 457*** the Apex Court dealt with an application for rectification of order. It has been held that the application cannot be accepted as it is a settled principle of law that the record of the Court speaks for itself and the terms of a judicial order reflect what has been decided.

## 20. EFFECT OF CORRECTION IN DEPOSITION SHEET

Sometimes, deposition sheets are corrected by either replacing the words "not true" with "it is true" or *vice versa*. When the presiding officer who had recorded the deposition is transferred, such corrections become difficult to appreciate. Such was the situation before Apex Court in ***Guru Dutt Pathak v. State of Uttar Pradesh, AIR 2021 SC 2257*** wherein it has been held that a truncated statement is not to be read and true import of such correction is to be inferred from the contents of entire paragraph. In this case, suggestion was given to eye-witness that he was not present in the village and reached there after receiving the information. Correction in deposition sheet suggests that he admitted it to be true. Apex Court rejected the contention that witness accepted that suggestion in the light of contents of the entire paragraph.

## 21. DEPOSITION TO BE READ AS A WHOLE

Oral statement of witnesses are often challenged on the basis of isolated and truncated admissions obtained by sagacious cross-examination. Such truncated admissions have no significance as deposition of a witness is to be read as a whole, not in parts.

In ***Sunil Kumar Sambhudayal Gupta & ors. v. State of Maharashtra, (2010) 13 SCC 657*** it has been held that the rules of appreciation of evidence require that court should not draw conclusions by picking up an isolated sentence of a witness without adverting to the statement as a whole.

## 22. EVIDENCE OF RUSTIC VILLAGERS

It is quite natural for rustic villagers to be overawed by the Court atmosphere to give varying statements. In ***Mallikarjun and ors. v. State of Karnataka, (2019) 8 SCC 359*** Apex Court has held that vidence of rustic villagers cannot be adjudged by the same standards and exactitude like any other witness. Minor variations in their statements have to be ignored.

## 23. POSSESSION IS PRIMA FACIE PROOF OF TITLE

The presumption of section 110 of the Evidence Act provides that when the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

On contemplation of the above provision, the Apex Court in ***Nair Service Society v. KC Alexander, AIR 1968 SC 1165*** has observed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.

In ***Chief Conservator of Forests v. Collector, AIR 2003 SC 1805***, Supreme Court enunciated that section 110 embodies the principle that possession of property furnishes *prima facie* proof of ownership to the possessor and casts burden of proof on the party who denies his ownership. A long and settled possession of party over disputed land shifts the burden of proof on adversary to prove that their settled possession is without title.

However, recently in ***Nazir Mohamed v. J. Kamala and ors., 2021 (4) MPLJ 46 (SC)***, the Apex Court has carved out a caveat to the above general rule. It has been held that the maxim “possession follows title” is limited in its application to property, which having regard to its nature, does not admit to actual and exclusive occupation, as in the case of open spaces accessible to all. The presumption that possession must be deemed to follow title arises only where there is no definite proof of possession by anyone else.

### Attributes of settled possession

Law protects the rights of persons in settled possession of property. But it is not easy to distinguish between a trespasser and a person in settled possession as the difference is subliminal. Celebrated judgment of the Apex Court in ***Rame Gowda v. M. Vardappa Naidu, AIR 2003 SC 4609*** may be referred wherein tests to determine whether a possession is settled possession or not have been laid down. It has been held that –

“The court laid down the following tests which may be adopted as a working rule for determining the attributes of ‘‘settled possession’’ :

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

## 24. PERMISSIVE POSSESSION DOES NOT AUTOMATICALLY BECOME ADVERSE

In a three Judge Bench judgment of Supreme Court in ***Sheodhari Rai v. Suraj Prasad Singh, AIR 1954 SC 758*** it was held that where the possession is proved to be in its origin permissive, it will be presumed that it continued to be of same character until and unless something occurred to make it adverse. In another judgment of ***State Bank of Travancore v. A.K. Panicker*** (supra) it was held that a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of true owners for a period of 12 years or more.

That apart, for establishing the title on the basis of adverse possession the starting point of hostile possession has to be proved as laid down in ***Swaroop Singh v. Bartu, (2005) 8 SCC 330*** where it was observed that in terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse.

In a more recent judgment of ***Ramnagina Rai & anr. v. Dev Kumar Rai (dead) by LRs. & anr. (2019) 13 SCC 1363***, Apex Court has observed that there is nothing on record to show that the defendants' permissive possession over the property became adverse to the interest of the real owner at any point of time. On the contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit. Therefore, question of adverse possession do not arise.

## 25. SALE DEED AND AGREEMENT TO SALE

Section 5 of the Transfer of Property Act, 1882 defines "transfer of property" which means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself or to himself and one

or more other living persons; and "to transfer property" is to perform such act. Further, section 54 defines "Sale' and method thereof. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

**Agreement to sale does not create any right or interest**

In ***Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & anr,, 2012 (1) SCC 656***, it has been held that any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of sections 54 and 55 of TP Act and will not confer any title nor transfer any interest in an immovable property. In ***Namdeo v. Collector, East Nimar, Khandwa, (1995) 5 SCC 598*** it was held that an agreement to sale does not create any right, title or interest except a right to be enforced in Courts.

**Priority of rights must be protected**

Several civil litigations involve dispute where same property is claimed by different persons on the basis of different sale deeds. Madhya Pradesh High Court recognized the principle of priority of rights in ***Sunil Kumar v. Dr. Om Prakash Garg & ors., ILR (2010) MP 960 (DB)*** and held that purchase made competently vide earlier registered sale deed is to be first protected.

**Essential ingredients of sale**

In ***Kanaklatabai v. Parvatibai, 2009 (2) MPLJ 321***, it has been held that essential elements of sale are parties, subject matter, transfer or conveyance and price or consideration. It was further held that price or consideration is essential for sale, but payment of price is not necessarily a *sine qua non* to the completion of sale.

In ***Dayawantibai v. Sarala Bai, 2006 (4) MPLJ 346***, it was held that sale is a transfer of ownership in exchange for a price. Delivery of possession is also an essential ingredient. Where both the ingredients are lacking and the possession remains with the vendor, it cannot be said to be a sale of immovable property.

**Purchaser is to prove the title of predecessor also**

Where property is purchased by a person and his title is challenged in a suit, such person is required to prove the title of vendor also. In ***Rashid Khan v. State of M.P., ILR (2011) MP 2801***, Madhya Pradesh High Court has observed that –

> "12. It is well settled law that if the title of the plaintiffs is challenged, he is not only bound to prove his title but he had to further prove the title of his vendor also. In this context, I may cite a decision of this Court ***Sabrani v. Muniya, 1967 RN 507***. Since the plaintiffs have utterly failed to prove the title of their predecessor, according to me, learned trial court did not err in dismissing the suit of plaintiffs holding that they had failed to prove their title in the suit land."

**Unregistered and insufficiently stamped sale deed or agreement**

The Apex Court has considered the effect of unregistered and insufficiently stamped sale deed and agreement to sale in the light of provisions of Transfer of Property Act, 1882, Registration Act, 1908 and Stamp Act, 1899 in ***Avinash Kumar Chauhan v. Vijay Krishna Mishra, 2009 (3) MPLJ 289 (SC)***. The upshot of the judgment may be summarised in following points –

(1) An unregistered document may be admitted in evidence but a document which is insufficiently stamped cannot be used even for collateral purpose.

(2) Section 33 Stamp Act casts a duty upon every person who has authority to receive evidence and every person in charge of a public office before whom the instrument is produced, if it appears to him that the same is not duly stamped, to impound the same. Sub-section (2) of Section 33 of the Act lays down the procedure for undertaking the process of impounding.

(3) Section 35 of the Stamp Act provides that an instrument shall be inadmissible in evidence if the same is not duly stamped.

(4) The unregistered deed of sale is an instrument which required payment of the stamp duty applicable to a deed of conveyance. If adequate stamp duty is not paid, the court has to pass an order in terms of section 35 of the Stamp Act.

(5) Such a document would be inadmissible even for collateral purposes.

**Unregistered but sufficiently stamped sale deed or agreement**

It may happen that requisite stamp is paid on the deed or agreement or after impounding u/s 33 of the Stamp Act, deficit stamp and penalty is recovered thereon, but requirement of registration cannot be fulfilled. In such cases, provision of section 49 of the Registration Act, 1908 is relevant which says that no document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

Further, proviso to section 49 provides that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence; (i) of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (now Specific Relief Act, 1963), or (ii) as evidence of any collateral transaction not required to be effected by registered instrument.

In ***K.B. Saha and Sons Private Limited v. Development Consultant Limited, AIR 2008 SC 850*** the Apex Court culled out the following principles –

(1) A document required to be registered, if unregistered is not admissible into evidence u/s 49 of the Registration Act.

(2) Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to section 49 of the Registration Act.

(3) A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

(4) A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

(5) If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

In ***S. Kaladevi v. V.R. Somasundaram and ors., AIR 2010 SC 1654***, the above principles were approved with one more principle added that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.

Section 17 of the Registration Act, 1908 was amended in Madhya Pradesh by ***Act No. 4 of 2010*** (w.e.f. 14.01.2010) by which clause (f) was added to section 17(1) to the following effect –

> (f) any document which purports or operates to effect any contract for sale of any immovable property;

Although, contract for sale of any immovable property has been made compulsorily registrable but corresponding amendment as to its effect on non-registration has not been made in section 49. Therefore, there is no effect of non-registration of contract for sale of any immovable property and suit for specific performance on its basis is maintainable. Our High Court in ***Akshay Doogad v. State of MP, AIR 2016 MP 83*** has approved it.

In ***Prabhu Ramchandra v. Sulchi Nande, AIR 1963 MP 292*** it was held that an unregistered sale deed can be received as evidence of contract in suit for specific performance.

**Collateral transactions**

Black's Law Dictionary defines 'collateral' as supplementary; accompanying, but secondary or subordinate. Collateral purpose is the purpose which is independent of the purpose for which document was executed and is divisible from the transaction required by law to be registered.

In ***K.B. Saha*** (supra), it was held that an unregistered document may be received as collateral purpose of the delivery of possession or nature of possession.

Similarly, unregistered mortgage deed was held to be admissible in a suit for recovery of money to prove advance of payment ***[2009 (1) MadLJ 961]***. A new agreement may prove that earlier agreement was repudiated ***[AIR 2008 All 169]***. Date of entering into possession ***[AIR 1963 All 603]***, fact of possession ***[2004 (3) PunLR 311]*** and delivery of possession ***[AIR 1976 Gau 10]*** have been held to be collateral purposes.

However, terms of a document have been held to be not a collateral purpose in ***Satish Chand Makhan v. Govardhan Das Byas, AIR 1984 SC 143***. Thus, if a document is inadmissible for want of registration, none of its terms may be proved in the garb of collateral purpose.

**Relinquishment must be by registered instrument**

Relinquishment of any immovable property by a share holder results in transfer of interest in favour of the beneficiary. It requires compulsory registration in light of clause (b) of section 17(1) of the Registration Act, 1908. The same has been established in the judgment of Madhya Pradesh High Court in ***Ghasitibai v. Ramgopal Singh*** (supra).

However, relinquishment resulting by way of oral partition or in a document which is recital of earlier partition does not require registration as held in Apex Court judgment of ***Roshan Singh v. Zile Singh, AIR 1987 SC 881***. Further, in ***Sharda Prasad v. Prabhakar Kachi & ors., 2020 LawSuit (MP) 148***, Madhya Pradesh High Court has laid down that relinquishment of share by one coparcener in favour of other coparcener under a family settlement does not require compulsory registration.

## 26. WHETHER ALL CASE LAWS ARE TO BE CITED IN JUDGMENT

There is a tendency of referring innumerable case laws in arguments by the lawyers. Whether presiding officer of Court is required to cite all of them in its judgment? This question came up for consideration before a Division Bench of Madhya Pradesh High Court in ***Kishore Kumar & anr. v. Mohd. Hussain & ors., ILR (2011) MP 1487 (DB)***. Holding that it is not mandatory for a judge to cite all of the case laws referred to, it has been observed that no party or counsel is entitled to make a grievance that the judgments, which are being cited, are not relied upon or mentioned unless the ratio laid down therein has any relevance in the given case. The relevant para is condign to reproduce here –

> "Next submission by the learned counsel for the petitioner, though with an undertone but have an element of complaint that the judgments which are being cited are not addressed at by the Court, we attach no significance to this submission as it is not unusual for the parties, and counsel to cite innumerable judgments without confining to the ratio attracted and applicable in the matter where it is being cited. No party or counsel is, therefore, entitled to make a grievance that the judgments which are being cited are not relied upon or adverted; as unless the judgments which are being cited has any relevance and if the ratio laid down therein is attracted in the case."

Appropriate practice would be to refer all the case laws relevat to the arguments advanced by the parties and mention that other referred case laws have no significance in the matter to support their arguments.

## 27. EVALUATION OF REPORT OF LOCAL COMMISSIONER

Commission for local investigation may be issued by Courts for elucidation of real dispute between the parties, where there is boundary dispute between them, where identification of property is in dispute or where there is no agreed map. But the question that how to appreciate such reports needs to be answered.

The law is well settled that Court is not bound by the report of Commissioner. Court can accept or reject the report on the basis of other evidence and material on record. ***Praga Tools Corporation Ltd. v. Mahboobunnissa Begum, (2001) 6 SCC 238***, may be referred where Apex Court has held that the report of the Commissioner could only be an aid to the trial Court in arriving at its findings.

In ***Bhuribai v. Phoolchand, 1977 (II) MPWN 236***, it was held that where objection is raised on Commissioners' report, the report cannot be read in evidence unless objection is decided. In ***Bherulal v. Shantabai, 1989 (II) MPWN 56***, it was held that Commissioners' report being part of record of Court is not required to be proved by the Commissioner himself.

As far the value of Commissioner report is concerned, Supreme Court in ***Rajinder and Company v. Union of India, 2000 LawSuit (SC) 709***, has held that the question whether the commissioner's report is finally acceptable or not could be decided by the court dehors the order passed by the authority concerned. Reference may also be made to the judgment of Privy Council in ***Chandan Mull v. Chaimanlal, AIR 1940 PC 3***, in which their Lordships have held –

> "Interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his report, and who had not blindly adopted the assertions of either party."

This judgment has been followed by Madhya Pradesh High Court in ***Mangilal v. Gaurishankar, AIR 1992 MP 309***.

So far as requirement of preparation of field book while conducting the proceedings of demarcation is concerned, in ***Neema Bai v. Saraswati Bai & ors., 2002 RN 416***, Madhya Pradesh High Court has approved that preparation of field book is not *sine qua non* for demarcation report.

## 28. PRESUMPTION OF ENTRIES IN LAND RECORDS

### Presumption

Section 117 of the MP Land Revenue Code, 1959 (MPLRC) provides that all entries made under this chapter in the land records shall be presumed to be correct until the contrary is proved.

**Nature of presumption**

The presumption u/s 117 is rebuttable presumption. It is enacted merely as a rule of evidence dealing with onus of proof. In appropriate cases, where the Court is satisfied that the entries were suspicious or their credibility was otherwise doubtful, the Court may refuse to draw a presumption and insist on proof aliunde the entries. Reference may be made to ***Malti v. Devi Ram, 1993 LawSuit (MP) 5***.

**Revenue entries are not proof of title**

There is a series of judgments of the Apex Court where it has been categorically held that entries in land records do not confer title and such entries cannot be relied upon to prove title over the property. In leading case ***Durga Das v. Collector and others (1996) 5 SCC 618***, Apex Court considering the entries in revenue record mandated as under –

> "Mutation entries do not confer any title to the property. It is only an entry for collection of the land revenue from the person in possession. The title to the property should be on the basis of the title they acquired to the land and not by mutation entries."

The same principle has been followed in ***Union of India and others v. Vasavi Co-operative Housing Society Limited and ors., (2014) 2 SCC 269*** and ***Municipal Corporation, Gwalior v. Puran Singh @ Puran Chand & ors., (2015) 5 SCC 725*** where it was held that even if the entries in the Record of Rights carry evidentiary value, that itself would not confer any title on the plaintiff on the suit land in question. Plaintiffs have to show, independent of those entries, that the plaintiff's predecessors had title over the property in question and it is that property which they have purchased. The same view has been reiterated in recent judgment of the Apex Court in ***Jitendra Singh v. State of Madhya Pradesh, 2021 LawSuit (SC) 488***.

**Entries made without order of competent authority – No presumption**

In ***Chudamani v. Shri Ramadhar, 1991 RN 61***, it was further held that u/s 117 of MPLRC, on entries made by Patwari in remarks column of khasra, no presumption of correctness can be attached. In ***Ismail v. State of M.P., 1999 RN 170***, it has been laid down that stray entries is remarks column of khasra have no evidentiary value.

The observation of the Apex Court in ***Baleshwar Tewari v. Sheo Jatan Tiwary, AIR 1997 SC 2089*** may also be referred here –

> "Entries in revenue records is the paradise of the patwari and the tiller of the soil is rarely concerned with the same. So long as his possession and enjoyment is not interdicted by due process and course of law, he is least concerned with entries. It is common knowledge in rural India that a raiyat always regards the lands he ploughs, as his dominion and generally obeys, with moral fiber the command of the intermediary so long as his possession is not

disturbed. Therefore, creation of records is a camouflage to defeat just and legal right or claim and interest of the raiyat, the tiller of the soil on whom the Act confers title to the land he tills."

**Order set aside in appeal – No presumption**

In ***Ram Kumar and another v. Kamla Prasad and others, 1996 RN 337*** and ***Chudamani v. Shri Ramadhar*** (supra), it was held that certainly when khasra entries made as per order of Tahsildar and concerning order has been set aside in appeal, then such khasra entries have no value.

**Longer period of entries raise stronger presumption**

The presumption enshrined u/s 117 of the MPLRC relating to the entries made in record of rights becomes stronger where entries are continuous and for longer period. The observation of Madhya Pradesh High Court in ***Malti v. Devi Ram*** (supra), is condign to refer here –

> "9.....The longer the period of entries, the stronger would be the presumption, i.e., if the entry continues to be repeated for a number of years, year after year, without being challenged, the presumption would gain better strength. Of course, it is true that in appropriate cases, where the Court is satisfied that the entries were suspicious or their credibility was otherwise doubtful, the Court may refuse to draw a presumption and insist on proof aliunde the entries, the presumption enacted being merely a rule of evidence dealing with onus of proof."

## 29. COMPETENCY OF CIVIL COURT TO NULLIFY THE ORDERS OF REVENUE COURTS

Section 111 of MPLRC provides that the Civil Courts shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the record-of-rights.

The principle laid down by Constitutional Bench of Supreme Court in ***Dhulabhai v. State of Madhya Pradesh, 1968 LawSuit (SC) 94***, has to be followed by every Court of law. In this case, the Apex Court has held as under –

> "It is settled law that the exclusion of the jurisdiction of the Civil Courts is not be readily inferred, but that such exclusion must either be explicitly expressed of clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

Madhya Pradesh High Court in ***Reshma Bai (Smt.) & ors. v. Kanchansingh & ors., 1996 RN 144***, has held that Civil Court has jurisdiction to examine whether any forum has exceeded its jurisdiction in passing the order under challenged.

In view of the aforesaid provision, it is well settled that any order of Civil Court pertaining to the title of the suit lands is binding upon the Revenue Courts. Hence, the Revenue Courts are bound to rectify its orders and act in accordance with the adjudication of Civil Court. As such, a separate order of Civil Court to annul the orders of Revenue Court is not required. However, Civil Court may at the same time declare that the order of Revenue Court is nullity and not binding.

## 30. PRINCIPLES OF CALCULATION OF MESNE PROFITS

The criteria for calculation of mesne profits is not what the owner looses by reason of deprivation from possession but what the trespasser received or might have received with ordinary diligence. In ***Fatehchand v. Balkrishna Das, AIR 1963 SC 1405***, Apex Court has observed that the normal measure of mesne profits is, therefore, the value of the user of the land to the person in wrongful possession.

## 31. QUESTION OF LIMITATION – DUTY OF COURT

Section 3 of the Limitation Act bars the institution of any suit after expiry of the period of limitation prescribed in the said Act. The question is whether Court can dismiss a suit being barred by limitation when no such defence is taken? This question has been recently answered by the Apex Court in ***Nazir Mohamed v. J. Kamala and ors., 2021 (4) MPLJ 46 (SC)*** by holding that the Court is obliged to dismiss a suit filed after expiry of the period of limitation, even though the plea of limitation may not have been taken in defence.

## 32. DOCUMENTS HAVE PRIMACY OVER ORAL EVIDENCE

Best evidence rule is also contained u/s 91 and 92 of the Evidence Act which excludes oral evidence for the purpose of contradicting, varying, adding or subtracting from the terms of any document. Recently, in ***V. Anantha Raju v. T.M. Narasimhan, 2021 SCC OnLine SC 969***, Apex Court has held that written instruments are entitled to much higher degree of credit than parol (oral) evidence. It is of principle because such instruments are in their own nature and origin, entitled to a much higher degree of credit than parol evidence.

## CONCLUSION

An effort has been made to compile important principles of appreciation of evidence in civil cases. It can be seen that most of the principles are based on inferences and presumptions. Some other principles have been developed through judicial pronouncements. However, the list is not exhaustive. Judging skills may be sharpen by more and more diverse reading and judicial wisdom is developed with experience. Readers may read the complete judgments referred in this article to gather how these principles have been applied to the facts. This may help them in better and pragmatic understanding of the principles.

●

***Note** : See also article titled "Proof of Will particularly by Secondary Evidence" published in JOTI Journal October, 2013 issue, Part I, page no. 165; articles titled "Law of Adverse Possession: Contemporary Developments" and "Probative Value of Land Records" published in JOTI Journal October, 2021 issue Part I at page no. 214 and 225 respectively.*

# PRINCIPLES OF DETERMINATION OF JUVENILITY UNDER JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015

**Anu Singh**
O.S.D., MPSJA

## INTRODUCTION

In February, 2006 and October, 2007 two articles were published in JOTI Journal discussing the law relating to determination of juvenility. In October, 2004 another article was published pertaining to base date for determination of age. However, all these articles were related to the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. After the repeal of Act, 2000 and enactment of Juvenile Justice (Care and Protection of Children) Act, 2015 (in brief JJ Act, 2015), this subject necessitates a fresh discussion.

In the light of two judgments of our High Court in ***Indra Singh v. State of M.P., order dated 15.03.2017*** passed in Criminal Revision No. 793/2016 and ***Narpat Singh v. State of Madhya Pradesh***, order dated 16.09.2019 passed in Criminal Revision No. 4376/2019, wherein it is held that u/s 94 of JJ Act, 2015, the Court of Session has no power to determine the age of accused and this power is granted only to the Juvenile Justice Board (JJB) constituted under the JJ Act, 2015. It was interpreted that in all cases when claim of juvenility is raised, the matter should be sent to JJB for determination of the said fact.

However, after the recent verdict of Hon'ble the Apex Court in the case of ***Rishipal Singh Solanki v. State of Uttar Pradesh and ors., 2021 SCC OnLine SC 1079***, this is no more *res integra*. It has been held that it is mandatory for the Court or Magistrate to record its opinion before forwarding any person claiming to be a juvenile to the JJB. Further, the inquiry for the purpose of determination of the age of the person claiming to be a juvenile has to be conducted within the purview of section 9 (2) of the JJ Act, 2015 (section 7-A of the Act, 2000) by seeking evidence and by obtaining documents mentioned u/s 94 (2) of JJ Act, 2015.

As rightly pointed out by the Apex Court in the case of ***Rishipal Singh Solanki*** (supra) that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

This article is an attempt to discuss all the possible aspects of age determination of the person accused of commission of an offence. It is also pertinent to note that in this article, reliance is placed on some judgments pronounced prior to enactment of JJ Act, 2015 since section 9 of JJ Act, 2015 is to some extent *pari materia* with the provisions of sections 7 and 7A of the Act, 2000 and section 94 of JJ Act, 2015 is *pari materia* to some extent with rule 12 of the JJ Rules, 2007. Therefore, the law laid down in such cases are still relevant for understanding the provisions of JJ Act, 2015.

## DETERMINATION OF JUVENILITY

Before proceeding towards discussion at length, it is pertinent to have sight of the provisions of JJ Act, 2015 in this regard.

**Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act -**

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the Court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the Court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

**Section 94. Presumption and determination of age -**

(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed

with the inquiry u/s 14 or section 36, as the case may be, without waiting for further confirmation of the age.

2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining -

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; **and in the absence thereof**;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) **and only in the absence of (i) and (ii)** above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Accordingly, a Magistrate not empowered under the JJ Act, 2015 have two recourses when a person alleged to have committed the offence and brought before the Magistrate appears to be a child or claims to be a child. *Firstly*, where the Magistrate is in the position to make an opinion that the person is a child, he shall, as per section 9 (1) without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the JJB. *Secondly*, if Magistrate is not in the position to state that the person is a child but has a suspicion and Court before which such claim is raised, they shall, as per section 9(2) make an inquiry, take such evidence as may be necessary (but not on affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be.

Second aspect which is explicit from section 9(2) is that here not only Magistrate but also the word 'Court' is used. Hence, even a Court of Session or Special Court before whom claim of juvenility is raised has to proceed u/s 9(2).

Hon'ble High Court of Madhya Pradesh in ***Hariom Singh v. State of M.P., ILR (2018) MP 1007*** has summed up law on this point in the following words –

> "As per section 9(1) of the Act, *firstly*, Court has to have satisfaction before forwarding the child to the Juvenile Justice Board. Secondly, Court has to form an opinion that offender was a child. Court is not precluded from recording evidence. Section 9 clearly bestows authority on Court to record a finding that whether a person brought before him is a child on the date of commission of offence or not and this exercise is not to be carried out in a mechanical manner without there being any objective assessment and subjective satisfaction."

In ***Rishipal Singh Solanki*** (supra) it is observed that when the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies. It is further held that if an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person "as nearly as may be."

## STANDARD OF PROOF AND PERCEPTION OF THE COURT

This fact could be discussed in light of important observation of Hon'ble Apex Court in different cases. In ***Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720***, an obligation has been cast on the Court that where a plea of juvenility is raised having regard to the beneficial nature of the socially oriented legislation, such a plea should be examined with great care. Further in ***Babloo Pasi v. State of Jharkhand, AIR 2009 SC 314*** it was held that –

> "We are also not oblivious of the fact that being a welfare legislation, the Courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences."

In ***Ravinder Singh Gorkhi v. State of U.P., (2006) 5 SCC 584***, this concept has been further clarified and it was held that we are, however, of the opinion that the same would not mean that a person who is not entitled to the said benefit would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on record.

While drawing a balance between this concept and theory of benefit of doubt in criminal cases must be extended to accused, Hon'ble Apex Court in ***Arnit Das v. State of Bihar, (2000) 5 SCC 488*** observed that while considering the question as to determination of the age of an accused for the purpose of ascertaining whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced in support of the plea that he was a juvenile and, if two views may be possible, the Court should lean in favour of holding the accused to be a juvenile in borderline cases [see ***Babloo Pasi*** (supra)]. This is because the Act being a welfare legislation, Courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the Courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishment for having committed serious offences. This principle has been again reiterated in ***Rishipal Singh Solanki*** (supra).

Regarding standard of proof, it is observed in ***Mukarrab and ors. v. State of U.P., (2017) 2 SCC 210*** that "It is to be of degree of probability and not proof beyond reasonable doubt". Further in ***Mukarrab and ors*** (supra) and ***Babloo Pasi*** (supra) it was held that that if two views may be possible on the same evidence, the Court should lean in favour of holding the accused to be a juvenile in borderline cases.

Accordingly, as determination of claim of juvenility is an inquiry, standard of proof will be alike in all other inquiries, i.e., of preponderance of probabilities. Further, this plea should be examined with great caution and in borderline cases benefit of doubt is to be given to the child.

## BURDEN OF PROOF

Section 101 of the Evidence Act, 1872 provides that the initial burden to prove existence of any fact is on the person who asserts or desires the Court to give judgment as to any legal right. In ***Rishipal Singh Solanki*** (supra) the same principle is fortified in following words –

> "That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised."

Therefore, initial burden shall be on the person raising the claim of juvenility and once such person discharges the burden, the onus to rebut it shall shift upon the prosecution.

## INQUIRY : AMBIT & SCOPE

Section 9(2) of the JJ Act, 2015 mandates that Court or Magistrate has to conduct inquiry by taking evidence. Therefore, the extent or scope of inquiry or evidence which is required to be recorded has to be understood. This aspect was dealt at length by the Apex Court in context of JJ Rules, 2007 in the case of ***Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750*** wherein it was observed that:

> "Section 7-A obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The Criminal Courts, Juvenile Justice Board, Committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry or investigation as per the Code. The statute requires the Court or the Board only to make an "inquiry" and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7-A and Rule 12 are of considerable importance and a reference to

> them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence, need not be oral evidence."

Hence, here only inquiry is to be conducted which is not intended to be as extensive or detailed as a criminal trial. Further, this inquiry is only for determination of the age and Court or Magistrate is not expected to examine the correctness of those documents which are kept during the normal course of business.

## EVIDENCE

In this regard observation of Hon'ble Delhi High Court in ***Court on its Own Motion v. Department of Women and Child Development,*** [W.P.(Civil) 8889 of 2011] judgment dated 11.05.2012 is apposite which says that JJBs shall determine the age of a person by way of recording the evidence brought forth by the person claiming to be a juvenile and the prosecution/ complainant and the parties shall be given an opportunity to examine, cross examine or re-examine witnesses of their choice.

Therefore, even at the stage of inquiry while taking evidence, opportunity of cross examination and rebuttal should be afforded to opposite party. In ***Rishipal Singh Solanki*** (supra) it was held that the presumption is not conclusive proof of the age of juvenile and the same may be rebutted by contra evidence led in by the opposite side.

## HOW ENTRIES IN THE SCHOOL SCHOLAR REGISTER IS TO BE PROVED

The Apex Court in ***Birad Mal Singhvi v. Anand Purohit, 1988 Supp SCC 604*** has observed that an entry in a school register may not be a public document and, thus, must be proved in accordance with law. It was further held that an entry in a register maintained in the ordinary course of business by a public servant in the discharge of his official duty or by any other person in performance of duty specially enjoined by law of the country in which such register is kept would be relevant fact only if the conditions mentioned in section 35 of the Evidence Act are fulfilled. Hence, the entry of date of birth in the admission form, the scholar register and transfer certificate must satisfy the conditions laid down in section 35 of the Evidence Act.

Observation of the Apex Court in ***Rishipal Singh Solanki*** (supra) needs to be highlighted here. It is held that any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJB provided such public document is credible and authentic as per the provisions of the Indian Evidence Act, 1872 viz., section 35 and other provisions.

For extent to which and how reliability of these documents is to be tested guidance may be taken from the observation in ***Akhilesh Yadav*** (supra) wherein it was observed that "the Courts are not to conduct a roving inquiry into the correctness of school certificate or the date of birth certificate. It has been held that there may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But Court, JJB or a Committee functioning under the JJ Act is not expected to conduct such a roving inquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the JJB or the committee need to go for medical report for age determination.

Further, minor discrepancies in the documents must not be given undue weightage [See- ***State of Madhya Pradesh v. Anoop Singh, (2015) 7 SCC 773***].

In ***Sanat Kumar Yadav v. State of Madhya Pradesh, 2017 SCC OnLine MP 252*** it was held that "The only argument that has been advanced is that the father of the petitioner had no definite knowledge regarding the date of birth of the petitioner and the entry regarding the date of birth of the petitioner was made on the basis of conjectures and surmises. As such, the date of birth mentioned in school record cannot be relied upon. As already observed, the Supreme Court has cautioned the Courts in the case of ***Akhilesh Yadav*** (supra) that a roving inquiry doubting the date of birth given in the school record, is not to be conducted. If the school records are maintained in ordinary course of business, the Court or Juvenile Justice Board is not expected to conduct a detailed probe to go behind the certificates issued on the basis of such records to examine their correctness."

## AMBIGUOUS SCHOOL RECORDS

Where school records are ambiguous as to the date of birth of a person and not conclusively prove juvenility, in such cases, opinion of medical experts have to be given precedence over the school records (***Om Prakash v. State of Rajasthan and anr., 2012 AIR SCW 2462***).

Therefore as per section 94(2) the phrase *'and only in the absence of (i) and (ii) above,'* will be construed not only in the circumstances of total absence of such documents but also in those cases where such document may be available, but are found to be untrustworthy or not reliable.

## DIFFERENT DATES OF BIRTH ARE RECORDED IN DIFFERENT CLASSES

This question came up for consideration before the Apex Court in ***Loknath Pandey v. State of UP and ors., AIR 2017 SC 3866***. It has been held that "where different dates of birth are recorded in different classes in reference to a person, then the date of birth recorded in the first school shall be deemed to be the effective date." However, in such a case both the documents must be

found to be reliable and there should not be any circumstance or fact on record which makes one of them to be more trustworthy in relation to the other.

## DOCUMENTS OTHER THAN THOSE MENTIONED IN SECTION 94(2)

Section 94(2), clauses (i) and (ii) specifies that process of age determination is to be undertaken by seeking evidence by obtaining the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; the birth certificate given by a corporation or a municipal authority or a panchayat. Section 94(2), clause (iii) further stipulates that in the absence of clause (i) and (ii), age shall be determined by an ossification test or any other latest medical age determination test. Therefore, this provision itself categorically states certain documents which could be obtained for ascertainment of age. However, during inquiry, many other documents are often placed on record for determination of age.

In ***Surendra Kumar v. State of Rajasthan, 2009 CriLJ 568 (Raj.)*** it was held that for determination of age, entries in voters list/electoral roll cannot be treated as conclusive piece of evidence. However, they could be considered along with other evidence merely for purpose of corroboration. Such entries cannot certainly be given precedence over birth certificate issued by a Government School. In ***Sharda Soni v. State of M.P., ILR 2018 MP 2507*** it was observed that the Aadhar Card cannot be used as a proof of date of birth. This document is only for the purpose of identification of particular person.

Therefore, any document other than those enumerated in section 94(2), clauses (i) and (ii) cannot be decisive for the determination of age of the child but such document can be looked up as corroborative. However, an exception to this has recently culled out by Hon'ble Apex Court in the case of ***Ram Vijay Singh v. State of Uttar Pradesh, 2021 SCC OnLine SC 142***, which is dealt in detail hereinafter.

## MEDICAL EXAMINATION: WHEN

Section 94(2), clause (iii) itself is clear in this regard which states that in the absence of clauses (i) and (ii), age shall be determined by an ossification test or any other latest medical age determination test. In the case of ***Shah Nawaz v. State of U.P. and anr., AIR 2011 SC 3107***, it was held that rule 12 of the JJ Rules, 2007 categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available. Further, Hon'ble Supreme Court in the case of ***Ashwani Kumar Saxena*** (supra) has held that the question of obtaining medical opinion from a duly constituted medical board arises only if the abovementioned documents are unavailable.

In ***Rishipal Singh Solanki*** (supra) also it is reiterated that only in the absence of either (i), (ii) or (iii) of clause (a) above (i.e. matriculation or equivalent certificates, date of birth certificate from the school, Birth certificate given by a

corporation or a municipal authority or a panchayat), the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child.

Accordingly, medical opinion regarding age of the person should be sought only if the documents mentioned in (i), (ii) or (iii) of clause (a) of section 94(2) of the JJ Act, 2015 are unavailable.

## MARGIN OF ERROR

Before enactment of JJ Act, 2015, Rule 12(3)(b) of JJ Rules, 2007 was the provision regarding benefit of margin of age which stipulated that benefit of margin of one year could be given to the child. However, section 94(2), clause (iii) does not contain any such provision. Interpreting the law in the light of scientific advancements and necessity of time, it is observed in a recent judgment of the Apex Court in ***Ram Vijay Singh*** (supra) that –

> "We find that the procedure prescribed in Rule 12 is not materially different than the provisions of section 94 of the Act to determine the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules."

The extent of margin of error which could be accorded was discussed by Hon'ble Supreme Court in the case of ***Mukarrab and ors.*** (supra). It is apposite to mention the observation of the Apex Court-

> "Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juveniles in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted."

At the same time observation made in ***Ramdayal v. State of M.P., 2008(2) Crimes 150*** and ***Mohd Wasim v. State, ILR (2012) 5 Del 286*** also needs consideration. Wherein it was held that

> "If ossification test is done for a single bone, the error may be two years either way. But if the test is done for multiple joints with overlapping age of fusion, the margin of error may be reduced. Sometimes this margin is reduced to six months on either side."

In ***Mukarrab and ors.*** (supra) it was also observed that "Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted." But this observation has to be considered in the light of the facts of the case and there could not be a straight jacket formula. Therefore quatum of margin of error is dependent on multiple facts such as the nature of examination i.e. it is examination of single bone or of multiple bones, age etc.

Taking a note of the benefit of margin of one year as provided in Rule 12(3)(b) of JJ Rules, 2007, Hon'ble Apex Court in ***Rishipal Singh Solanki*** (supra) observed that

> "In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year."

Hence, medical examination leaves a margin of about 6 months to two years on either side if ossification test is of multiple joints or otherwise respectively. Therefore by taking note facts and circumstances of this benefit of lower side, the margin of 6 months to two years may be given to child, in cases where exact science is not available. Further, where exact assessment of the age cannot be done, for the reasons to be recorded, if considered necessary, benefit of lower side within the margin of one year may also be extended to the child.

Sometimes it is also argued that rather than going in the either side mean or average of the upper and lower limit of the age indicated in medical examination report should be considered as the age of the person. This approach is neither approved in any law nor follwed by the Hon'ble Supreme Court or High Courts. Further refereing this a doubt was raised in ***Darga Ram v. State of Rajasthan, (2015) 2 SCC 775*** in the following words –

> "The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination."

Therfore, mean or average of the upper or lower limit of the age expressed in medical report could not be considered to be the age of the person.

## EVIDENTIARY VALUE OF MEDICAL REPORT

In this regard, it was held in ***Mukarrab and ors.*** (supra) at page 225 and reiterated in ***Rishipal Singh Solanki*** (supra) that ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in section 94(2) of the JJ Act, 2015.

Hence, medical opinion regarding age of a person, like other expert opinion is just opinion and has to be evaluated along with other matter on record. Further, it is not at all conclusive proof of any age of the person.

## PROCEDURE WHEN NEITHER DOCUMENT U/S 94(2)(I) OR (II) IS AVAILABLE NOR MEDICAL TEST IS HELPFUL

Although section 94(2) provides the detailed procedure to be adopted for ascertainment of age of child who is alleged of committing any offence, however, one cannot deny the existence of circumstances when neither section 94(1) nor section 94(2)(i) or (ii) could be helpful for ascertainment of age nor medical examination of the person could yield any result.

Recently, Hon'ble Apex Court has discussed this situation at length in the case of ***Ram Vijay Singh*** (supra) wherein after detailed analysis of law, it is held that –

> "When a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age. ''The Apex Court considered its judgment in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and ors., (2020) 7 SCC 1***, wherein under the context of certificate required under Section 65B of the Evidence Act, applicability of maxim, *lex non cogit ad im-possibilia*, i.e., law does not demand the impossible was discussed. It is further held in ***Ram Vijay Singh*** (supra) that ''When the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident. … The Court is not precluded from taking into consideration any other relevant and trustworthy material to determine the age as all the three eventualities mentioned in sub-section (2) of section 94 of the Act are either not available or are not found to be reliable and trustworthy. Since there is a document signed by the appellant much

before the date of occurrence, therefore, we are of the opinion that the appellant cannot be treated to be juvenile on the date of incident as he was more than 21 years of age as per his application submitted to obtain the Arms Licence."

Accordingly, we may encounter some cases wherein all three eventualities mentioned in sub-section (2) of section 94 of the JJ Act, 2015 are either not available or are not found to be reliable and trustworthy. In such cases, after recording reasons for the same, Court or Magistrate may take into consideration any other relevant and trustworthy material to determine the age of the person concerned.

## COMPUTATION OF AGE OF MAJORITY

The next important fact which may arise for consideration is how this age has to be computed or calculated. For computation of the period, very pertinent fact is the relevant date when computation will start and upto which period or date this should be calculated.

### Relevant date for the determination of age

Section 7A of the JJ Act, 2000 clarified that relevant date for determination of juvenility is the date of commission of offence. Further, Section 2(13) of JJ Act, 2015 defines 'child in conflict with law' as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. Therefore, no iota of doubt subsists that relevant date for determination of juvenility is the date of commission of offence.

### Date on which majority is said to be achieved

Generally, the date when majority is said to be achieved is not material but in the cases when offence is said to be committed on the date of birth anniversary, date on which majority is attained becomes crucial. In this regard, section 3 of the Indian Majority Act, 1875 provides that in computing the age of any person, the day on which a person was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. Hence, time of birth is not material and even if a person is born at 11.00 pm, his birthday will be counted as a whole day. Accordingly, the person is said to attained specified age at 12.00 am (00.00 hours) of the day of his birth.

It can be simplified by an example. A person born on 7th January, 2000 will attain his majority on 7th January, 2018 at 12.00 am. If he commits any offence on 6th January, 2018 at 11.59 pm he will fall within the definition of child in conflict with law. But, if the offence is committed on 7th January, 2018 at 12.01 am, he will be treated as an adult accused. [See also ***Eerati Laxman v. State of A.P., (2009) 3 SCC 337***]

### Cases of continuing offence

Cases pertaining to continuing or multiple offences or wherein offence is not completed on any particular date but continues on different dates, then the determinative date for claim of juvenility is another fact which substantially changes the outcome of the inquiry. In ***Vikas Chaudhary v. N C T of Delhi, (2010) 8 SCC 508 and Sri Ganesh v. State of TN, (2017) 3 SCC 280*** it was held that where

multiple offences or continuing offences or repeated offences are committed, the last date on which any offence is committed is to be considered as date on which it is to be determined whether accused was a child in conflict with law or not.

## OTHER PROCEDURAL ASPECTS

### Bail during pending inquiry

Another important question which arises for consideration is whether the Magistrate or Court can grant bail to a person claiming to be juvenile pending inquiry?

Section 9(4) of the JJ Act, 2015 provides that –

'In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into ... ." Therefore, it is explicit from this provision itself that in cases where it is not required to keep the person in protective stay, he/she may be released on bail.

Next pertinent question which arises for consideration is which provision will be applicable in such cases – section 437 or 439 of Cr.P.C. or section 12 of JJ Act, 2015. The answer here will depend upon the facts and circumstances of each case.

In cases where from the appearance of the person he/she *prima facie* appears to be child and plea of juvenility appears to be well founded, then taking recourse to section 12 of the JJ Act, 2015, such a person may be enlarged on bail. Here one more fact which requires attention is that in such cases irrespective of the nature of the offence, bail application has to be considered in the light of the provisions of section 12 of the JJ Act, 2015. For bail to juvenile, only applicable provision is section 12 of JJ Act, 2015 as held in order dated 20.03.2020 of Hon'ble the High Court of Madhya Pradesh (Jabalpur) in ***Y (Name of the child is not published) v. State of M.P., MCrC No. 54552 of 2019***. However, one has to keep in mind that this bail is only a provisional arrangement for placement of the person in custody of his/her parents/guardian till the conclusion of inquiry regarding claim of juvenility. In other words it could only be interim measure till conclusion of inquiry.

Otherwise if the person *prima facie* does not appear to be child and the question of juvenility also does not *prima facie* inspires satisfaction of the Court, then in such cases the person's bail may be considered in light of provisions of section 437 or 439 of Cr.P.C.

### Where to keep that person while adjudication of his claim of juvenility

Section 9(4) of the JJ Act, 2015 provides that in case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety. Accordingly, this provision gives a discretion to the Court or Magistrate that the person may be placed, in the intervening period in a place of safety. Hence, again in order to address the bonafide cases only which inspire *prima facie* satisfaction of the Court, only for protective stay person

should be send to place of safety. In rest of the cases, while recording reasons for the same, Court can send the person to jail for the protective stay.

**When after inquiry a person is found to be a child and forwarded to JJB and JJB after inquiry finds that the person is an adult and send it back to the Court/Magistrate for trial**

There may be occassions when after inquiry a child is forwarded to JJB and JJB on age determination finds that said person is an adult and sends that person back to the Magistrate or Court concerned. In this case the question which squarely covers the field is whose order will be binding or in that case is it again open for that Court or Magistrate to hold an inquiry and to acertain juvenility of the person?

In this regard, section 94(3) of the JJ Act, 2015 states that the age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person. However, this order of JJB is appealable u/s 101 of the JJ Act, 2015. Accordingly, the age determined by the JJB subject to the order of appellate Court is to be considered true age of that person.

Further in the case of ***Rishipal Singh Solanki*** (supra), it is observed that the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal Court. In case of an inquiry, the Court records a *prima facie* conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

## CONCLUSION

The discussion in this article can be summarized as -

1. Whenever any claim as to juvenility is raised before any Magistrate or Court, it is mandatory for the Court/ Magistrate to record its opinion before forwarding the person to the JJ Board.
2. Determination of claim of juvenility is an inquiry, and standard of proof for the proof of the fact of juvenility is preponderance of probabilities.
3. This plea should be examined with great caution and in borderline cases, benefit of doubt is to be given to the child.
4. Initial burden shall on the person raising the claim of juvenility and once such person discharges the burden, the onus to rebut it shall shift upon the prosecution.

5. Inquiry is to be conducted which is not intended to be as extensive or detailed as a criminal trial.

6. The inquiry for the purpose of determination of the age of the person claiming to be a juvenile has to be conducted within the purview of Section 9 (2) of the JJ Act, 2015 by seeking evidence and by obtaining documents mentioned u/s 94 (2) of JJ Act, 2015.

7. While taking evidence at the stage of inquiry, opportunity of cross examination and rebuttal should be afforded to opposite party.

8. In general, documents other than those enumerated in section 94(2), clauses (i) and (ii) cannot be decisive for determination of age of the child but they can be looked a as upon corroborative fact.

9. Medical opinion regarding age of the person should be sought only if the documents mentioned in (i), (ii) or (iii) of clause (a) of section 94(2) of the JJ Act, 2015 are unavailable.

10. Medical opinion regarding age of a person, is just an opinion. It is not at all conclusive proof of any age of the person, and has to be evaluated along with other matter on record.

11. Where all three eventualities mentioned in sub-section (2) of section 94 of the JJ Act, 2015 are either not available or are not found to be reliable and trustworthy, in such cases, after recording reasons for the same, Court or Magistrate may take into consideration any other relevant and trustworthy material to determine the age of the person concerned.

12. Relevant date for determination of juvenility is the date of commission of offence. In computing the age of any person, the day on which a person was born is to be included as a whole day. In case of continuing offences, the last date on which any offence is committed is to be considered as date on which it is to be determined whether accused was a child or not.

●

***Note** : See also article titled "Assessment of Age – an Overview" published in JOTI Journal October, 2007 issue, Part I, page no. 202.*

# विधिक समस्यायें एवं समाधान

(इस स्तम्भ के अन्तर्गत मध्यप्रदेश के अधीनस्थ न्यायालयों के न्यायाधीशों द्वारा अकादमी के संज्ञान में लाई गई विधिक समस्याओं का उपयुक्त हल प्रस्तुत करने का प्रयास किया जाता है। स्तम्भ के लिये न्यायाधीशगण अपनी विधिक समस्याएं अकादमी को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंकों में प्रकाशित किये जाएंगे।)

(i) **क्या हिन्दू देवता अथवा मूर्ति को शाश्वत अवयस्क (perpetual minor) माने जाने से देवता अथवा मूर्ति के विरूद्ध विधिक कार्यवाहियों में परिसीमा विधि के प्रावधान लागू नहीं होते हैं?**

यह एक भ्रामक और स्थापित विधि के विपरीत धारणा है कि शाश्वत् अवयस्क माने जाने से हिन्दू देवता अथवा मूर्ति के विरूद्ध परिसीमा विधि के प्रावधान लागू नहीं होते हैं। वस्तुतः देवता अथवा मूर्ति स्वयं कोई विधिक कार्यवाही संचालित नहीं कर सकते हैं इसलिए सामान्य अवयस्क व्यक्ति के समान देवता अथवा मूर्ति में विधिक निर्योग्यता (legal disability) की विधिक कल्पना (legal fiction) की गई है और उसे ''अवयस्क'' माना जाता है। लेकिन इसका यह अर्थ नहीं है कि देवता अथवा मूर्ति को परिसीमा अधिनियम के प्रावधानों से छूट प्राप्त है। देवता अथवा मूर्ति का विधिक व्यक्तित्व होता है और उसकी ओर से किसी न किसी मानवीय ऐजेन्सी द्वारा ही प्रतिनिधित्व किया जाना अपेक्षित है। इस संबंध में न्यायदृष्टांत ***विश्वनाथ विरूद्ध ठाकुर राधा वल्लभी, ए.आई.आर. 1967 एस.सी. 1044*** एवं ***जोगेन्द्रनाथ नसकर विरूद्ध कमिश्नर ऑफ इन्कम टैक्स, ए.आई.आर. 1969 एस.सी. 1089*** अवलोकनीय है।

माननीय सर्वोच्च न्यायालय की पांच न्यायाधीशों की संविधान पीठ ने ***एम. सिद्दीक विरूद्ध महंत सुरेश दास एवं अन्य, (2020) 1 एस.सी.सी. 1*** **(अयोध्या प्रकरण)** में देवता अथवा मूर्ति की शाश्वत् अवयस्कता और परिसीमा अधिनियम के प्रावधानों के लागू होने के संबंध में (उक्त निर्णय के पैरा 525 से 545 में) आरंभ से अब तक प्रतिपादित विधि पर विस्तार से विचार करते हुए प्रतिपादित किया है कि ''यह एक स्थापित स्थिति है कि शाश्वत अवयस्क होने के आधार पर देवता परिसीमा अधिनियम की प्रयोज्यता से छूट प्राप्त नहीं हो सकते।'' निर्णय का पैरा 544 का सुसंगत अंश इस प्रकार है–

> "544. ..... Based on the judicial precedents analysed above, it is an established position that a deity cannot on the ground of being a perpetual minor stand exempted from the application of the Limitation Act. The submission which was urged by Mr. C.S. Vaidyanathan is contrary to the jurisprudence of close to a century on the issue. We follow the line of precedents emanating from the Privy Council, this Court and several High Courts noted earlier. The applicability of the law of limitation cannot be ruled out on the basis of the theory of perpetual minority."

अर्थात् देवता अथवा मूर्ति की सदैव अवयस्क होने की विधिक कल्पना के आधार पर ऐसे देवता अथवा मूर्ति की ओर से अथवा उसके विरूद्ध न्यायालय में वाद या कार्यवाही में परिसीमा से कोई छूट प्राप्त नहीं होगी वरन् परिसीमा विधि के प्रावधान ठीक उसी तरह लागू होंगे जैसे कि एक सामान्य व्यक्ति के मामले में लागू होते हैं।

यहां एक अन्य कारण से भी भ्रम की स्थिति निर्मित हो सकती है। उदाहरण के लिए, माननीय सर्वोच्च न्यायालय ने न्यायदृष्टांत ***वली मोहम्मद विरूद्ध रहमत बी एवं अन्य, ए.आई.आर. 1999 एस.सी. 1136*** में प्रत्यर्थी के पिता एवं प्रत्यर्थी को मुतवल्ली की हैसियत में वादग्रस्त संपत्ति का प्रबंधकर्ता पाए जाने से उनके द्वारा प्रतिकूल आधिपत्य के आधार पर स्वत्व अर्जित नहीं कर सकना अवधारित किया है। ऐसा ही मत ***श्री ईश्वर श्रीधर जिव विरूद्ध सुशीला बाला देसाई, ए.आई.आर. 1954 एस.सी. 69*** एवं ***बलराम चुन्नीलाल विरूद्ध दुर्गालाल शिवनारायण, ए.आई.आर. 1968 एम.पी. 81*** में दिया गया है। माननीय मध्यप्रदेश उच्च न्यायालय की एकल पीठ ने ***करन सिंह विरूद्ध मध्यप्रदेश राज्य, 1994 राजस्व निर्णय 72*** जहां वादग्रस्त भूमि पर वादी का प्रतिवादी–पुजारी की ओर से अनुमत आधिपत्य पाया गया था, यह अवधारित किया गया है कि देवता को हमेशा अवयस्क माना गया है इसलिए लंबे समय से कब्जे और प्रतिकूल आधिपत्य के आधार पर देवता के विरूद्ध स्वत्व अर्जित नहीं किया जा सकता है। ये न्यायदृष्टांत वस्तुतः परिसीमा अधिनियम, 1963 की धारा 10 के प्रकाश में देखे जाने चाहिए। धारा 10 इस प्रकार है –

> ''10. न्यासियों तथा उनके प्रतिनिधियों के विरूद्ध वाद – इस अधिनियम के पूर्वगामी उपबंधों में अन्तर्विष्ट किसी बात के होते भी, किसी ऐसे व्यक्ति के विरूद्ध, जिसमें संपत्ति किसी विनिर्दिष्ट प्रयोजन के लिए न्यास निहित हुई हो अथवा उसके विधिक प्रतिनिधियों या समनुदेशितियों के विरूद्ध (जो मूल्यवान प्रतिफलार्थ समनुदेशिती न हों) उसके या उनके हस्तगत ऐसी संपत्ति या उसके आगमों का पीछा करने के प्रयोजन से या उस संपत्ति या उसके आगमों के लेखा के लिए कोई वाद कितना भी समय बीत जाने के कारण वर्जित न होगा।
>
> स्पष्टीकरण – इस धारा के प्रयोजनों के लिए किसी हिन्दू, मुसलमान या बौद्ध धार्मिक या खैराती विन्यास समाविष्ट कोई भी संपत्ति एक विनिर्दिष्ट प्रयोजन के लिए न्यास निहित समझी जाएगी और सम्पत्ति का प्रबंधक उसका न्यासी समझा जाएगा।''

स्पष्ट है कि किसी देवता अथवा मूर्ति के पुजारी/ मुतवल्ली/ सरवराहकार/मोहत्तमकार या उसके प्रतिनिधि के विरूद्ध ऐसे देवता अथवा मूर्ति की ओर से विधिक कार्यवाही में परिसीमा लागू नहीं होगी और इस कारण से पुजारी/मुतवल्ली/सरवराहकार/मोहत्तमकार या उसके प्रतिनिधि द्वारा देवता अथवा मूर्ति के विरूद्ध प्रतिकूल आधिपत्य के आधार पर स्वत्व अर्जित नहीं किया जा सकता है। लेकिन देवता अथवा मूर्ति के पुजारी/मुतवल्ली/सरवराहकार/मोहत्तमकार या उसके प्रतिनिधि के अलावा किसी तीसरे पक्ष या अन्य व्यक्ति के विरूद्ध देवता अथवा मूर्ति

की ओर से प्रस्तुत किसी वाद या विधिक कार्यवाही में परिसीमा अधिनियम के प्रावधान लागू होंगे और तीसरे पक्ष या अन्य व्यक्ति द्वारा देवता अथवा मूर्ति या न्यास के विरूद्ध प्रतिकूल आधिपत्य के आधार पर भी स्वत्व का दावा किया जा सकता है। इस सम्बंध में ***मोहम्मद शाह विरूद्ध फसीहुद्दीन अंसारी, ए.आई.आर. 1956 एस.सी. 713*** एवं ***सारंगदेवा पेरिया मातम विरूद्ध रामास्वामी गोंडर, ए.आई.आर. 1966 एस.सी. 1603*** अवलोकनीय हैं।

निष्कर्ष में, हिन्दू देवता अथवा मूर्ति की ओर से किसी अनुतोष के लिए वाद या कार्यवाही में परिसीमा अधिनियम के प्रावधान लागू होंगे और यदि ऐसा वाद या कार्यवाही विहित परिसीमा काल के बाद की गई है तब ऐसा वाद या कार्यवाही अवधि बाधित होगी। जैसा कि माननीय सर्वोच्च न्यायालय की पांच न्यायाधीशों की संविधान पीठ ने ***एम. सिद्दीक*** (पूर्वोक्त) में प्रतिपादित किया है।

●

(ii) **क्या परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत प्रस्तुत अवधि बाधित परिवाद में अपराध का संज्ञान लेने के उपरांत विलम्ब क्षमा किया जा सकता है?**

यदि मांग सूचना पत्र मिलने के पन्द्रह दिवस बाद चेक जारी करने वाले द्वारा राशि अदा नहीं करने तथा परक्राम्य लिखत अधिनियम की धारा 142(बी) के अनुसार उक्त पन्द्रह दिवस की अवधि के अवसान से एक माह के भीतर परिवाद पेश नहीं किया जाता है तब परिवाद अवधि बाधित होगा। उक्त अधिनियम की धारा 142 के परंतुक के अनुसार ऐसा विलम्ब क्षमा किया जा सकता है। परक्राम्य लिखत अधिनियम के अन्तर्गत परिवाद प्रस्तुत किये जाते समय ही मजिस्ट्रेट द्वारा उससे सम्बंधित सभी परिसीमाओं का परिशीलन कर लेना अपेक्षित है लेकिन कभी–कभी दृष्टिचूक के कारण ऐसी त्रुटि हो जाती है कि अवधि बाधित परिवाद दर्ज हो जाता है और विचारण के आगामी प्रक्रम पर त्रुटि को ठीक करने हेतु अर्थात विलम्ब को क्षमा करने हेतु आवेदन प्रस्तुत किए जाते है।

माननीय सर्वोच्च न्यायालय के न्यायदृष्टांत ***अनिल कुमार विरूद्ध किशन चंद, ए.आई.आर. 2008 एस.सी. 899*** के अनुसार अधिनियम की धारा 142 के परन्तुक का विलम्ब क्षमा करने के सम्बंध में भूतलक्षी प्रभाव नहीं है। इस सम्बंध में न्यायदृष्टांत ***सुबोध एस. सालस्कर विरूद्ध जयप्रकाश शाह, (2008) 13 एस.सी.सी. 689*** में अवधारित किया गया है कि अधिनियम की धारा 142 का परन्तुक प्रक्रिया सम्बंधी न होकर एक सैद्धांतिक प्रावधान है जिसे भूतलक्षी प्रभाव नहीं दिया गया है। माननीय मध्यप्रदेश उच्च न्यायालय द्वारा न्यायदृष्टांत ***मानव शर्मा विरूद्ध उमाशंकर तिवारी, आई.एल.आर. 2016 एम.पी. 3154*** में अभिमत दिया गया कि संज्ञान लेने के उपरांत परिवाद प्रस्तुत करने में हुआ विलम्ब पश्चातवर्ती प्रक्रम पर आवेदन प्रस्तुत होने पर क्षमा नहीं किया जा सकता है।

अतः स्पष्ट है कि विलम्ब क्षमा करने संबंधी आवेदन परिवाद के साथ अथवा संज्ञान लिए जाने के पूर्व ही प्रस्तुत तथा निराकृत किया जाना चाहिए। एक बार यदि परिवाद पर संज्ञान ले लिया

गया है तो पश्चातवर्ती प्रक्रम पर ऐसा विलम्ब विचारण न्यायालय द्वारा क्षमा नहीं किया जा सकता है।

●

(iii) **क्या किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 के किशोर की आयु निर्धारण संबंधी प्रावधान लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 के अंतर्गत अभियोक्त्री की आयु निर्धारण में भी लागू होते हैं? और क्या आयु निर्धारण के लिए अस्थि संयोजन परीक्षण के निष्कर्ष निर्णयात्मक होंगे?**

आयु निर्धारण के संबंध में दण्ड प्रक्रिया संहिता, 1973, लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 या लैंगिक अपराधों से बालकों का संरक्षण नियम, 2020 में कोई प्रावधान नहीं हैं। किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2000 के अधीन किशोर न्याय (बालकों की देखरेख एवं संरक्षण) नियम, 2007 बनाए गए थे। इसके नियम 12 के संदर्भ में ***जरनेल सिंह विरूद्ध हरयाणा राज्य, 2013 (7) एस.सी.सी. 263*** में यह प्रतिपादित किया गया कि "Even though Rule 12 [Juvenile Justice (Care and Protection) of Children Rules, 2007] is strictly applicable only to determine the age of child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime."

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2000 निरसित हो चुका है और उसके स्थान पर किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 लागू किया गया है। इस नए अधिनियम, 2015 के अधीन किशोर न्याय (बालकों की देखरेख एवं संरक्षण) नियम, 2016 बनाए गए हैं जिसके नियम 54(18)(iv) में यह उपबंध है कि ''बालक के साथ अपराधों के संबंध में पीड़ित की आयु के निर्धारण हेतु, अधिनियम के अधीन, इस अधिनियम की धारा 94 के अधीन बोर्ड तथा समिति हेतु अधिदेशित इन प्रक्रियाओं का पालन किया जाएगा।''

यद्यपि नियम 54(18)(iv) में अधिनियम, 2015 के अधीन बालकों के विरुद्ध अपराध के संदर्भ में ही आयु निर्धारण हेतु प्रक्रिया का उल्लेख किया है किन्तु यह नियम ***जरनेल सिंह*** (उपरोक्त) में प्रतिपादित विधि के विपरीत नहीं है। वस्तुतः पुराने नियम 12 का ही प्रावधान नए अधिनियम 2015 की धारा 94 में अधिनियमित है। इसके अलावा न्यायदृष्टांत ***महादेव विरूद्ध महाराष्ट्र राज्य, (2013) 4 एस.सी.सी.*** तथा ***मध्यप्रदेश राज्य विरूद्ध अनूप सिंह, 2015 (7) एस.सी.सी. 773*** में अभिनिर्धारित विधि भी अवलोकनीय है।

अर्थात् किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 के किशोर की आयु निर्धारण संबंधी प्रावधान लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 के अंतर्गत अभियोक्त्री की आयु निर्धारण में भी लागू होते हैं। अभियोक्त्री की आयु का निर्धारण के संदर्भ में यह ध्यान रखे जाने योग्य है कि अधिनियम, 2012 के अधीन अपराधों में अभियोक्त्री की आयु अपराध का आवश्यक घटक है। इसलिए आयु विषयक प्रमाण का स्तर भी अपराध के घटकों के प्रमाण के स्तर का होगा।

जहां तक अस्थि संयोजन परीक्षण (ossification test) के निष्कर्ष का प्रश्न है अस्थि संयोजन परीक्षण आयु निर्धारण के लिए निर्णयात्मक नहीं होता है। जैसे कि ***रामसुरेश सिंह विरूद्ध प्रभात सिंह (2009) 6 एस.सी.सी. 681*** एवं ***मुकर्रब व अन्य विरूद्ध उत्तर प्रदेश राज्य, (2017) 2 एस.सी.सी. 210*** व अन्य मामलों में यह प्रतिपादित किया गया है कि अस्थि संयोजन परीक्षण के मामलों में छः वर्ष से दो वर्ष की त्रुटि की संभावना होती है। प्रश्न यह है कि ऐसी त्रुटि का लाभ किस पक्ष अर्थात् अभियोजन को या अभियुक्त को प्रदान किया जा सकता है?

यह सुस्थापित है कि आपराधिक मामलों में संदेह का लाभ अभियुक्त को प्रदान किया जाता है। न्यायदृष्टांत ***त्रिवेणीबेन विरूद्ध गुजरात राज्य, (1989) 1 एस.सी.सी. 678*** तथा ***मारू राम विरूद्ध भारत संघ, (1981) 1 एस.सी.सी. 107, श्वेता गुलाटी विरूद्ध दिल्ली एन.सी.आर. की राज्य सरकार, 2018 एस.सी.सी. ऑनलाईन दिल्ली 10448*** और ***रज्जाक मोहम्मद विरूद्ध हिमाचल प्रदेश राज्य, (2018) 9 एस.सी.सी. 248*** आदि में ऐसा ही मत प्रतिपादित किया गया है। न्यायदृष्टांत ***महेश्वर तिग्गा विरूद्ध झारखण्ड राज्य, (2020) 10 एस.सी.सी. 108*** में यह अभिनिर्धारित किया है "In absence of any positive evidence with regard to the age of prosecutrix on the date of occurance, benefit of doubt has to be given to accused."

लेकिन आयु के संबंध में त्रुटि की गुंजाइश (margin of error) को सदैव ''युक्तियुक्त संदेह'' नहीं माना जा सकता है। जहां आयु के विषय में अभिलेख पर उपलब्ध समग्र साक्ष्य और इंगित परिस्थितियां एक आयु को दर्शाती हैं वहां त्रुटि की गुंजाइश (margin of error) का लाभ ''युक्तियुक्त संदेह'' के रूप में अभियुक्त को दिए जाने की अनिवार्यता नहीं होगी। तथापि यह एक तथ्य का प्रश्न है।

***दीपक प्रजापति विरूद्ध मध्यप्रदेश राज्य, 2021 क्रि.ला.ज. 4229 (म.प्र.)*** में मध्यप्रदेश उच्च न्यायालय द्वारा यह प्रतिपादित किया गया है कि – "There is no straight jacket formula to the effect that in every case the margin of error of two years has to be taken in favour of the accused irrespective of the surrounding circumstances. If the surrounding circumstances indicate the margin of error in favour of the prosecution then there is no bar under the law in considering the same against the accused." अर्थात् जहां उपस्थित परिस्थितियां अभियोक्त्री का निम्न आयु सीमा का होना इंगित करती है, ऐसी स्थिति में त्रुटि की गुंजाइश का लाभ अभियोजन को भी दिया जा सकता है। अतः ऐसी किसी परिस्थिति की उपलब्धता की स्थिति में त्रुटि की गुंजाइश का लाभ अभियोक्त्री को दिया जा सकेगा।

●

***टीप : किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 के अंतर्गत आयु के निर्धारण के संबंध में आलेख इसी अंक के भाग एक के पृष्ठ क्रमांक 47 पर प्रकाशित किया गया है।***

# PART - II

## NOTES ON IMPORTANT JUDGMENTS

**1. ARBITRATION AND CONCILIATION ACT, 1996 – Section 37**
**COMMERCIAL COURTS ACT, 2015 – Section 13**
**LIMITATION ACT, 1963 – Section 5, Articles 116, 117 and 137**
**Limitation – Appeal – Condonation of delay – The provision of section 5 of the Limitation Act is applicable to appeals which are filed u/s 37 of the Arbitration Act related to commercial disputes of specified values defined in the Commercial Courts Act.**

**माध्यस्थम् एवं सुलह अधिनियम, 1996 – धारा 37**
**वाणिज्यिक न्यायालय अधिनियम, 2015 – धारा 13**
**परिसीमा अधिनियम, 1963 – धारा 5, अनुच्छेद 116, 117 एवं 137**
परिसीमा – अपील – विलंब की माफी – परिसीमा अधिनियम की धारा 5 के प्रावधान माध्यस्थम् अधिनियम की धारा 37 के अंतर्गत प्रस्तुत उन अपीलों पर भी लागू होते हैं जो वाणिज्यिक न्यायालय अधिनियम में परिभाषित विशिष्ट मूल्य के वाणिज्यिक विवादों से संबंधित हैं।

**Government of Maharashtra (Water Resources Department) v. Borse Brothers Engineers and Contractors Pvt. Ltd.**
**Judgment dated 19.03.2021 passed by the Supreme Court in Civil Appeal No. 995 of 2021, reported in 2021 (4) MPLJ 274 (Three Judge Bench)**

**Relevant extracts from the judgment:**

Section 37 of the Arbitration Act, when read with section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under section 37. This takes us to Articles 116 and 117 of the Limitation Act, which provide for a limitation period of 90 days and 30 days, depending upon whether the appeal is from any other court to a High Court or an intra-High Court appeal. There can be no doubt whatsoever that section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of section 43 of the Arbitration Act and by virtue of section 29(2) of the Limitation Act.

Even in the rare situation in which an appeal under section 37 of the Arbitration Act would be of a specified value less than three lakh rupees, resulting in Article 116 or 117 of the Limitation Act applying, the main object of the Arbitration Act requiring speedy resolution of disputes would be the most important principle to be applied when applications under section 5 of the Limitation Act are filed to condone delay beyond 90 days and/or 30 days depending upon whether Article 116(a) or 116(b) or 117 applies. As a matter of fact, given the timelines contained in sections 8, 9(2), 11(4), 11(13), 13(2)-(5), 29A, 29B, 33(3)-(5) and 34(3) of the Arbitration Act, and the observations made in some of this

Court's judgments, the object of speedy resolution of disputes would govern appeals covered by Articles 116 and 117 of the Limitation Act.

●

**2. CIVIL PROCEDURE CODE, 1908 – Sections 11, 47 and Order 21 Rules 54, 64 and 66**

**Execution of decree – Applicability of *res judicata* – Sale of property attached in execution of decree – Objection to sale on the ground that only portion of property was sufficient to discharge the decree – Objection filed belatedly and after earlier rejection of objections on other grounds – Held, subsequent objection u/s 47 CPC is barred by *res judicata* in the light of Explanation 7 to section 11 CPC – Reference in section 11 to any suit, issue or former suit shall be construed as reference to a proceeding for execution of decree, question arising in such proceeding and a former proceeding for the execution of that decree.**

**सिविल प्रक्रिया संहिता, 1908 – धाराएं 11, 47 तथा आदेश 21 नियम 54, 64 एवं 66**

आज्ञप्ति का निष्पादन – पूर्व न्याय की प्रयोज्यता – आज्ञप्ति के निष्पादन में कुर्क संपत्ति का विक्रय – विक्रय पर इस आधार पर आपत्ति की गई कि संपत्ति का अंश भाग ही आज्ञप्ति के उन्मोचन के लिए पर्याप्त था – आपत्ति विलम्ब से एवं अन्य आधारों पर पहले की गई आपत्तियों के खारिज होने के उपरांत की गई – अवधारित, धारा 11 सि.प्र.सं. के स्पष्टीकरण 7 के आलोक में धारा 47 के अधीन की गई पश्चात्वर्ती आपत्ति पूर्व न्याय द्वारा वर्जित है – धारा 11 में किसी भी वाद, विवाद्यक अथवा पूर्ववर्ती वाद को आज्ञप्ति के निष्पादन की कार्यवाही के संदर्भ में ऐसी कार्यवाही में उत्पन्न होने वाले प्रश्न एवं उस आज्ञप्ति के निष्पादन की पूर्ववर्ती कार्यवाही माना जाएगा।

**Dipali Biswas and ors. v. Nirmalendu Mukherjee and ors.**

**Judgment dated 05.10.2021 passed by the Supreme Court in Civil Appeal No. 4557 of 2012, reported in AIR 2021 SC 4756**

**Relevant extracts from the judgment:**

It is seen that the appellants have filed as additional document in Annexure A-3, the copy of the extract of relevant orders passed in Money Execution Case No. 2 of 1975 by the District Munsif Court, Bongaon. This document reveals that on 10.01.1975, the Executing Court ordered the issue of notice of attachment under Order XXI, Rule 54 of the Code. It was only thereafter that the court directed on 16.07.1975, the issue of sale proclamation under Order XXI, Rule 66.

Thereafter, the judgment-debtor filed a petition u/s 47 of the Code on 02.09.1975 (this was the first petition u/s 47, while the appeal on hand arises out of the second petition u/s 47).

Even after directing the publication of the sale proclamation in the newspaper, the Executing Court was more than fair to the judgment-debtor, as could be seen from the order passed on 16.03.1979. On the said date the Executing Court found that in the newspaper publication, the case number was wrongly mentioned. Therefore, the court directed the issue of fresh sale proclamation and fresh publication. It is only thereafter that the judgment-debtor moved a petition on 30.05.1979 for postponement of the auction. It was rejected and the court proceeded with the auction. The decree holder himself participated in the auction after getting permission from the Court. However, it is only the third parties who succeeded in getting the sale confirmed.

The above sequence of events would show that the judgment-debtor had sufficient opportunity to object to the inclusion of the entire property when an order was passed under Order XXI, Rule 54. Subsequently he had an opportunity to object to the inclusion of the whole of the property, by taking advantage of the amended clause (a) of sub rule (2) of Rule 66 of Order XXI, which speaks about a part of the property that would be sufficient to satisfy the decree. But the judgment-debtor despite filing a petition u/s 47 on 02.09.1975, did not point out how the property being a vacant land of an extent of 17 decimals could have been divided.

x x x

As we have pointed out elsewhere, the original judgment-debtor himself filed a petition u/s 47, way back on 02.09.1975. What is on hand is a second petition u/s 47 and, hence, it is barred by *res judicata*. It must be pointed out at this stage that before Act 104 of 1976 came into force, there was one view that the provisions of section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted u/s 11 and it says that the provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

●

**3. CIVIL PROCEDURE CODE, 1908 – Section 11, Order 23 Rules 3 and 3A**

**(i) *Res Judicata* – Whether plea of *res judicata* can be decided as a preliminary issue? Held, yes – In cases, when mixed question of law and fact is raised, the issue should await a full-fledged trial after evidence is adduced – In other cases where no disputed question of facts or mixed question of fact and law is involved, plea of *res judicata* may be decided as preliminary issue.**

**(ii) *Res judicata* – Whether issues conclusively decided in previous suit? Twin test propounded i.e. 'the necessity test' and 'the essentiality test'.**

**(iii)** ***Res judicata*** **and compromise decree – Earlier suit was dismissed on the ground of compromise reached on the issue of possession and lease – Since no compromise was entered on the issue of title, subsequent suit of title is not barred.**

**सिविल प्रक्रिया संहिता, 1908 – धारा 11, आदेश 23 नियम 3 एवं 3–क**

**(i)** पूर्व न्याय – क्या पूर्व न्याय का अभिवाक् प्रारंभिक विवाद्यक के रूप में निर्णीत किया जा सकता है? अवधारित, हाँ – ऐसे मामलों में जहां विधि एवं तथ्य का मिश्रित प्रश्न उठाया जाता है, ऐसा विवाद्यक पूर्ण विचारण एवं साक्ष्य प्रस्तुत किए जाने के उपरांत निराकृत करना चाहिए – अन्य मामलों में जहां तथ्यों का कोई विवादित प्रश्न या तथ्य और विधि का मिश्रित प्रश्न अंतर्वलित न हो, पूर्व न्याय के अभिवाक् का विनिश्चय प्रारंभिक विवाद्यक के रूप में किया जा सकता है।

**(ii)** पूर्व न्याय – क्या पूर्ववर्ती वाद में विवाद्यकों को अंतिम रूप से निर्णीत किया गया था? द्वि–परीक्षण प्रतिपादित – 'आवश्यकता परीक्षण' एवं 'अनिवार्यता परीक्षण'।

**(iii)** पूर्व न्याय एवं समझौता आज्ञप्ति – पूर्ववर्ती वाद आधिपत्य एवं पट्टे के विवाद्यक पर हुए समझौते के आधार पर खारिज कर दिया गया था – चूंकि स्वत्व के प्रश्न पर कोई समझौता नहीं किया गया था, स्वत्व पर आधारित पश्चात्वर्ती वाद वर्जित नहीं है।

**Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs. and ors.**
**Judgment dated 23.09.2021 passed by the Supreme Court in Civil Appeal No. 10946 of 2014, reported in AIR 2021 SC 4523 (Three Judge Bench)**

**Relevant extracts from the judgment:**

The court while undertaking an analysis of the applicability of the plea of *res judicata* determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of *res judicata* would be inapplicable. We are unable to accept the submission of the appellants that *res judicata* can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of *res judicata* turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial Court and the First Appellate Court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this Court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the Court and arguments have been addressed by the contesting sides fully on that basis.

x x x

The twin test that is used for the identification of whether an issue has been conclusively decided in the previous suit is:

> A. Whether the adjudication of the issue was 'necessary' for deciding on the principle issue ('the necessity test'); and
>
> B. Whether the judgment in the suit is based upon the decision on that issue ('the essentialist test').

x x x

Since it is the principle of estoppal by conduct that will bar the institution of the subsequent suit, it is pertinent that we refer to the compromise decree to determine if any compromise was arrived at between the parties on the title to the suit property. On a perusal of the compromise deed, it is evident that a compromise was reached only on the issue of possession and lease. When no compromise was arrived at between the parties on the title to the suit property, then no estoppal by conduct could also be inferred. Additionally, the counsel for the respondent referred to Order 23 Rule 3A to contend that a subsequent suit is barred when the previous suit is dismissed through a compromise decree. However, the provision would not be applicable to the case at hand since it only bars the challenge to a compromise decree on the ground that it is unlawful. Therefore, the disposal of the second suit in view of the compromise would not bar the filing of the suit out of which the instant proceedings arise.

●

**4. CIVIL PROCEDURE CODE, 1908 – Section 96 and Order 41 Rule 31**
**SPECIFIC RELIEF ACT, 1963 – Sections 10 and 16(c)**
**CIVIL PRACTICE :**

**(i) First appeal – Procedure for deciding – First Appellate Court is required to frame points for determination, discuss the entire matter and issues in detail and re-appreciate the entire evidence on record before recording its findings.**

**(ii) Specific performance of contract – Readiness and willingness of plaintiff – There were specific pleadings that defendant was required to evict the tenants and thereafter to execute the sale deed – There were no pleadings that plaintiff was ready and willing to execute sale deed through tenants – Plaintiff filed affidavit in first appeal stating that he is ready and willing to execute the sale deed with tenants – Held, such an affidavit cannot be relied upon in absence of pleadings.**

**सिविल प्रक्रिया संहिता, 1908 – धारा 96 एवं आदेश 41 नियम 31**
**विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धाराएं 10 एवं 16(ग)**
**सिविल प्रथा :**

**(i)** प्रथम अपील – निराकृत करने की प्रक्रिया – प्रथम अपीलीय न्यायालय के लिए आवश्यक है कि वह विचारणीय बिन्दु विरचित करे, पूरे मामले और विवाद्यकों पर

विस्तार से चर्चा करे और अपने निष्कर्षों को अभिलिखित करने के पूर्व अभिलेख पर आई संपूर्ण साक्ष्य का पुनर्मूल्यांकन करे।

**(ii)** संविदा का विनिर्दिष्ट अनुपालन – वादी का तत्पर एवं इच्छुक होना – विशिष्ट अभिवचन थे कि प्रतिवादी किरायेदारों को निष्कासित करेगा और उसके उपरांत विक्रय विलेख निष्पादित करेगा – ऐसा कोई अभिवचन नहीं था कि वादी किरायेदारों के माध्यम से विक्रय विलेख निष्पादित कराने के लिए तत्पर एवं इच्छुक था – वादी ने प्रथम अपील में यह उल्लेखित करते हुए शपथपत्र प्रस्तुत किया कि वह किरायेदारों के साथ विक्रय विलेख निष्पादित करने के लिए तत्पर एवं इच्छुक है – अभिनिर्धारित, अभिवचनों के अभाव में ऐसे शपथपत्र पर अवलंब नहीं लिया जा सकता है।

## K. Karuppuraj v. M. Ganesan

**Judgment dated 04.10.2021 passed by the Supreme Court in Civil Appeal No. 6014 of 2021, reported in AIR 2021 SC 4652**

**Relevant extracts from the judgment:**

In the present case, the original plaintiff instituted a suit for specific performance of the contract. On appreciation of evidence, the learned Trial Court held the issue of readiness in favour of the plaintiff. However, refused to pass the decree for specific performance of the contract on the ground that the plaintiff was not willing to purchase the property with tenants. Therefore, the issue with respect to willingness was held against the plaintiff. In an appeal filed before the High Court under Section 96 read with Order XLI by the impugned judgment and order, the High Court has allowed the said appeal and has quashed and set aside the decree passed by the learned Trial Court dismissing the suit and consequently has decreed the suit for specific performance. Having gone through the impugned judgment and order passed by the High Court, it can be seen that there is a total non-compliance of the Order XLI Rule 31 of CPC. While disposing of the appeal, the High Court has not raised the points for determination as required under Order XLI Rule 31 CPC. It also appears that the High Court being the First Appellate Court has not discussed the entire matter and the issues in detail and as such it does not reveal that the High Court has re-appreciated the evidence while disposing of the first appeal. It also appears that the High Court has disposed of the appeal preferred under Order XLI CPC read with section 96 in a most casual and perfunctory manner. Apart from the fact that the High Court has not framed the points for determination as required under Order XLI Rule 31 CPC, it appears that even the High Court has not exercised the powers vested in it as a First Appellate Court. As observed above, the High Court has neither re-appreciated the entire evidence on record nor has given any specific findings on the issues which were even raised before the learned Trial Court.

In the case of ***B.V. Nagesh and anr. v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530***, this Court has observed and held that without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the First Appellate Court cannot dispose of the first appeal under Section 96 CPC and that too without raising the points for determination as provided under Order XLI Rule 31 CPC.

In the case of ***State Bank of India and anr. v. Emmsons International Limited and anr., (2011) 12 SCC 174*** while considering the scope and ambit of exercise of powers u/s 96 of CPC by the Appellate Court and after considering the decisions of this Court in the cases of ***Madhukar and ors. v. Sangram and ors., (2001) 4 SCC 756; H.K.N. Swami v. Irshad Basith (Dead) by LRs., (2005) 10 SCC 243*** and ***Jagannath v. Arulappa and anr., (2005) 12 SCC 303***, it is held that sitting as a Court of First Appeal, it is the duty of the Appellate Court to deal with all the issues and the evidence led by the parties before recording its findings.

Applying the law laid down by this Court in the aforesaid decisions, if the impugned judgment and order passed by the High Court is considered, in that case, there is a total non-compliance of the provisions of the Order XLI Rule 31 CPC. The High Court has failed to exercise the jurisdiction vested in it as a First Appellate Court; the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned Trial Court, in particular, on findings recorded by the learned Trial Court on the issue of willingness. Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable.

It is required to be noted that as per the case of the original plaintiff, the defendant was required to evict the tenants and hand over the physical and vacant possession at the time of execution of the sale deed on payment of full sale consideration. Even in the suit notice issued by the plaintiff, the plaintiff called upon the defendant to evict the tenants and thereafter execute the sale deed on payment of full consideration from the plaintiff. Even when we consider the pleadings and the averments in the plaint, it appears that the plaintiff was never willing to get the sale deed executed with tenants and/or as it is. It was the insistence on the part of the plaintiff to deliver the vacant possession after evicting the tenants. Therefore, on the basis of the pleadings in the plaint and on appreciation of evidence, the learned Trial Court held the issue of willingness against the plaintiff. However, before the High Court, the plaintiff filed an affidavit stating that he is now ready and willing to get the sale deed executed with respect to the property with tenants and unfortunately, the High Court relying upon the affidavit in the first appeal considered that as now the plaintiff is ready and willing to purchase the property with tenants and get the sale deed executed with respect to the property in question with tenants, the High Court has allowed the appeal and decreed the suit for specific performance. The aforesaid procedure adopted by the High Court relying upon the affidavit in a First Appeal

by which virtually without submitting any application for amendment of the plaint under Order VI Rule 17 CPC, the High Court as a First Appellate Court has taken on record the affidavit and as such relied upon the same. Such a procedure is untenable and unknown to law. First appeals are to be decided after following the procedure to be followed under the CPC. The affidavit, which was filed by the plaintiff and which has been relied upon by the High Court is just contrary to the pleadings in the plaint. As observed hereinabove, there were no pleadings in the plaint that he is ready and willing to purchase the property and get the sale deed executed of the property with tenants and the specific pleadings were to hand over the peaceful and vacant possession after getting the tenants evicted and to execute the sale deed. The proper procedure would have been for the plaintiff to move a proper application for amendment of the plaint in exercise of the power under Order VI Rule 17 CPC, if at all it would have been permissible in a first appeal under Section 96 read with Order XLI CPC. However, straightaway to rely upon the affidavit without amending the plaint and the pleadings is wholly impermissible under the law. Therefore, such a procedure adopted by the High Court is disapproved.

●

***5. CIVIL PROCEDURE CODE, 1908 – Section 151**

**Consolidation of suit – Purpose – The purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action – Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses and the parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials.**

**सिविल प्रक्रिया संहिता, 1908 – धारा 151**

वादों का समेकन – प्रयोजन – वादों के समेकन का प्रयोजन व्यय, समय और प्रयत्न की बचत करना और कई वादों के संचालन को एक वाद मानकर अधिक सुविधाजनक बनाना होता है – वादों का समेकन न्याय के उद्देश्यों की प्राप्ति के लिये आदेशित किया जाता है क्योंकि यह पक्षकारों को कार्यवाहियों की बहुलता, विलंब एवं व्यय से बचाता है और पक्षकारों को दो वादों के दो विभिन्न विचारणों में एक समान दस्तावेजी और मौखिक साक्ष्य दो–दो बार प्रस्तुत करने की आवश्यकता से मुक्त करता है।

**Dyna Chem (M/s) v. Jaipaldas S/o Ghuriyomal Punjabi**

**Order dated 26.07.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 1463 of 2021, reported in 2021 (4) MPLJ 406**

●

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

**Rejection of plaint – Non-disclosure of cause of action – Where the reliefs as sought in the plaint cannot be granted to the plaintiff, the suit should be thrown out at the threshold – Such a plaint should be rejected for non-disclosure of cause of action under Order 7 Rule 11 of CPC.**

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

वादपत्र नामंजूर किया जाना – वाद हेतुक प्रकट नहीं होना – जहां वादी को वादपत्र में वांछित अनुतोष प्रदान नहीं किया जा सकता है, वाद को प्रारंभिक प्रक्रम पर ही समाप्त कर देना चाहिए – ऐसा वादपत्र, वाद हेतुक प्रकट न करने के आधार पर सि.प्र.सं. के आदेश 7 नियम 11 के अधीन नामंजूर किया जाना चाहिए।

**Rajendra Bajoria and ors. v. Hemant Kumar Jalan and ors.**

**Judgment dated 21.09.2021 passed by the Supreme Court in Civil Appeal No. 5819 of 2021, reported in AIR 2021 SC 4594**

**Relevant extracts from the judgment:**

The court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold. This Court, therefore, upheld the order passed by the Trial Court of rejecting the suit and that of the Appellate Court, thereby affirming the decision of the Trial Court. This Court set aside the order passed by the High Court, wherein the High Court had set aside the concurrent orders of the Trial Court and the Appellate Court and had restored and remanded the suit for trial to the Trial Court.

It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.

●

**7. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 13**

***Ex-parte* decree; setting aside of – Matrimonial dispute – Wife alleged that she was assured by her Advocate not to come on each date and that he will call her as and when required – Her advocate was out of town for treatment of his wife who died of cancer later – Held, in general, lawyers do not call parties in family disputes on each date and they are called when it is required for recording their evidence – Party could not be made to suffer on fault of her counsel – *Ex-parte* decree ordered to be set aside.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 9 नियम 13**

एकपक्षीय आज्ञप्ति का अपास्त किया जाना – विवाह संबंधी विवाद – पत्नी का अभिकथन था कि उसे उसके अधिवक्ता ने प्रत्येक तिथि पर नहीं आने और जब भी आवश्यकता होगी उसे बुलाने का आश्वासन दिया था – उसके अधिवक्ता अपनी पत्नी के इलाज के लिए नगर से बाहर थे, जिनकी बाद में कैंसर से मृत्यु हो गई – अवधारित, सामान्यतया अधिवक्ता विवाह संबंधी विवादों में पक्षकारों को प्रत्येक तिथि पर नहीं बुलाते हैं और उन्हें तब बुलाया जाता है जब उनकी साक्ष्य लेखबद्ध करने की आवश्यकता हो – पक्षकार को उसके अधिवक्ता के दोष का दण्ड नहीं दिया जा सकता है – एकपक्षीय आज्ञप्ति अपास्त की गई।

**Pushpa Devi v. Santoshi Lal Sharma**

**Judgment dated 16.09.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 217 of 2015, reported in AIR 2021 MP 180 (DB)**

**Relevant extracts from the judgment:**

Keeping in view the evidence adduced by the appellant/wife, her witness Ramprakash Sharma, Stamp Vendor as well as the cross-examination of the respondent/ husband, it is clear that appellant had engaged Shri Vishnu Maheshwari as her lawyer for prosecuting her case in the divorce petition filed by her husband/respondent, who had assured her not to come to the Court on each date of hearing and he will call her as and when required. It is true that the appellant did not produce Advocate Shri Vishnu Maheshwari but in general, the Lawyers in family matters/disputes do not call their parties on each date and they are called when it is required for recording of their evidence before the Court. So far as the evidence of the appellant that the wife of her Advocate Shri Vishnu Maheshwari died because of suffering from cancer for whose treatment, her advocate Shri Vishnu Maheshwari had gone out of Morena is concerned, the same remains unchallenged. The ex parte judgment and decree was passed on 16/03/2011 and after obtaining certified copy of same on 07/04/2011, the appellant on 11/04/2011 had filed a restoration application under Order 9 Rule 13 r/w Sec. 151 CPC for setting aside ex parte judgment and decree i.e. within a period of one month. In the interest of justice, after affording an opportunity of hearing to both the rival parties, the learned Family Court should have decided

the matter. In the present matter, the appellant is 57 years old lady and could not be made to suffer on the fault of her counsel. She has given sufficient cause/ reason for non-appearance of her/her counsel before the Court concerned whereby an ex parte judgment and decree has been passed against her.

●

**8. CONSUMER PROTECTION ACT, 1986 – Section 24-A**

**Bar of limitation – Consumer complaint – Where cause of action continues even after the date of agreement, the limitation period of two years will begin from last of such dates – Instantly, agreement of maintenance was entered on 15.11.2003 between builder and RWA – Builder was required to carry out certain works under the agreement – Such works continued till December, 2005 – Consumer complaint filed in February, 2007 was held to be within limitation.**

उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 24–क

परिसीमा का वर्जन – उपभोक्ता परिवाद – जहां अनुबंध की तिथि के बाद भी वाद हेतुक जारी रहता है, दो वर्ष की परिसीमा अवधि ऐसी तिथियों में से अंतिम से प्रारंभ होगी – हस्तगत मामले में, रखरखाव का अनुबंध 15.11.2003 को बिल्डर और आरडब्ल्यूए के मध्य किया गया था – अनुबंध के अधीन कुछ कार्यों को करने के लिए बिल्डर उत्तरदायी था – ऐसे कार्य दिसंबर, 2005 तक जारी रहे – अतः फरवरी, 2007 में प्रस्तुत उपभोक्ता परिवाद को परिसीमा के भीतर होना अवधारित किया गया।

**Managing Director (Shri Grish Batra), Padmini Infrastructure Developers (I) Ltd. v. General Secretary (Shri Amol Mahapatra) Royal Garden Residents Welfare Association**

**Judgment dated 28.09.2021 passed by the Supreme Court in Civil Appeal No. 2998 of 2010, reported in AIR 2021 SC 4627**

**Relevant extracts from the judgment:**

Section 24-A(1) of the Consumer Protection Act, 1986 prescribes a period of limitation of two years from the date on which the cause of action has arisen for the admission of a complaint, by the District Forum, State Commission or the National Commission. In the case on hand, the opposite party handed over the work of maintenance of the complex to the complainant, under an agreement dated 15.11.2003. As seen from the preamble to the agreement, the agreement covered common essential services such as generators, lifts, tubewell, water softening plant, electric substation, cabling, fire fighting system, pipelines, swimming pool, health and fitness centre, parking, clubhouse, water supply, drainage/sewerage system, horticulture, water tanks/pumps and lawns/parks.

But different timelines were prescribed under the said agreement for different obligations still remaining to be performed by the opposite party, towards the purchasers of flats. The last of such timeline was indicated to be 31.03.2004.

There were specific obligations to be performed by the opposite party under the said agreement, in relation to certain services.

In the affidavit filed by the local Manager of the opposite party by way of evidence, it was admitted that certain works in relation to firefighting equipment continued up to the year 2005. In fact, the opposite party filed certain bills, which were dated 27.02.2005, 22.04.2005, 01.05.2005, 19.07.2005, 29.10.2005 and 12.12.2005, to show that the opposite party was honest and diligent in carrying out their obligations.

The affidavit in evidence filed by the opposite party and the aforesaid bills establish that the cause of action continued at least till December, 2005. The complaint before the National Commission was filed in February, 2007. Therefore, the National Commission was right in rejecting the objection relating to limitation.

●

**9. CRIMINAL PROCEDURE CODE, 1973 – Section 154**

**Preliminary inquiry – In a case of corruption, FIR can be registered without conducting any preliminary inquiry – However, if the Investigation Officer is conducting preliminary inquiry before registration of FIR then accused cannot be granted a chance to explain his conduct at the time of inquiry.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 154**

प्रारम्भिक जांच – भ्रष्टाचार के मामले में किसी प्रारंभिक जांच के बिना भी प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जा सकता है – तथापि यदि अन्वेषण अधिकारी द्वारा प्रथम सूचना प्रतिवेदन के पंजीयन के पूर्व प्रारंभिक जांच की जा रही हो तब ऐसी जांच के समय अभियुक्त को अपने आचरण का स्पष्टीकरण प्रस्तुत करने का अवसर नहीं दिया जा सकता।

**Central Bureau of Investigation (CBI) and anr. v. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and anr.**

**Judgment dated 08.10.2021 passed by the Supreme Court in Criminal Appeal No. 1045 of 2021, reported in 2021 (4) Crimes 141 (SC)**

**Relevant extracts from the judgment:**

A Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in the ***State of Telangana v. Managipet, (2019) 10 SCC 87*** dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry.

Therefore, since an accused public servant does not have a right to be afforded a chance to explain the alleged Disproportionate Assets to the Investigating Officer

before the filing of a charge sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a Preliminary Enquiry mandatory.

●

***10. CRIMINAL PROCEDURE CODE, 1973 – Section 167(2)(a)(i)**
**INDIAN PENAL CODE, 1860 – Section 467**

**(i) Default bail – As per Section 167(2)(a)(i) of the Code, the period of filing of the charge sheet in a case where the offence is punishable with life imprisonment and any lower sentence would be 90 days.**

**(ii) Default bail – Where the maximum prescribed sentence is not death or life imprisonment but the minimum prescribed sentence is less than 10 years then the period of filing of the charge sheet would be 60 days.**

**[Principles laid down in *Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67* reiterated]**

दण्ड प्रक्रिया संहिता, 1973 – धारा 167(2)(क)(i)

दण्ड संहिता, 1860 – धारा 467

(i) व्यतिक्रम जमानत – संहिता की धारा 167(2)(क)(i) के अनुसार, ऐसे मामलों में जो आजीवन कारावास एवं निम्नतर दण्ड से दण्डनीय है अभियोग पत्र प्रस्तुत करने की अवधि 90 दिन होगी।

(ii) व्यतिक्रम जमानत – जहां अधिकतम विहित दण्डादेश मृत्यु दण्ड अथवा आजीवन कारावास न हो परन्तु न्यूनतम विहित दण्डादेश 10 वर्ष से कम है वहां अभियोग पत्र प्रस्तुत करने की अवधि 60 दिन होगी।

[*राकेश कुमार पॉल विरूद्ध आसाम राज्य, (2017) 15 एससीसी 67* में प्रतिपादित सिद्धांत दोहराये गये]

**Nitin Khandelwal and anr. v. State of M.P.**
**Order dated 23.04.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in MCRC No.15570 of 2021, reported in ILR (2020) M.P. 1178**

●

***11. CRIMINAL PROCEDURE CODE, 1973 – Section 173**
**Further investigation – Fair trial and fair investigation is also a fundamental right of a victim – Where the Investigating Officer has deliberately conducted a faulty investigation and certain lapses were left deliberately, then a direction for further investigation can be given.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 173

अतिरिक्त अन्वेषण – निष्पक्ष विचारण और निष्पक्ष अन्वेषण भी पीड़ित का मूलभूत अधिकार है – जहां अन्वेषणकर्ता अधिकारी ने जानबूझकर दोषपूर्ण अन्वेषण किया है

और कुछ कमियां जानबूझकर छोड़ दी हैं, वहां अग्रिम अन्वेषण के लिए निर्देश दिया जा सकता है।

**State of M.P. v. Anil Sharma and ors.**

**Order dated 02.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 9801 of 2021, reported in 2021 CriLJ 4720**

●

**12. CRIMINAL PROCEDURE CODE, 1973 – Sections 200 and 204**
**Issuance of process – Vicarious liability of Chairman, Managing Director, Managers or Planners of company – Unless there are specific allegations and/or averments against them with respect to their individual role in their capacity, such office bearers cannot be arrayed as accused and held vicariously liable for the acts of company.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 200 एवं 204

आदेशिका जारी किया जाना – कंपनी के चेयरमेन, प्रबंध निदेशक, प्रबंधकों या योजनाकारों का प्रतिनिधिक दायित्व – जब तक उनकी पदीय क्षमता के अधीन व्यक्तिगत भूमिका के संबंध में उनके विरुद्ध कोई विशिष्ट आक्षेप और/अथवा अभिकथन नहीं हों, ऐसे पदाधिकारियों को अभियुक्त के रूप में संयोजित नहीं किया जा सकता है और उन्हें कंपनी के कृत्यों के लिए प्रतिनिधिक रूप से उत्तरदायी नहीं ठहराया जा सकता है।

**Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. and ors. etc.**

**Judgment dated 27.09.2021 passed by the Supreme Court in Criminal Appeal No. 1047 of 2021, reported in AIR 2021 SC 4587**

**Relevant extracts from the judgment:**

As held by this Court in the case of ***GHCL Employees Stock Option Trust v. India Infoline Limited, (2013) 4 SCC 505***, in the order issuing summons, the learned Magistrate has to record his satisfaction about a *prima facie* case against the accused who are Managing Director, the Company Secretary and the Directors of the company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/ Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.

From the order passed by the learned Magistrate issuing the process against the Respondents herein – accused Nos. 1 to 8, there does not appear that the learned Magistrate has recorded his satisfaction about a *prima facie* case against respondent Nos. 2 to 5 and 7 & 8. Merely because respondent Nos. 2 to 5 and 7 & 8 are the Chairman/Managing Director/Executive Director/ Deputy General Manager/Planner & Executor, automatically they cannot be held vicariously liable, unless, as observed herein-above, there are specific allegations and averments against them with respect to their individual role.

●

**13. CRIMINAL PROCEDURE CODE, 1973 – Section 319**

**Summoning of new accused – Power of summoning any accused u/s 319 of Cr.P.C. should not be exercised in a cursory manner – This power should not be exercised just because the Magistrate or the Sessions Judge makes an opinion that any other person may also be offender in the same case – Such order must be based on strong and cogent evidence – At this stage guilt of the proposed accused should not be considered by the Court.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 319**

नये अभियुक्त को समन करना – दण्ड प्रक्रिया संहिता की धारा 319 के अंतर्गत किसी अभियुक्त को आहूत करने की शक्ति का प्रयोग लापरवाही पूर्ण तरीके से नहीं करना चाहिए – इस शक्ति का प्रयोग मात्र इस आधार पर नहीं किया जाना चाहिए कि मजिस्ट्रेट या सत्र न्यायाधीश जज का यह अभिमत है कि उसी प्रकरण में कोई अन्य व्यक्ति भी अपराधी हो सकता है – ऐसा आदेश दृढ़ एवं तर्कपूर्ण साक्ष्य पर आधारित होना चाहिए – इस स्तर पर न्यायालय को प्रस्तावित अभियुक्त की दोषिता पर विचार नहीं करना चाहिए।

**Ramesh Chandra Srivastava v. The State of U.P. and anr.**

**Judgment dated 13.09.2021 passed by the Supreme Court in Criminal Appeal No. 990 of 2021, reported in 2021 (4) Crimes 61 (SC)**

**Relevant extracts from the judgment:**

Power under Section 319 Cr. P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

There is, therefore, no scope for the court acting under Section 319 Cr. P.C. to form any opinion as to the guilt of the accused.

For invoking power under Section 319 Cr.P.C. *inter alia* includes the principle that only when strong and cogent evidence occurs against a person from the

evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges.

●

**14. CRIMINAL PROCEDURE CODE, 1973 – Section 320**

**Compromise – Consideration of in non-compoundable offence – The fact of compromise filed in a case related to non–compoundable offence can be considered while awarding sentence to avoid bitterness between the parties – While doing so other aggravating and mitigating factors should also be considered and if it is found that the crime was against the society then such compromise should not be considered at the time of sentence because giving proper punishment to the wrong doer is the heart of the criminal justice delivery system.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 320**

समझौता – अशमनीय अपराध में विचार – उभयपक्ष के मध्य कटुता समाप्त करने हेतु अशमनीय अपराध से संबंधित प्रकरण में समझौता प्रस्तुत होने के तथ्य पर दण्डादेश पारित करते समय विचार किया जा सकता है – ऐसा करते समय अन्य गुरूत्तरकारी एवं लघुत्तरकारी कारकों पर भी विचार किया जाना चाहिए और यदि यह पाया जाता है कि समाज के विरूद्ध अपराध कारित किया गया है तब ऐसे समझौते पर दण्डादेश के समय विचार नहीं किया जाना चाहिए क्योंकि अपकृत्यकारी को उचित दण्ड देना आपराधिक न्याय प्रदाय व्यवस्था का मर्म है।

**Bhagwan Narayan Gaikwad v. The State of Maharashtra and ors.**

**Judgment dated 20.09.2021 passed by the Supreme Court in Criminal Appeal No. 1039 of 2021, reported in 2021 (4) Crimes 42 (SC)**

**Relevant extracts from the judgment:**

Giving punishment to the wrongdoer is the heart of the criminal delivery system. The compromise if entered at the later stage of the incident or even after conviction can indeed be one of the factor in interfering the sentence awarded to commensurate with the nature of offence being committed to avoid bitterness in the families of the accused and the victim and it will always be better to restore their relation, if possible, but the compromise cannot be taken to be a solitary basis until the other aggravating and mitigating factors also support and are favourable to the accused for molding the sentence which always has to be examined in the facts and circumstances of the case on hand.

●

***15. CRIMINAL PROCEDURE CODE, 1973 – Section 378**

**Appeal against acquittal – If the Trial Court after due appreciation of the evidence comes to the conclusion about the finding of acquittal then normally, if the finding is not perverse, this should not be interfered with by the Appellate Court.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 378**

दोषमुक्ति के विरुद्ध अपील – यदि विचारण न्यायालय साक्ष्य की उचित विवेचना के बाद दोषमुक्ति के बारे में निष्कर्ष पर पहुंचता है, तब यदि निष्कर्ष विकृत नहीं है तो सामान्यतया अपीलीय न्यायालय द्वारा हस्तक्षेप नहीं किया जाना चाहिए।

**State of Madhya Pradesh v. Rizwan Khan**

**Order dated 08.07.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Criminal Case No. 9166 of 2021, reported in 2021 CriLJ 4769 (DB)**

●

**16. CRIMINAL PROCEDURE CODE, 1973 – Section 386**

**Re-trial – Principles summarized – Re-trial should not be ordered on the ground of failure of prosecution in producing proper evidence – Re-trial may be ordered by the Appellate Court only after its satisfaction that any omission or irregularity resulted in failure of justice.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 386**

पुनः विचारण – सिद्धांत समेकित किए गए – अभियोजन द्वारा उचित साक्ष्य प्रस्तुत करने में असफल होने के आधार पर पुनः विचारण आदेशित नहीं किया जाना चाहिए – अपील न्यायालय द्वारा पुनः विचारण अपनी इस संतुष्टि के पश्चात् ही आदेशित किया जा सकता है कि किसी त्रुटि या अनियमितता के परिणामस्वरूप न्याय विफल हुआ है।

**Nasib Singh v. The State of Punjab and anr.**

**Judgment dated 08.10.2021 passed by the Supreme Court in Criminal Appeal No. 1051 of 2021, reported in 2021 (4) Crimes 173 (SC)**

**Relevant extracts from the judgment:**

The principles that emerge from the decisions of this Court on retrial can be formulated as under:

(i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for re-trial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/ prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :

(a) The trial court has proceeded with the trial in the absence of jurisdiction:

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.

●

**17. CRIMINAL PROCEDURE CODE, 1973 – Section 389**
**CRIMINAL PRACTICE :**

**(i) Suspension of sentence – Factors to be considered – Nature of accusation, gravity of the offence, its impact over society at large, manner in which crime was committed, quality and reliability of evidence on record, desirability of accused being released on bail after conviction *inter alia* are factors to be considered – Whether sentence of accused can be suspended just because he has served half of the sentence awarded? Held, no.**

**(ii) Suspension of sentence – Recording of reasons by appellate court – Held, is mandatory.**

**(iii) Suspension of sentence – Maintainability of subsequent application – Subsequent application for suspension of sentence is maintainable when there is material change in facts and circumstances or the law.**

**[Full Bench judgment dated 16.04.2017 of High Court of Madhya Pradesh (Indore Bench) in *Dashrath v. State of M.P., Criminal Appeal No. 1248/2005* followed]**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 389**

**आपराधिक प्रथा :**

**(i)** दण्डादेश का निलंबन – विचार किए जाने वाले कारक – आरोप की प्रकृति, अपराध की गंभीरता, समाज पर इसका व्यापक प्रभाव, जिस तरह से अपराध

किया गया था, अभिलेख पर उपलब्ध साक्ष्य की गुणवत्ता एवं विश्वसनीयता, दोषसिद्धि के उपरांत अभियुक्त की जमानत पर रिहा होने की वांछा अन्य के साथ–साथ विचार किए जाने वाले कारक हैं – क्या अभियुक्त का दण्डादेश मात्र इस आधार पर निलंबित किया जा सकता है कि उसने दण्डादेश का आधा भाग भुगत लिया है? अवधारित, नहीं।

(ii) दण्डादेश का निलंबन – अपीलीय न्यायालय द्वारा कारण लेखबद्ध किया जाना – अवधारित, आज्ञापक है।

(iii) दण्डादेश का निलंबन – उत्तरवर्ती आवेदन की पोषणीयता – दण्डादेश के निलंबन का उत्तरवर्ती आवेदन तथ्यों एवं परिस्थितियों अथवा विधि में तात्विक परिवर्तन होने पर पोषणीय होगा।

**[मध्य प्रदेश उच्च न्यायालय (इंदौर पीठ) की पूर्ण पीठ के द्वारा *दशरथ विरुद्ध म.प्र. राज्य, आपराधिक अपील क्रमांक 1248/2005* में पारित निर्णय दिनांक 16.04.2017 अनुसरित]**

## Rahul v. State of Madhya Pradesh

**Order dated 07.01.2022 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 740 of 2016, unreported (DB)**

**Relevant extracts from the order:**

With regards to the ground taken by the applicant this time, discussing a series of judgments and orders of the Hon'ble Supreme Court as well as of various High Courts delivered from time to time on the issue, the Full Bench of this Court in ***Dashrath vs State of M.P. (Cr.A. No. 1248/2005)*** delivered on ***26.04.2017***, has held that sentence of any term of a convict cannot be suspended just because he has served half of the sentence or any particular period of the sentence. It has been concluded that while considering suspension, the Court, amongst other factors, is required to consider the nature of accusation made against the accused, gravity of the offence, the manner in which the crime is alleged to have been committed and the desirability of the accused being released on bail after conviction.

A simple and plain reading of this Sectlon makes it clear that while granting suspension, it is mandatory for the Court to record reasons. In the judgments of ***The State of Haryana v. hasmat, (2004) 6 SCC 175, State of Maharashtra v. Madhukar Wamanrao Srnarth, (2008) 5 SCC 721, Kishori Lal v. Rupa, (2004) 7 SCC 638*** and ***Vasant Tikaram Pawar v. State of Maharashtra, (2005) 5 SCC 281*** (also referred to ***Dashrath's*** case (supra)), the Apex Court has uniformly laid down that one of the essential ingredients of Section 389 Cr.P.C is the requirement for the appellate Court to record reasons in writing for ordering suspension of execution of sentence and the requirement of recording reasons clearly indicates that there has to be careful consideration of relevant aspects. In the above context, the reasons refer to reasons which justify the suspension of sentence in all judicial senses. Term of jail served may be one of the reasons in a given case but may

not justify the conscious of the Court to decide the prayer of suspension without consideration of the evidence produced on record, its quality and reliability, the nature and gravity of the offence, the manner and method in which it has been committed, its impact over the society or the public at large, the object of the law in dealing with the crime, the special enactment introduced to curb the menace etc. and peculiar facts and circumstances of any particular case.

x x x

Though, there is no doubt that the subsequent bail/suspension application is maintainable, there must be some material change in the facts and circumstances or the law.

It is not open to the aggrieved person to file successive bail application on the ground already rejected by the Court earlier without any fresh material, factual or legal. Granting bail by reconsidering the same grounds and by substituting its subjective satisfaction practically overrules findings of the Court recorded in the earlier order and obviously this is not permissible.

●

**18. CRIMINAL PROCEDURE CODE, 1973 – Sections 437 (5) and 439 (2) Cancellation of bail – After granting bail, it should not be cancelled in absence of cogent and overwhelming reasons – Consideration of irrelevant factors or ignorance of relevant factors by the court granting bail may be considered at the time of cancellation of bail for preventing the failure of justice.**

**दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437 (5) एवं 439 (2)**

**जमानत का निरस्त किया जाना – जमानत मंजूर किये जाने के पश्चात् इसे तर्कपूर्ण एवं अपरिहार्य कारणों के अभाव में निरस्त नहीं करना चाहिए – न्याय की विफलता को निवारित करने हेतु जमानत निरस्त करते समय जमानत मंजूर करने वाले न्यायालय द्वारा असंगत तथ्यों को विचार में लेने या सुसंगत तथ्यों को नजरअंदाज किये जाने संबंधी तथ्यों को विचार में लिया जा सकता है।**

**Vipin Kumar Dhir v. State of Punjab and anr.**

**Judgment dated 04.10.2021 passed by the Supreme Court in Criminal Appeal No. 1161 of 2021, reported in 2021 (4) Crimes 67 (SC)**

**Relevant extracts from the judgment:**

At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. This Court in ***Daulat Ram and others vs. State of Haryana, (1995) 1 SCC 349*** observed that:

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail.

Bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice.

●

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

**(i) Anticipatory bail – Whether a person who is declared as an absconder or proclaimed offender in terms of section 82 Cr.P.C. be granted relief of anticipatory bail? Held, no.**

**(ii) Anticipatory bail – Whether accusation is arising out of business transaction is a factor to be considered while deciding anticipatory bail? Held, no – What is required to be considered is the nature of allegation and the accusation.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 438**

**(i)** अग्रिम जमानत – क्या द.प्र.सं. की धारा 82 के अधीन फरार अथवा उद्घोषित अपराधी घोषित किए गए व्यक्ति को अग्रिम जमानत का लाभ दिया जा सकता है? अवधारित, नहीं।

**(ii)** अग्रिम जमानत – क्या अभियोग व्यापारिक लेनदेन से उत्पन्न हुआ है, इस तथ्य पर अग्रिम जमानत का निराकरण करते समय विचार किया जाना चाहिए? अवधारित, नहीं – जिन तथ्यों पर विचार करने की आवश्यकता है वह हैं अपराध की प्रकृति एवं अभियोग।

**Prem Shankar Prasad v. State of Bihar and anr.**

**Judgment dated 21.10.2021 passed by the Supreme Court in Criminal Appeal No. 1209 of 2021, reported in 2021 (4) Crimes 303 (SC)**

**Relevant extracts from the judgment:**

In the case of ***State of Madhya Pradesh v. Pradeep Sharma, (2014) 2 SCC 171***, it is observed and held by this Court that if anyone is declared as an absconder/ proclaimed offender in terms of section 82 of CrPC, he is not entitled to relief of anticipatory bail.

Even the observations made by the High Court while granting the anticipatory bail to respondent No. 2 - accused that the nature of accusation is arising out of a business transaction and therefore the accused is entitled to the anticipatory bail is concerned, the same cannot be accepted. Even in the case of a business transaction also there may be offences under the IPC more particularly sections 406, 420, 467, 468, etc. What is required to be considered is the nature of allegation and the accusation and not that the nature of accusation is arising out of a business transaction.

●

**20. EVIDENCE ACT, 1872 – Sections 3, 8, 17 and 68**
**INDIAN SUCCESSION ACT, 1925 – Section 63**
**APPRECIATION OF EVIDENCE :**

**(i) Will; admission of – Where a claim is based on revocation of earlier Will, it is acknowledgement of the execution thereof – If the Will is otherwise proved in accordance with law, such admission becomes relevant fact duly proved.**

**(ii) Will – Suspicious circumstances – Exclusion of brother and sister of beneficiary does not create suspicion when brother was attesting winess and sister accompanied the testatrix to Sub-Registrar office – Their participation, in fact, uphold the execution of Will.**

साक्ष्य अधिनियम, 1872 – धाराएं 3, 8, 17 एवं 68
भारतीय उत्तराधिकार अधिनियम, 1925 – धारा 63
साक्ष्य का मूल्यांकन :

**(i)** वसीयत की स्वीकृति – जहां कोई वाद पूर्ववत् वसीयत के निरसन पर आधारित हो, वहां यह ऐसी वसीयत के निष्पादन की स्वीकृति होगी – यदि वसीयत अन्यथा विधिनुसार साबित हो जाती है, तो ऐसी स्वीकृति विधिवत् साबित होने वाला सुसंगत तथ्य होगी।

**(ii)** वसीयत – संदिग्ध परिस्थितियाँ – लाभार्थी के भाई और बहन का अपवर्जन तब संदेह उत्पन्न नहीं करेगा जब भाई अनुप्रमाणन साक्षी हो एवं बहन वसीयतकर्ता के साथ उप–पंजीयक कार्यालय आई हो – उनकी भागीदारी, वस्तुतः वसीयत के निष्पादन को संपुष्ट करती है।

**V. Prabhakara v. Basavaraj K. (Dead) by LR. and anr.**
**Judgment dated 07.10.2021 passed by the Supreme Court in Civil Appeal No. 1376 of 2010, reported in AIR 2021 SC 4830**

**Relevant extracts from the judgment:**

Section 3 of the Indian Evidence Act defines “a fact”. Conduct of a party would be construed as a fact under section 8. Such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. When evidence is given on the conduct of a party and if it is proved to the satisfaction of the court particularly when it involves an admission, adequate weight age is required to be given. Such a conduct would include a silence emanating from a party who is expected to speak and express. When a party makes a claim based upon revocation of the earlier Will, as indicated in the subsequent one, the said acknowledgement of the former would form part of a conduct leading to a relevant fact *vis-à-vis* a fact in issue.

Section 17 defines “an admission” which would include a statement both oral and documentary. When such an admission is clear and unequivocal, there is no need to prove it while taking judicial notice. U/s 58, a fact admitted need not be proved unless the court warrants it. Thus, in a case where a party admits the execution of the document in the nature of a Will, which is otherwise proved in accordance with section 63 and section 68 of the Indian Succession Act and Indian Evidence Act respectively, it becomes a relevant fact duly proved, in the absence of any discretion by the court. The exercise of discretion is a judicial one and therefore, there must be a basis in asking a party to prove it otherwise.

x x x

A testamentary court is not a court of suspicion but that of conscience. It has to consider the relevant materials instead of adopting an ethical reasoning. A mere exclusion of either brother or sister per se would not create a suspicion unless it is surrounded by other circumstances creating an inference. In a case where a testatrix is accompanied by the sister of the beneficiary of the Will and the said document is attested by the brother, there is no room for any suspicion when both of them have not raised any issue.

The appellant has duly complied with the mandate of section 63 of the Indian Succession Act along with section 68 of the Indian Evidence Act. PW2 being the brother of the appellant and the other sister, Ms. Kantha Lakshmi were present at the time of execution of Exhibit P4. They have not raised any demur. Both the Courts found that Exhibit D1 is a forged and fabricated document. The alleged mortgage in favor of respondent No.1 has not been proved. The Appellate Court, in our considered view, has unnecessarily created a suspicion when there is none. The respondents have not denied the factum of the execution of Exhibit P4. The very fact that they made reliance upon Exhibit D1, which took note of Exhibit P4 as validly done, there is no need for any suspicion on the part of the High Court. That too, when the Trial Court did not find any. Such a suspicion, as stated earlier, did not arise from either of the siblings of the appellant who would otherwise be entitled to a share in the suit property. Their exclusion will not enure to the benefit of the defendants who are bound by the recitals under Exhibit D1 and averments made in their written statement.

The High Court has also committed an error in misconstruing the presence of the sister of the appellant, Ms. Kantha Lakshmi. Her presence in fact adds strength to Exhibit P4 having been executed properly. It is the specific case of the appellant, and perhaps PW2 and Ms. Kantha Lakshmi that the deceased, Ms. Jessie Jayalakshmi wanted the property to be given in his favor. Their participation coupled with the subsequent conduct would be sufficient enough to uphold Exhibit P4. When there are no suspicious circumstances surrounding the execution of Exhibit P4, there is no need to remove.

●

**21. EVIDENCE ACT, 1872 – Sections 3 and 145**
**INDIAN PENAL CODE, 1860 – Sections 201, 302, 364, 366-A and 376**
**APPRECIATION OF EVIDENCE :**

**(i) Contradiction in testimony of witnesses – Whether witnesses must be confronted by the defence to seek advantage of the contradictions? Held, no – Defence is entitled to rely upon contradictions in ocular evidence of eye-witnesses and highlight incongruity between their versions and the prosecution's case.**

**(ii) Inconsistency amongst witnesses as to the date of incident – Appreciation of – Held, dates in Gregorian calendar may not be of much relevance in rural areas – Witnesses were villagers and their evidence was recorded nearly a year after the occurrence – Held, they may not have possibly remembered the date of sighting.**

**(iii) Rape and murder – Time of death – Rate of putrefaction of body in water is more reliable than of body exposed to air – Ordinarily, body takes twice as much time in water as in air to undergo the same degree of putrefaction – Flotation of body takes place when gases of decomposition or putrefaction develop within submerged body.**

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 145
भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302, 364, 366–क एवं 376
साक्ष्य का मूल्यांकन :

**(i)** साक्षियों की परिसाक्ष्य में विरोधाभास – क्या विरोधाभास का लाभ लेने के लिए बचाव पक्ष द्वारा साक्षियों का उससे सामना कराना आवश्यक है? अभिनिर्धारित, नहीं – बचाव पक्ष को चक्षुदर्शी साक्षियों की मौखिक साक्ष्य में आए विरोधाभासों का अवलंबन लेने एवं उनके व अभियोजन पक्ष के मामले के बीच विसंगति को उजागर करने का अधिकार है।

**(ii)** घटना की तिथि के बारे में साक्षियों के बीच असंगतता का मूल्यांकन – अभिनिर्धारित, ग्रेगोरियन कैलेंडर की तिथि ग्रामीण क्षेत्रों में अधिक प्रासंगिक

नहीं होती हैं – साक्षी ग्रामीण थे और उनकी साक्ष्य घटना के लगभग एक वर्ष पश्चात् लेख की गई थी – अभिनिर्धारित, संभव है कि उन्हें घटना की तिथि याद न हो।

**(iii)** बलात्कार और हत्या – मृत्यु का समय – पानी में शरीर के सड़ने की दर हवा के संपर्क में आने वाले शरीर की तुलना में अधिक प्रामाणिक होती है – सामान्यतया, एक समान स्तर तक सड़ने के लिए शरीर हवा की तुलना में पानी में दोगुना समय लेता है – शरीर तब सतह पर तैरने लगता है जब डूबे हुए शरीर के भीतर अपघटन या सड़न की गैसें विकसित होती हैं।

## Irappa Siddappa Murgannavar v. State of Karnataka

**Judgment dated 08.11.2021 passed by the Supreme Court in Criminal Appeal No. 1473 of 2017, reported in 2021 (4) Crimes 221 (SC) (Three Judge Bench)**

**Relevant extracts from the judgment:**

Yallappagouda Kagadal (PW-7) in his testimony has clearly stated that he had seen the appellant carrying a girl on his shoulder at about 8:30 p.m. on 28th December, 2010. Contrary to Yallapagouda's (PW-7) statement relating to the date of sighting, Bhimappa Talawar (PW-8), Gadigeppa Talawar (PW-9), and Hanamappa Talawar (PW-10), have deposed that they had seen the appellant with a gunny bag and a girl child on his shoulder on 30th December, 2010 at about 8:30 p.m. This date 30th December, 2010 has been repeatedly mentioned by Bhimappa Talawar (PW-8) and Hanamappa Talawar (PW-10) and once by Gadigeppa Talawar (PW-9). The counsel for the appellant has harped on the inconsistency of these dates. On the other hand, the State has contended that this contradiction should have been put to the witnesses in question in their cross-examination by the defence. We would have to reject the contention raised by the State as untenable and fallacious. It is an accepted position that the defence is entitled to rely upon contradictions in ocular evidence furnished by the eye-witnesses and highlight any incongruity between their versions and the prosecution's case. It is not a universally affirmed position that the witnesses must be confronted by the defence to seek advantage of the contradictions.

Secondly, we see good and sound reasons to believe that the date 30th December, 2010 deposed to by Bhimappa Talawar (PW-8), Gadigeppa Talawar (PW-9) and Hanamappa Talawar (PW-10) is on account of failure to recollect the exact date when they had seen the appellant with a gunny bag and the girl on his shoulder, and not on account of false deposition on the factum that the appellant was seen carrying the child at about 8:30 p.m. The witnesses are village residents and as their evidence was recorded nearly a year after the occurrence, they may not have possibly remembered the date of sighting, for the reason that dates, especially those in the Gregorian calendar, may not be of much relevance or consequence in the rural areas.

x x x

To affirm our opinion as to the time of death we have studied the opinion expressed in Modi's Textbook of Medical Jurisprudence and Toxicology, 25th edition (2016), Chapter XV - 'Post Mortem Changes and Time of Death'. At page 352, the treatise observes that the rate of putrefaction of body in water is more reliable than of body exposed to air as the temperature in water is more uniform and the body is protected from air. Ordinarily, the body takes twice as much time in water as in air to undergo the same degree of putrefaction. The process is retarded, when a body is lying in deep water and is well-protected by clothing. However, it is hastened when the body is lying in water contaminated with sewage. Flotation of body takes place when gases of decomposition or putrefaction develop within the submerged body. In India, submerged body comes to the surface within 24 hours in summer and within two to three days or more, and sometimes in more than a week, in winter. In temperate climates a submerged body floats within a week in summer and in about a fortnight in winter. Power of flotation of a decomposed body is so great that in certain cases it may float to the surface in spite of being weighted with a heavy stone. The duration required for flotation of body depends upon the age, sex, the condition of the body, season of the year and water. Bodies which are light in weight have low specific gravity and, therefore, float sooner.

●

**22. EVIDENCE ACT, 1872 – Section 27**
**APPRECIATION OF EVIDENCE :**

**(iii) Disclosure statement and resultant recovery – Appreciation of – Conviction can be held exclusively on the basis of disclosure statement and resultant recovery of inculpatory material from accused – However, such recovery should be unimpeachable and undoubted.**

**(iv) Disclosure statement and resultant recovery – Factors affecting credibility of recovery enumerated – Held, period of interval between the malfeasance and disclosure, commonality of the recovered object and its availability in the market, nature of the object and its relevance to the crime, ease of transferability of the object, the testimony and trustworthiness of the attesting witness and other like factors aid in gauging the intrinsic evidentiary value and credibility of recovery.**

साक्ष्य अधिनियम, 1872 – धारा 27

साक्ष्य का मूल्यांकन :

(i) प्रकटन कथन और परिणामतः बरामदगी का मूल्यांकन – मात्र प्रकटन कथन और उसके आधार पर अभियुक्त के आधिपत्य से दोषिता स्थापित करने वाली सामग्री की परिणामतः बरामदगी के आधार पर दोषसिद्धि की जा सकती है – तथापि, ऐसी बरामदगी निर्विवाद और असंदिग्ध होनी चाहिए।

**(ii)** प्रकटन कथन और परिणामतः बरामदगी – बरामदगी की विश्वसनीयता को प्रभावित करने वाले कारक रेखांकित किए गए – अभिनिर्धारित, अपराध एवं प्रकटीकरण के मध्य के अंतराल की अवधि, बरामद वस्तु की सामान्यता और बाजार में इसकी उपलब्धता, वस्तु की प्रकृति और अपराध के लिए इसकी प्रासंगिकता, वस्तु के हस्तांतरण में आसानी, जप्ती साक्षियों की साक्ष्य एवं विश्वसनीयता और अन्य समान कारक बरामदगी के आंतरिक साक्ष्यिक मूल्य तथा उसकी विश्वसनीयता का आंकलन करने में सहायता करते हैं।

## Bijender @ Mandar v. State of Haryana

**Judgment dated 08.11.2021 passed by the Supreme Court in Criminal Appeal No. 2438 of 2010, reported in 2021 (4) Crimes 215 (SC) (Three Judge Bench)**

**Relevant extracts from the judgment:**

It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. [***Vijay Thakur v. State of Himachal Pradesh, (2014) 14 SCC 609***] We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: ***Tulsiram Kanu v. The State, AIR 1954 SC 1; Pancho v. State of Haryana, (2011) 10 SCC 165; State of Rajasthan v. Talevar and anr., (2011) 11 SCC 666*** and ***Bharama Parasram Kudhachkar v. State of Karnataka, (2014) 14 SCC 431***)

In its desire to hold a heavy hand over such derelictions, the Trial Court and the High Court have hastened to shift the burden on the appellant to elucidate how he bechanced to be in possession of the incriminating articles, without primarily scrutinizing the credibility and admissibility of the recovery as well as its linkage to the misconduct. We say so for the following reasons:

> Firstly, the High Court and the Trial Court failed to take into consideration that the testimony of ASI Rajinder Kumar (PW-14) exhibited no substantial effort made by the police for conducting the search of the residence of the appellant in the presence of local witnesses. The only independent witness to the recovery was Raldu (PW-8) who was admittedly a companion of the complainant.
>
> Secondly, the complainant (PW-4) as well as Raldu (PW-8), have unambiguously refuted that neither the passbook, nor the 'red cloth' was recovered from the

possession of the appellant, as claimed in his disclosure statement.

Thirdly, while the complainant (PW-4) negated his signatures on the recovery memo (EX. PD/2), on the other hand, Raldu (PW-8) also neither enumerated the recovery memo (Ex. PD/2) in the catalogue of exhibited documents, nor did that he affirm to having his endorsement.

Fourthly, the recovered articles are common place objects such as money which can be easily transferred from one hand to another and the 'red cloth' with 'Kamla' embossed on it, as has been acceded by the Investigating Officer, Rajinder Kumar (PW-14), can also be easily available in market.

Fifthly, the recovery took place nearly a month after the commission of the alleged offence. We find it incredulous, that the appellant during the entire time period kept both the red cloth and the passbook in his custody, along with the money he allegedly robbed off the complainant.

Sixthly and finally, there is no other evidence on record which even remotely points towards the iniquity of the appellant.

●

***23. EVIDENCE ACT, 1872 – Section 45**

**Opinion of medical expert – Evidentiary value of – In case of medical negligence, there should be material available on record, or appropriate medical evidence should be tendered to prove negligence – Opinion of medical expert was based on statements recorded and material perused – Medical expert was not made available for cross-examination – Held, such an opinion cannot be the basis to arrive at a conclusion in judicial proceedings where parties have opportunity of tendering evidence.**

**साक्ष्य अधिनियम, 1872 – धारा 45**

**चिकित्सीय विशेषज्ञ के अभिमत का साक्ष्यिक मूल्य – चिकित्सीय उपेक्षा के मामले में उपेक्षा साबित करने के लिए अभिलेख पर सामग्री उपलब्ध होनी चाहिए अथवा उपयुक्त चिकित्सीय साक्ष्य प्रस्तुत की जानी चाहिए – चिकित्सीय विशेषज्ञ का अभिमत लेखबद्ध कथनों एवं देखी गई सामग्री पर आधारित था – चिकित्सीय विशेषज्ञ को प्रतिपरीक्षण के लिए उपलब्ध नहीं किया गया था – अभिनिर्धारित, इस तरह का अभिमत न्यायिक कार्यवाही में किसी निष्कर्ष पर पहुंचने का आधार नहीं हो सकता जहां पक्षकारों के पास साक्ष्य प्रस्तुत करने का अवसर होता है।**

**Dr. Harish Kumar Khurana v. Joginder Singh and ors.**
**Judgment dated 07.09.2021 passed by the Supreme Court in Civil Appeal No. 7380 of 2009, reported in (2021) 10 SCC 291**

●

**24. EVIDENCE ACT, 1872 – Sections 101 and 102**
**CONTRACT ACT, 1872 – Section 73**
**CONSUMER PROTECTION ACT, 1986 – Section 2(1)(g)**
**CIVIL PRACTICE :**

**(i) Deficiency in service – Burden of proof – In civil cases onus is always on the person who would fail if no evidence is led by the other side – Thus, initial burden is on the complainant to prove deficiency in service.**

**(ii) Deficiency in service – Proof of – Respondent was employed for testing and certification of goods – Dispute that consignment at destination do not match the certification – There was no evidence as to the quality of samples at the time of dispatch – Further, there was no stipulation that goods consigned has to meet the specifications at the time of loading – Held, respondent cannot be held liable for deficiency in service.**

साक्ष्य अधिनियम, 1872 – धाराएं 101 एवं 102
संविदा अधिनियम, 1872 – धारा 73
उपभोक्ता संरक्षण अधिनियम, 1986 – धारा 2(1)(छ)
सिविल प्रथा :

(i) सेवा में कमी – सबूत का भार – सिविल मामलों में प्रमाण भार सदैव उस व्यक्ति पर होता है जो दूसरे पक्ष के द्वारा कोई साक्ष्य नहीं प्रस्तुत करने पर विफल हो जाएगा – इस प्रकार, सेवा में कमी साबित करने का प्रारंभिक भार परिवादी पर है।

(ii) सेवा में कमी – साबित किया जाना – प्रत्यर्थी माल के परीक्षण और प्रमाणीकरण के लिए नियोजित किया गया था – विवाद कि गंतव्य पर भेजा गया माल प्रमाणन के समान नहीं है – माल प्रेषित करते समय के नमूनों की गुणवत्ता संबंधी कोई साक्ष्य नहीं थी – इसके अतिरिक्त, ऐसी कोई शर्त भी नहीं थी कि भेजे गए माल को लदान के समय विनिर्देश पूरे करने होगें – अवधारित, प्रतिवादी को सेवा में कमी के लिए उत्तरदायी नहीं ठहराया जा सकता है।

**SGS India Ltd. v. Dolphin International Ltd.**
**Judgment dated 06.10.2021 passed by the Supreme Court in Civil Appeal No. 5759 of 2009, reported in AIR 2021 SC 4849**

**Relevant extracts from the judgment:**

The onus of proof that there was deficiency in service is on the complainant. If the complainant is able to discharge its initial onus, the burden would then shift to the respondent in the complaint. The rule of evidence before the civil proceedings is that the onus would lie on the person who would fail if no evidence is led by the other side. Therefore, the initial burden of proof of deficiency in service was on the complainant, but having failed to prove that the result of the sample retained by the appellant at the time of consignment was materially different than what was certified by the appellant, the burden of proof would not shift on the appellant.

The complainant has not produced best evidence which they were expected to produce in respect of the test results of the samples sent by the appellant to the port of destination. There could be a deficiency of service only if the complainant was able to prove that the certificate issued by the appellant at the time of dispatch and the samples sent to the complainant or his agents is materially different. In the absence of any such proof, the appellant cannot be held deficient in service.

Therefore, in the absence of any proof of negligence on the part of the appellant at the time of loading of the consignment, the appellant cannot be held responsible if at the port of destination, the products specifications were not the same as certified by the appellant at the time of loading of consignment. In the absence of any clause in the contract to ensure that the goods consigned has to meet the products specifications at the time of loading of consignment, the appellant cannot be held liable for change in specifications of the agricultural produce at the destination port after being in transit for two months on the high seas.

●

**25. EVIDENCE ACT, 1872 – Sections 101 and 106**
**APPRECIATION OF EVIDENCE :**
**Burden of proof of facts especially within knowledge – Applicability of Section 106 of the Evidence Act – It applies when prosecution successfully establishes the facts from which reasonable inference can be drawn regarding the existence of certain other facts which are within special knowledge of accused – In cases based on circumstantial evidence, if chain of circumstances required to be established by prosecution is not established, failure of accused to discharge burden u/s 106 of the Evidence Act is inconsequential.**

साक्ष्य अधिनियम, 1872 – धाराएं 101 एवं 106
साक्ष्य का मूल्यांकन :
विशेष रूप से ज्ञान के तथ्यों के सबूत का भार – साक्ष्य अधिनियम की धारा 106 की प्रयोज्यता – यह तब लागू होती है जब अभियोजन उन तथ्यों को सफलतापूर्वक

स्थापित कर दे जिनसे कुछ अन्य तथ्यों के अस्तित्व के बारे में उचित निष्कर्ष निकाला जा सकता है जो अभियुक्त के विशेष ज्ञान के भीतर हैं – परिस्थितिजन्य साक्ष्य पर आधारित मामलों में यदि अभियोजन से अपेक्षित परिस्थितियों की श्रृंखला स्थापित नहीं की जाती है, तो अभियुक्त द्वारा धारा 106 साक्ष्य अधिनियम के अधीन भार का निर्वहन करने में विफलता अप्रासंगिक हो जाती है।

**Nagendra Sah v. State of Bihar**

**Judgment dated 14.09.2021 passed by the Supreme Court in Criminal Appeal No. 1903 of 2019, reported in 2021 (4) Crimes 334 (SC)**

**Relevant extracts from the judgment:**

U/s 101 of the Evidence Act, whoever desires any Court to give a judgment as to a liability dependent on the existence of facts, he must prove that those facts exist. Therefore, the burden is always on the prosecution to bring home the guilt of the accused beyond a reasonable doubt. Thus, section 106 constitutes an exception to section 101.

Thus, section 106 of the Evidence Act will apply to those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference.

When a case is resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of burden placed on him by virtue of section 106 of the Evidence Act, such a failure may provide an additional link to the chain of circumstances. In a case governed by circumstantial evidence, if the chain of circumstances which is required to be established by the prosecution is not established, the failure of the accused to discharge the burden u/s 106 of the Evidence Act is not relevant at all. When the chain is not complete, falsity of the defence is no ground to convict the accused.

●

**26. EVIDENCE ACT, 1872 – Sections 136, 148 and 165**
**CRIMINAL TRIAL :**
**CRIMINAL PRACTICE :**

**(i) Objections during recording of evidence – When to be decided? What course may be adopted to curtail repeated objections? Held, Presiding Officer should decide objection to questions, during the course of proceeding, or failing it at the end of the deposition of the witness concerned – Where repeated objections are taken, Court may resort to imposing costs, depending on the nature of obstruction and proclivity of the line of questioning – Practice mandated in *Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1* modified.**

**(ii) Criminal trial – Procedure of investigation, bail, trial, recording of evidence and judgment – Directions issued – Draft Rules of Criminal Practice, 2021 approved – Directions issued to High Courts and State Governments to modify the existing Rules and practice by incorporateing these Draft Rules.**

साक्ष्य अधिनियम, 1872 – धाराएं 136, 148 एवं 165

आपराधिक विचारण :

आपराधिक प्रथा :

**(i)** साक्ष्य लेख करने के दौरान की गई आपत्तियां – कब निराकृत की जानी चाहिए? बार–बार की जाने वाली आपत्तियों को कम करने के लिए कौन से मार्ग अपनाये जा सकते हैं? अभिनिर्धारित, पीठासीन अधिकारी को कार्यवाही के दौरान ही आपत्तियों का निराकरण करना चाहिए और, ऐसा न करने पर संबंधित साक्षी के बयान के अंत में ऐसा अवश्य करना चाहिए – जहां बार–बार आपत्तियां ली जाती हैं, न्यायालय बाधा की प्रकृति और पूछे जा रहे प्रश्नों की प्रवृत्ति के आधार पर परिव्यय अधिरोपित करने का विकल्प ले सकता है – *बिपिन शांतिलाल पांचाल वि. गुजरात राज्य, (2001) 3 एससीसी 1* में प्रतिपादित प्रथा उपांतरित की गई।

**(ii)** आपराधिक विचारण – अन्वेषण, जमानत, विचारण, साक्ष्य अभिलेखन एवं निर्णय की प्रक्रिया – निर्देश जारी किए गए – ड्राफ्ट रूल्स ऑफ क्रिमिनल प्रैक्टिस, 2021 अनुमोदित – उच्च न्यायालयों और राज्य सरकारों को अद्यतन नियमों एवं प्रक्रियात्मक निर्देश को संशोधित कर ड्राफ्ट रूल्स को सम्मिलित करने के निर्देश दिए गए।

## Criminal Trials Guidelines Regarding Inadequacies and Deficiciencies, In Re v. State of Andhra Pradesh and ors.

**Judgment dated 20.04.2021 passed by the Supreme Court in Suo Motu Writ (Crl.) No. 1 of 2017, reported in (2021) 10 SCC 598**

**Relevant extracts from the judgment:**

During questioning, no doubt, the counsel for the party seeking cross-examination has considerable leeway; cross-examination is not confined to matters in issue, but extends to all relevant facts. However, if the court is not empowered to rule, during the proceeding, whether a line of questioning is relevant, the danger lies in irrelevant, vague and speculative answers entering the record. Further, based on the answers to what (subsequently turn out to be irrelevant, vague or otherwise impermissible questions) more questions might be asked and answered. If this process were to be repeated in case of most witnesses, the record would be cluttered with a jumble of irrelevant details, which at best can be distracting, and at worst, prejudicial to the accused. Therefore, this Court is of opinion that the view in ***Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1*** should not be considered as binding. The Presiding Officer therefore, should decide objections to questions, during the course of the

proceeding, or failing it at the end of the deposition of the witness concerned. This will result in de-cluttering the record, and, what is more, also have a salutary effect of preventing frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in ***Bipin Shantilal Panchal*** (supra) shall stand modified in the above terms.

The Court is of the opinion that the Draft Rules of Criminal Practice, 2021, (which are annexed to the present order, and shall be read as part of it) should be hereby finalised in terms of the above discussion. The following directions are hereby issued:

All High Courts shall take expeditious steps to incorporate the said Draft Rules, 2021 as part of the rules governing criminal trials, and ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from today. If the State Government's co-operation is necessary in this regard, the approval of the department or departments concerned, and the formal notification of the said Draft Rules, shall be made within the said period of six months.

The State Governments, as well as the Union of India (in relation to investigating agencies in its control) shall carry out consequential amendments to their police and other manuals, within six months from today. This direction applies, specifically in respect of Draft Rules 1-3. The appropriate forms and guidelines shall be brought into force, and all agencies instructed accordingly, within six months from today.

●

**27. HINDU LAW :**

**Partition and reunion – Any member of joint hindu family may separate himself from joint family and after partition, he may reunite again to continue the status of joint family also.**

हिन्दू विधि :

विभाजन एवं पुनर्मिलन – संयुक्त हिन्दू परिवार का कोई भी सदस्य स्वयं को संयुक्त परिवार से अलग कर सकता है और विभाजन के पश्चात् वह संयुक्त परिवार की प्रास्थिति को निरंतर रखने हेतु पुनः मिल भी सकता है।

**R. Janakiammal v. S. K. Kumarasamy (deceased) through Legal Representatives and ors.**

**Judgment dated 30.06.2021 passed by the Supreme Court in Civil Appeal No. 1537 of 2016, reported in (2021) 9 SCC 114**

**Relevant extracts from the judgment:**

Under Hindu Law, any member of the joint family can separate himself from joint family. The intention of the parties to terminate the status of joint family is a relevant factor to determine the status of Hindu undivided family.

The concept of reunion in Hindu Law is well known. Hindu Joint Family even if partitioned can revert back and reunite to continue the status of joint family. Mulla on Hindu Law, 22nd Edition, while deliberating on reunion has stated following in paragraphs 341, 342 and 343:-

> "341. *Who may reunite*. – 'A reunion in estate properly so called, can only take place between persons who were parties to the original partition'. It would appear from this that a reunion can take place between any persons who were parties to the original partition. Only males can reunite.
>
> 342. *Effect of reunion*. – The effect of a reunion is to remit the reunited members to their former status as members of a joint Hindu family.
>
> 343. *Intention necessary to constitute reunion*. – To constitute a reunion, there must be an intention of the parties to reunite in estate and interest."

It is also well settled that to constitute a reunion there must be an intention of the parties to reunite in estate and interest. It is implicit in the concept of a reunion that there shall be an agreement between the parties to reunite in estate with an intention to revert to their former status of members of a joint Hindu family. Such an agreement need not be express, but may be implied from the conduct of the parties alleged to have reunited. But the conduct must be of such an incontrovertible character that an agreement of reunion must be necessarily implied therefrom. As the burden is heavy on a party asserting reunion, ambiguous pieces of conduct equally consistent with a reunion or ordinary joint enjoyment cannot sustain a plea of reunion.

●

**28. HINDU MARRIAGE ACT, 1955 – Section 5**
**Valid marriage – The ritual of *Saptpadi* is mandatory for a valid marriage between Hindus and mere exchange of garlands or filling up of Mang with sindoor without *Saptpadi* does not make a marriage valid.**

**हिन्दू विवाह अधिनियम, 1955 – धारा 5**

**वैध विवाह – हिन्दुओं के मध्य वैध विवाह के लिये सप्तपदी संस्कार अनिवार्य है और सप्तपदी संस्कार के बिना मात्र मालाओं का आदान–प्रदान करने से या मांग में सिन्दूर भर देने से वैध विवाह संपन्न नहीं होता है।**

**Ankita Argal and anr. v. State of Madhya Pradesh and ors.**
**Judgment dated 13.08.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 14349 of 2021, reported in 2021 (4) MPLJ 451**

**Relevant extracts from the judgment:**

When the counsel for the petitioners was directed to point out from the Hindu law that exchange of garlands or filling up of Mang without following the rituals of *Saptpadi* would be a valid marriage, then he accepted that mere exchange of garlands or filling up of Mang is/are not a known ritual for a valid marriage. Under these circumstances, where the petitioner No. 1 is under a *bonafide* impression that she is the legally wedded wife of the petitioner No. 2, but in fact, the marriage has not been performed in accordance with any known rituals or under any statute, this Court is of the considered opinion that the petitioners have failed to make out a case that they are legally wedded husband and wife.

●

***29. INDIAN PENAL CODE, 1860 – Sections 34, 149, 302 and 307**

**(i) Appreciation of evidence – Difference between "related witness" and "interested witness" explained.**

**(ii) Number of witnesses – Quality of witnesses should be considered and not the quantity of witnesses.**

**(iii) Maxim *"falsus in uno falsus in omnibus"* has no application in India.**

**(iv) Minor omissions, contradictions, embellishments in the evidence of the prosecution witnesses would not make them unreliable.**

**(v) Evidence of Police personnel cannot be discarded only because of the fact that either he is an Investigating Officer or his evidence is not corroborated by independent witnesses.**

**(vi) Framing of charge – If charge u/s 149 of IPC has been framed and if it is found that some of the accused persons were not guilty and some of the accused had participated in the occurrence and were sharing common intention then, they can be convicted with the aid of section 34 of IPC and non-framing of charge u/s 34 of IPC would not cause any prejudice to them.**

**भारतीय दण्ड संहिता, 1860 – धाराएं 34, 149, 302 एवं 307**

**(i)** साक्ष्य की विवेचना – ''संबंधी साक्षी'' एवं ''हितबद्ध साक्षी'' के बीच अन्तर समझाया गया।

**(ii)** साक्षियों की संख्या – साक्षियों की गुणवत्ता पर विचार किया जाना चाहिए न कि साक्षियों की संख्या पर।

**(iii)** सूक्ति ''एक बात में मिथ्या तो सब में मिथ्या'' की भारत में कोई प्रयोज्यता नहीं है।

**(iv)** अभियोजन पक्ष के साक्षियों की साक्ष्य में अल्प लोप, विरोधाभास, अलंकृतियाँ उन्हें अविश्वनीय नहीं बनाती है।

**(v)** केवल इस तथ्य के कारण पुलिस कर्मी की साक्ष्य को अमान्य नहीं किया जा सकता कि या तो वह एक अन्वेषण अधिकारी है या स्वतंत्र साक्षियों द्वारा उसकी साक्ष्य संपुष्ट नहीं है।

(vi) आरोप का निर्धारण – यदि भा.दं.सं. की धारा 149 के अंतर्गत आरोपित तय किया गया है और यदि यह पाया जाता है कि कुछ अभियुक्तगण दोषी नहीं थे और कुछ अभियुक्तगण ने घटना में भाग लिया था और समान मनतव्य साझा कर रहे थे, तो उन्हें भा.दं.सं. की धारा 34 की सहायता से दोषी ठहराया जा सकता है और भा.दं.सं. की धारा 34 के अन्तर्गत आरोप तय न करने से उन पर कोई प्रतिकूल प्रभाव नहीं पड़ेगा।

**Nathu Singh v. State of M.P.**

**Judgment dated 30.04.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 397 of 2005, reported in ILR 2021 MP 1388 (DB)**

●

**30. INDIAN PENAL CODE, 1860 – Sections 34 and 302**
**EVIDENCE ACT, 1872 – Section 3**
**APPRECIATION OF EVIDENCE :**
**Common intention; proof of – Murder – Three out of four accused persons armed with fire-arms and one with *danda* went together at the field of complainant – There was previous enmity between the parties over succession of property – Incident occurred in broad day light when two accused fired shots and killed two persons of complainant party on exhortation of one accused – Held, section 34 IPC was rightly invoked as the manner in which crime was executed clearly establishes a concerted action on the part of the accused persons.**

भारतीय दण्ड संहिता, 1860 – धाराएं 34 एवं 302

साक्ष्य अधिनियम, 1872 – धारा 3

साक्ष्य का मूल्यांकन :

सामान्य आशय का साबित किया जाना – हत्या – चार में से तीन अभियुक्त आग्नेयास्त्रों एवं एक डण्डे से सुसज्जित होकर एक साथ परिवादी के खेत पर गए – संपत्ति के उत्तराधिकार को लेकर पक्षकारों के मध्य पूर्व वैमनस्य था – घटना दिन के उजाले में हुई थी जब एक अभियुक्त के उकसावे पर दो अभियुक्तगण ने गोलियां चलाईं और परिवादी पक्ष के दो व्यक्तियों की हत्या कर दी – अभिनिर्धारित, धारा 34 भा.द.सं. का उचित उपयोग किया गया क्योंकि जिस तरह से अपराध को अंजाम दिया गया था, वह स्पष्ट रूप से अभियुक्तगण की संयुक्त कार्रवाई को स्थापित करता है।

**Indrapal Singh and ors. v. State of U.P.**

**Judgment dated 21.09.2021 passed by the Supreme Court in Criminal Appeal No. 313 of 2020, reported in AIR 2021 SC 4514 (Three Judge Bench)**

**Relevant extracts from the judgment:**

In fact, a cumulative reading of the evidence of PW1 and PW2 along with other material evidence on record would clearly point to the fact that section 34 of the IPC was rightly invoked along with section 302 vis-à-vis the accused. This is particularly so on account of there being no contra evidence on behalf of the defence to explain as to why they all went together to the spot with fire-arms and shot at the deceased. On the other hand, the antecedent enmity between the accused and the victims as narrated in detail by PW-1 clearly brings out the fact that there existed a common intention on the part of the accused inasmuch as they went together armed with guns in broad day light to the land where the victims were engaged in irrigation. Also the manner in which the crime was executed clearly establishes a concerted action on part of the accused.

As far as the submission of learned counsel for the accused-appellant *vis-à-vis* Surender Pal Singh is concerned, we do not think that though in the complaint no overt act has been expressly attributed to Surender Pal Singh as such, it cannot be ignored that PW1 as well as PW2 have categorically stated in their evidence that Inder Pal Singh and Surender Pal Singh fired shots with their weapons and killed Atar Singh and Shiv Pal Singh. PW2, another eye-witness, has also stated that Inder Pal Singh and Surender Pal Singh began firing at Atar Singh and Shiv Pal Singh with bore 315 rifle and semi barrel gun respectively. It is also established that Surendra Pal Singh was also carrying a half gun (Addhi gun). This consistent testimony of PW1 and PW2 demolishes the case sought to be made out against Surender Pal Singh. It is also noted that the FIR clearly mentioned that Rajbahadur Singh accompanied by the three appellants who were carrying fire arms, came to the field of informant - PW1 and on the exhortation of Rajbahadur Singh (accused No. 1), the other accused fired from the respective fire arms (rifles).

●

**31. INDIAN PENAL CODE, 1860 – Section 53**
**CRIMINAL PROCEDURE CODE, 1973 – Section 437**

**(i) Life imprisonment – A sentence for imprisonment of life will run for the entire life unless the remission is granted in accordance with law.**

**(ii) Power of remission of sentence – Such power cannot be exercised by Court – It is with the appropriate Government.**

**भारतीय दण्ड संहिता, 1860 – धारा 53**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 437**

**(i)** आजीवन कारावास – आजीवन कारावास का दण्ड सम्पूर्ण जीवन तक चलेगा जब तक कि विधि अनुसार परिहार नहीं किया जाता।

**(ii)** दण्ड का परिहार करने की शक्ति – ऐसे अधिकार का प्रयोग न्यायालय द्वारा नहीं किया जा सकता है – यह शक्ति समुचित सरकार के पास है।

## Haseen Khan v. State of M.P. and ors.

**Judgment dated 30.06.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 2113 of 2000, reported in 2021 CriLJ 4739**

**Relevant extracts from the judgment :**

Coming to the question of sentence, the record reflects that the appellant has suffered the actual sentence of 21 years 5 months and 19 days as on 26.03.2021 as reflected in the communication dated 30th of March, 2021 received from the Superintendent of Jail, Bhopal. As per the said communication, he had also earned remission of 9 years 2 months and 19 days as on 31.12.2020, therefore, following two issues arise for consideration before this Court:-

(i) Whether the sentence of life imprisonment awarded to the appellant means actual sentence of 14 years or 20 years?

(ii) Whether this Court can commute or reduce the sentence giving the benefit of remission?

Section 53 of the IPC provides for life imprisonment as a punishment as under:

"53. **Punishments**.— The punishments to which offenders are liable under the provisions of this Code are—

First-Death

1[Secondly-Imprisonment for life;]

2[***]

Fourthly-Imprisonment, which is of two descriptions, namely-

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly-Forfeiture of property;

Sixthly-Fine"

Section 45 of Indian Penal Code defines "Life Imprisonment" as under:

"45. "Life"- The word "life" denotes the life of a human being, unless the contrary appears from the context."

Section 53 of the IPC provides for sentence of imprisonment for life and the definition of 'life' as contained in Section 45 makes it clear that life means the life of a human being i.e. till he breaths his last. The Supreme Court in the matter of ***Gopal Vinayak Godse v. State of Maharashtra and ors., AIR 1961 SC 600*** has held that a sentence for transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for whole or remaining period of convicted person's natural life. In the matter of ***Maru Ram v. Union of India and ors., (1981) 1 SCC 107***, the Constitution Bench has followed the earlier

judgment in the case of ***Gopal Vinayak Godse*** (supra) and reiterated in paragraph 72(4) that the imprisonment for life lasts until the last breath and the prisoner can claim release only if the remaining sentence is remitted by the government. The above position of law was reiterated again by the Hon'ble Supreme Court in the matter of ***State of M.P. v. Ratan Singh, (1976) 3 SCC 470***. Hence, from the aforesaid pronouncements, it is clear that a sentence for imprisonment of life will run for the entire life of the convict unless the remission is granted in accordance with law.

This takes us to the next question if this Court can grant remission and release a life convict on completion of 14 years or 20 years of actual sentence.

Section 432 of the Cr.P.C. gives power to the appropriate Government to suspend or remit sentence and Section 433 of the Cr.P.C. empowers the appropriate Government to commute the sentence. Section 433 reads as under:

> "**433. Power to commute sentence**. – The appropriate Government may, without the consent of the person sentenced commute –
>
> (a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);
>
> (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
>
> (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
>
> (d) a sentence of simple imprisonment, for fine."

The restriction imposed upon the power of remission or commutation of sentence is contained under Section 433-A of the Cr.P.C. which provides that:

> "**433A- Restriction on powers of remission or Commutation in certain cases**. – Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

In terms of Section 433 Cr.P.C., the appropriate government is empowered to commute the sentence of a convict for imprisonment for life for a term not exceeding 14 years and in terms of Section 433A Cr.P.C., the power of remission or commutation is restricted and a convict with sentence of imprisonment of life for an offence for which death is one of the punishment, cannot be released

before completion of at least 14 years of imprisonment. Section 432 and 433 of the Cr.P.C. also reveal that the remission can be granted only by the appropriate government. Such an exercise of power is an executive discretion and the same is not available to the High Court in exercise of review jurisdiction.

The Constitution Bench of the Supreme Court in the matter of ***Union of India v. V. Sriharan @ Murugan and others reported in (2016) 7 SCC 1*** has held that the power of remission vests with the State executive and the Court at best can only give a direction to consider any claim for remission and cannot grant any remission and provide for premature release. It has further been held that -

> "114. Therefore, it must be held that there is every scope and ambit for the Appropriate Government to consider and grant remission under Sections 432 and 433 of the Criminal Procedure Code even if such consideration was earlier made and exercised under Article 72 by the President and under Article 161 by the Governor. As far as the implication of Article 32 of the Constitution by this Court is concerned, we have already held that the power under Sections 432 and 433 is to be exercised by the Appropriate Government statutorily, it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government, even if someone approaches this Court under Article 32 of the Constitution. We answer the said question on the above terms."

In the matter of ***Ratan Singh*** (supra), the Supreme Court has held as under:

> "9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:
>
> (1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;"

Having regard to the aforesaid position in law, we are of the opinion that the life sentence which is awarded to the appellant is for a period of his entire remaining life till his last breath and the power to grant remission lies with the State Government. In view of the fact that the appellant has completed more than 20

years of sentence, we are of the opinion that the issue relating to release of the appellant after granting the benefit of remission now needs to be considered by the competent authority of the State Government in accordance with law.

●

**32. INDIAN PENAL CODE, 1860 – Sections 299 and 300**
**EVIDENCE ACT, 1872 – Sections 3 and 32**
**APPRECIATION OF EVIDENCE :**

**(i) Difference between murder and culpable homicide explained.**

**(ii) Relative witness – Credibility of – Testimonies of eye-witnesses cannot be discarded merely on the ground of being relative of deceased.**

**भारतीय दण्ड संहिता, 1860 – धाराएं 299 एवं 300**

**साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 32**

**साक्ष्य का मूल्यांकन :**

**(i)** हत्या और आपराधिक मानववध के मध्य अंतर समझाया गया।

**(ii)** रिश्तेदार साक्षी – विश्वसनीयता – चक्षुदर्शी साक्षियों की साक्ष्य को मात्र इस आधार पर अमान्य नहीं किया जा सकता कि वे मृतक के रिश्तेदार हैं।

## Hameer Singh and ors. v. State of Madhya Pradesh

**Judgment dated 11.06.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No.505 of 2011, reported in 2021 CriLJ 4676 (DB)**

**Relevant extracts from the judgment :**

A bare perusal of the section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression “intent” and “knowledge” postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable homicide” but not vice versa. Speaking generally ‘culpable homicide sans special characteristics of murder’ if culpable homicide is not amounting to murder.

There are three species of *mens rea* in culpable homicide. First, an intention to cause death; second, an intention to cause a dangerous injury; third, knowledge that death is likely to happen. The act is said to cause death when death results either from the act directly or results from some consequence necessarily or naturally flowing from such act and reasonably contemplated as its result. The offence is complete as soon as any person is killed.

Now, while determining whether it is culpable homicide or murder, the Court has to keep in focus key words used in Sections 299 and 300 of the I.P.C. It is degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in Section 299 conveys the sense of probable as distinguished from a mere possibility. Words used in Section 299 'that bodily injury sufficient in the ordinary course of nature to cause death' indicates that death is most probable result of the injury. Where bodily injury sufficient to cause death, is actually caused, it is immaterial to go into the question as to whether the accused had intention to cause death or knowledge that the act will cause death.

It is settled law that merely because the witnesses may be related to the victim or the complainant, their testimonies may not be rejected. There is no legal canon that only unrelated witnesses shall be considered credible. On the contrary, we are of the view that it is not natural for the related witness to implicate a person falsely leaving aside the actual culprit. It is pertinent to note that only interested witnesses want to see the real culprit is brought to book.

●

***33. INDIAN PENAL CODE, 1860 – Sections 300, Exception 4 and 304 Part II EVIDENCE ACT, 1872 – Section 3**
**APPRECIATION OF EVIDENCE :**
**Murder or culpable homicide not amounting to murder – Accused was not armed, he was drunk, there was sudden quarrel when accused stated that he wanted complainant to be his wife – Accused took a stick lying on the spot and hit the deceased – There was no other act of violence – Held, all the requirements of Section 300, Exception 4 are satisfied – Conviction altered from Section 302 to Section 304 Part II of the IPC.**

**भारतीय दण्ड संहिता, 1860 – धाराएं 300, अपवाद 4 एवं 304 भाग–दो साक्ष्य अधिनियम, 1872 – धारा 3**

**साक्ष्य का मूल्यांकन :**

हत्या अथवा आपराधिक मानव–वध जो हत्या नहीं है – अभियुक्त हथियार से सज्जित नहीं था, वह नशे में था, अचानक झगड़ा हुआ जब अभियुक्त ने कहा कि वह परिवादी को अपनी पत्नी बनाना चाहता है – अभियुक्त ने मौके पर पड़ी एक छड़ी ली और मृतक को मारा – हिंसा का कोई अन्य कृत्य नहीं था – अवधारित, धारा 300, अपवाद 4 की सभी आवश्यकताएं पूरी होती हैं – दोषसिद्धि भा.द.सं. की धारा 302 से धारा 304 भाग–दो में संपरिवर्तित की गई।

**Jangli v. State of Madhya Pradesh**
**Judgment dated 18.08.2021 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 822 of 2010, reported in 2021 CriLJ 5017 (DB)**

●

**34. INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part I**
**Murder or culpable homicide – If the offence was committed in the heat of passion or rage with lack of *animus* then in such case accused should not be convicted u/s 302 of IPC but should be convicted under first part of section 304 of IPC.**

**भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 304 भाग – एक**

हत्या या आपराधिक मानववध – यदि अपराध आवेश की तीव्रता में या क्रोध में विद्वेषपूर्ण आशय के बिना कारित किया जाता है तब ऐसे प्रकरण में अभियुक्त को धारा 302 भा.दं.सं के अंतर्गत दोषसिद्ध नहीं करना चाहिए वरन् भा.द.सं. की धारा 304 के प्रथम खण्ड के अंतर्गत दोषसिद्ध किया जाना चाहिए।

**Mohd. Rafiq @ Kallu v. The State of Madhya Pradesh**
**Judgment dated 15.09.2021 passed by the Supreme Court in Criminal Appeal No. 856 of 2021, reported in 2021 (4) Crimes 53 (SC)**

**Relevant extracts from the judgment:**

All the essential elements show that the appellant did not have any previous quarrel with the deceased; there was lack of *animus*. The act resulting in SI Tiwari's death was not pre-meditated. Though it cannot be said that there was a quarrel, caused by sudden provocation, if one considers that the deceased tried to board the truck, and was perhaps in plain clothes, the instinctive reaction of the appellant was to resist; he disproportionately reacted, which resulted in the deceased being thrown off the vehicle. Such act of throwing off. The deceased and driving on without pausing, appears to have been in the heat of passion, or rage. Therefore, it is held that the appellant's conviction under Section 302 IPC was not appropriate. Should be convicted for the offence punishable under the first part of Section 304 IPC.

●

**35. INDIAN PENAL CODE, 1860 – Section 304**
**Conviction – In the absence of any pre-planned attack and intention to cause death or such bodily injury as is likely to cause death, accused should be convicted u/s 304 Part-II of the IPC instead of section 304 Part-I of the IPC.**

**भारतीय दण्ड संहिता, 1860 – धारा 304**

दोषसिद्धि – किसी पूर्व नियोजित आक्रमण एवं मृत्यु या ऐसी शारीरिक क्षति जिससे मृत्यु कारित करना संभाव्य है, के आशय के अभाव में अभियुक्त को भा.दं.सं. की धारा 304 भाग–एक के स्थान पर भा.दं.सं. की धारा 304 भाग–दो के अंतर्गत दोषसिद्ध किया जाना चाहिए।

### Kala Singh @ Gurnam Singh v. State of Punjab

**Judgment dated 21.09.2021 passed by the Supreme Court in Criminal Appeal No. 1040 of 2021, reported in 2021 (4) Crimes 119 (SC)**

**Relevant extracts from the judgment:**

It is clear from the evidence on record that the scuffle had taken place on the spur of the moment and a sudden fight had taken place in the heat of passion upon a sudden quarrel. It was not a pre-meditated one and as there was no intention on the part of the appellant and co-accused either to cause death or cause such bodily injury as is likely to cause death, the High Court ought not to have convicted the appellant for the offence under Section 304 Part-I IPC. In absence of any intention on the part of the appellant, we are of the view that it is a clear case where the conviction of the appellant is to be modified to one under Section 304 Part-II IPC.

●

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

**Abetment for suicide – No one should be convicted for offence u/s 306 of IPC until it is proved that offence was committed because of positive act of the accused by instigating or aiding in committing suicide.**

**भारतीय दण्ड संहिता, 1860 – धारा 306**

**आत्महत्या हेतु दुष्प्रेरण – भा.दं.सं. की धारा 306 के अंतर्गत तब तक किसी व्यक्ति को दोषसिद्ध नहीं किया जाना चाहिए जब तक कि यह प्रमाणित नहीं हो जाता है कि यह अपराध अभियुक्त के द्वारा ही प्रत्यक्ष रूप से आत्महत्या करने के लिए उत्तेजित करने अथवा सहायता देने के कारण हुआ है।**

### Kanchan Sharma v. State of Uttar Pradesh and anr.

**Judgment dated 17.09.2021 passed by the Supreme Court in Criminal Appeal No. 1022 of 2021, reported in 2021 (4) Crimes 48 (SC)**

**Relevant extracts from the judgment:**

'Abetment' involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without positive act on the part of the accused to instigate or aid in committing suicide, no one can be convicted for offence under Section 306, IPC. To proceed against any person for the offence under Section 306 IPC it requires an active act or direct act which led the deceased to commit suicide, seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

●

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

**CRIMINAL TRIAL :**

**(i) Suicide – A teacher should not be prosecuted for the suicide committed by any student just because he rebuked the student for his indiscipline and informed his parents for the purpose of correcting a child.**

**(ii) Prosecution – Only pain or suffering of any complainant cannot be a base for starting a criminal prosecution unless it translates into a legal remedy.**

भारतीय दण्ड संहिता, 1860 – धारा 306

आपराधिक विचारण :

(i) आत्महत्या – एक शिक्षक को किसी छात्र द्वारा इस आधार पर की गई आत्महत्या के लिये अभियोजित नहीं किया जाना चाहिए कि उसने छात्र की अनुशासनहीनता के लिये उसकी भर्त्सना की थी और बच्चे में सुधार लाने के आशय से उसके अभिभावकों को सूचित किया था।

(ii) अभियोजन – किसी परिवादी का मात्र दर्द या पीड़ा एक दाण्डिक अभियोजन प्रारम्भ होने का आधार नहीं हो सकता है जब तक कि यह किसी विधिक उपचार में परिवर्तित नहीं होता है।

**Geo Varghese v. State of Rajasthan and anr.**

**Judgment dated 05.10.2021 passed by the Supreme Court in Criminal Appeal No. 1164 of 2021, reported in 2021 (4) Crimes 71 (SC)**

**Relevant extracts from the judgment:**

If, a student is simply reprimanded by a teacher for an act of indiscipline and bringing the continued act of indiscipline to the notice of Principal of the institution who conveyed to the parents of the student for the purposes of school discipline and correcting a child, any student who is very emotional or sentimental commits suicide, can the said teacher be held liable for the same and charged and tried for the offence of abetment of suicide under section 306 IPC.

We are conscious of the pain and suffering of the complainant who is the mother of the deceased boy. It is also very unfortunate that a young life has been lost in this manner, but our sympathies and the pain and suffering of the complainant, cannot translate into a legal remedy, much less a criminal prosecution.

●

**38. INDIAN PENAL CODE, 1860 – Section 376**

**Quantum of punishment – An accused convicted u/s 376 of the IPC for the offence of rape committed prior to 21.04.2018, cannot be sentenced for a minimum period of ten years – The provisions for punishment applicable at the time of offence decides the quantum of punishment for any offence.**

भारतीय दण्ड संहिता, 1860 – धारा 376

दण्ड की मात्रा – दिनांक 21.04.2018 के पहले कारित बलात्कार संबंधी अपराध के लिये भा.दं.सं. की धारा 376 के अंतर्गत अभियुक्त को न्यूनतम 10 वर्षों के लिये दण्डित नहीं किया जा सकता – अपराध के समय प्रभावशील दण्ड संबंधी प्रावधान ही किसी अपराध के लिये दण्ड की मात्रा का निर्धारण करते हैं।

**Manoj Mishra @ Chhotkau v. State of Uttar Pradesh**

**Judgment dated 08.10.2021 passed by the Supreme Court in Criminal Appeal No. 1167 of 2021, reported in 2021 (4) Crimes 104 (SC)**

**Relevant extracts from the judgment:**

On arriving at the conclusion that the appellant is liable to be convicted under Section 376 IPC and not under Section 376 D IPC, the appropriate sentence to be imposed needs consideration. The incident in question is based on the complaint dated 09.08.2013. In this circumstance, though it is noted that Section 376 has been amended w.e.f. 21.04.2018 providing for the minimum sentence of 10 years, the case on hand is of 2013 and the conviction of the appellant was on 20.05.2015. The incident having occurred prior to amendment, the pre-amended provision will have to be taken note. The same provides that a person committed of rape shall be punished with rigorous imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

●

**39. INDIAN PENAL CODE, 1860 – Sections 376 and 511**
**CRIMINAL PRACTICE :**

**(i) Preparation and attempt to commit an offence – Distinction explained – 'Prepartion' consists of deliberation, devising or arranging the means or measures necessary for commission of offence – 'Attempt' is execution of *mens rea* after preparation – What constitutes 'attempt' is a mixed question of law and facts.**

**(ii) Attempt to commit rape or outraging modesty of women – Accused took minor girls to his house, closed doors, undressed the girls and himself and rubbed his genitals on those of victim girls – As the victims started crying, accused could not succeed in his penultimate act – Held, accused is guilty of attempt to commit rape u/s 376 r/w/s 511 IPC as it stood in force at the time of occurance.**

भारतीय दण्ड संहिता, 1860 – धाराएं 376 एवं 511

आपराधिक प्रथा :

(i) अपराध करने की तैयारी और प्रयत्न – भेद समझाया गया – 'तैयारी' में अपराध करने के लिए आवश्यक साधनों या उपायों का विचार करना, तैयार करना या

व्यवस्था करना सम्मिलित है – 'प्रयास' तैयारी के बाद मनःस्थिति का निष्पादन है – 'प्रयास' का गठन हुआ अथवा नहीं, यह विधि व तथ्यों का मिश्रित प्रश्न है।

**(ii)** बलात्कार अथवा स्त्री की लज्जा भंग करने का प्रयास – अभियुक्त अवयस्क बालिकाओं को अपने घर ले गया, दरवाजे बंद कर लिया, बालिकाओं व स्वयं को निर्वस्त्र किया और अपने गुप्तांगों को बालिकाओं पर रगड़ा – चूंकि बालिकाएं रोने लगीं, अभियुक्त अपने अंतिम कार्य में सफल नहीं हो सका – अवधारित, अभियुक्त घटना के समय प्रभावी भा.द.सं. की धारा 376 सहपठित 511 के अधीन बलात्कार के प्रयत्न का दोषी है।

## State of Madhya Pradesh v. Mahendra @ Golu

**Judgment dated 25.10.2021 passed by the Supreme Court in Criminal Appeal No. 1827 of 2011, reported in 2021 (4) Crimes 289 (SC)**

**Relevant extracts from the judgment:**

It is a settled preposition of criminal jurisprudence that in every crime, there is first, *mens rea* (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of mens rea after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.

However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between 'preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

We may at the outset explain that what constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of 'Rape' as it stood conservatively defined under section 375 IPC at that time.

In our considered opinion, the act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of section 511 read with section 375 IPC as it stood in force at the time of occurrence.

●

***40. INDIAN PENAL CODE, 1860 – Section 460**
**CRIMINAL PROCEDURE CODE, 1973 – Section 374**
**Circumstantial evidence – When the case fully rests upon the circumstantial evidence, all the circumstances available against the accused should be so connecting that only inference can be drawn that it is the accused who is the author of the crime concerned.**

**भारतीय दण्ड संहिता, 1860 – धारा 460**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 374**

**परिस्थितिजन्य साक्ष्य – जब मामला पूर्णतः परिस्थितिजन्य साक्ष्य पर निर्भर करता है, तो अभियुक्त के खिलाफ उपलब्ध सभी परिस्थितियां इतनी सम्बद्ध होनी चाहिए कि केवल यही अनुमान लगाया जा सके कि अभियुक्त ही है जो संबंधित अपराध का कर्ता है।**

**Nandu Galtha Pardi v. State of Madhya Pradesh through Police Station Kotwali, District Guna (M.P.)**

**Judgment dated 01.09.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 499 of 2006, reported in 2021 CriLJ 4867 (DB)**

●

***41. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 94**

**Determination of age of juvenile – If the documents mentioned in section 94(2)(i) & (ii) of the Act are not available, then the age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or Board.**

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम, 2015 – धारा 94

किशोर की आयु का निर्धारण – यदि अधिनियम की धारा 94(2)(i) एवं (ii) में उल्लेखित दस्तावेज उपलब्ध नहीं हैं तब आयु का निर्धारण अस्थि विकास परीक्षण द्वारा अथवा समिति या बोर्ड के आदेशानुसार किसी अन्य नवीनतम चिकित्सीय आयु निर्धारण परीक्षण द्वारा किया जाना चाहिए।

**Rajendra v. State of M.P. and anr.**

**Order dated 16.03.2021 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Revision No. 693 of 2020, reported in ILR (2020) MP 1172**

●

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

**Land acquisition – Determination of compensation – Reliance on sale deed – In absence of any material showing that parties were aware of proposed acquisition of land, a sale deed executed by land owner himself in favour of his relative cannot be discarded.**

भू–अर्जन अधिनियम, 1894 – धाराएं 18 एवं 23

भूमि अधिग्रहण – प्रतिकर का निर्धारण – विक्रय विलेख पर निर्भरता – किसी भी ऐसी सामग्री के अभाव में कि पक्षकार प्रस्तावित भू–अर्जन की जानकारी रखते थे, स्वयं भूमिस्वामी द्वारा अपने नातेदार के पक्ष में निष्पादित विक्रय विलेख को अस्वीकार नहीं किया जा सकता है।

**Manusamy v. Land Acquisition Officer**

**Judgment dated 29.09.2021 passed by the Supreme Court in Civil Appeal No. 398 of 2010, reported in AIR 2021 SC 4715**

●

**43. LAND ACQUISITION ACT, 1894 – Section 23**

**(i) Compensation; determination of – Assessment of market value – Where different properties in different servey numbers are acquired for same purpose, a common determination of market value applicable to all lands which are subject-matter of acquisition is the appropriate course.**

**(ii) Compensation; determination of – Assessment of market value – Reliance on sale exemplars of very property in question – Held, such sale exemplars would be appropriate if the sale instance is closer to the period of acquisition – Where sale instances are of prior dates, percentage of appreciation is to be considered per year.**

**भू–अर्जन अधिनियम, 1894 – धारा 23**

**(i)** प्रतिकर का निर्धारण – बाजार मूल्य का आंकलन – जहां एक ही उद्देश्य के लिए अलग–अलग सर्वे नंबरों की विभिन्न भूमियों का अधिग्रहण किया जाता है, अधिग्रहण की जाने वाली समस्त भूमि के लिए बाजार मूल्य का एक सामान्य निर्धारण, उपयुक्त प्रक्रिया है।

**(ii)** प्रतिकर का निर्धारण – बाजार मूल्य का आंकलन – उसी संपत्ति के विक्रय दृष्टांत पर निर्भरता – अभिनिर्धारित, ऐसे विक्रय दृष्टांत उपयुक्त होंगे यदि वे अधिग्रहण की अवधि के समीपवर्ती हैं – जहां विक्रय दृष्टांत पूर्व की तिथियों के हों, अभिमूल्यन का प्रतिशत वार्षिक जोड़ा जाना चाहिए।

**Manmohan Lal Gupta (Dead) Through LRs. v. Market Committee, Bhikhi and ors.**

**Judgment dated 20.09.2021 passed by the Supreme Court in Civil Appeal No. 9207 of 2012, reported in (2021) 10 SCC 395**

**Relevant extracts from the judgment:**

When the different items of property in the different survey number were acquired for the same purpose of establishing the market yard and as observed by the High Court since all the lands had the road passing beside it, a common determination of the market value was the appropriate course. In that view, the said observation of the High Court is justified. In that background, the determination of the market value which would be applicable to all the lands which were the subject-matter of the acquisition was to be made when the various landowners had also filed their appeals. The determination of the common market value which is applicable to all the lands as made by the High Court is justified.

In that regard, to arrive at the appropriate market value, the High Court having discarded the documents at Exts. A-1 and A-2 had taken note of the remaining documents. In order to rely upon Exts. A-17 to A-24 as also Ext. A-27 i.e. the sale deeds under which the properties were purchased by the landowners the High Court has referred to the decision of this Court in ***Dollar Co. v. Collector***

*of Madras, (1975) 2 SCC 730 and in V. Subrahmanya Rao v. LAO, (2004) 10 SCC 640*. The said decisions have been extracted in detail and noted. It is to be noted that such sale exemplars of the very property in question would in a normal circumstance be appropriate if the sale instance is closer to the period of acquisition. In the case which was referred by the High Court, the sale instances were around ten months prior to the notification. Be that as it may, in the absence of such sale instances which were closer to the date of the notification in the instant case, the High Court has taken guidance from the decisions of this Court in ***Shakuntalabai v. State of Maharashtra, (1996) 2 SCC 152 and Om Prakash v. Union of India, (2004) 10 SCC 627*** whereunder this Court had indicated the percentage of appreciation to be considered per year when earlier sale instances are taken into consideration and the acquisition notification is of a subsequent date.

●

**44. LEGAL SERVICES AUTHROTIES ACT, 1987 – Sections 19 and 20**
**Lok Adalat – Jurisdiction – Whether Lok Adalat can enter into the merits of matter and decide it on merits in absence of any compromise or settlement between the parties? Held, no – Jurisdiction of Lok Adalat is to determine and arrive at a compromise or settlement between the parties – In absence of any such compromise or settlement, Lok Adalat has to return the case to the reference Court – Lok Adalat has no jurisdiction to decide the matter on merits.**

**विधिक सेवा प्राधिकरण अधिनियम, 1987 – धाराएं 19 एवं 20**
लोक अदालत – क्षेत्राधिकार – क्या लोक अदालत पक्षकारों के बीच किसी समझौते या परिनिर्धारण के अभाव में मामले के गुण–दोष पर विचार कर सकती है और गुण–दोष के आधार पर निर्णय ले सकती है? अभिनिर्धारित, नहीं – लोक अदालत का क्षेत्राधिकार पक्षकारों के मध्य समझौता या परिनिर्धारण ज्ञात करना और उस पर पहुंचना है – इस तरह के किसी भी समझौते अथवा परिनिर्धारण के अभाव में, लोक अदालत को मामला संदर्भित करने वाले न्यायालय को वापस करना होगा – लोक अदालत को मामले को गुण–दोष के आधार पर निराकृत करने की अधिकारिता नहीं है।

**Estate Officer v. Colonel H.V. Mankotia (Retired)**
**Judgment dated 07.10.2021 passed by the Supreme Court in Civil Appeal No. 6223 of 2021, reported in AIR 2021 SC 4894**

**Relevant extracts from the judgment:**

The short question which is posed for consideration of this Court is whether in the Lok Adalat held by the High Court, was it open for the members of the Lok Adalat to enter into the merits of the writ petition and to dismiss the same on merits, in absence of any settlement arrived at between the parties?

As per sub-section (3) of Section 20 where any case is referred to a Lok Adalat under sub-section (1) or where a reference is made to it under sub-

section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. Sub-section (5) of Section 20 further provides that where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

Thus, a fair reading of the aforesaid provisions of the Legal Services Authorities Act, 1987 makes it clear that the jurisdiction of the Lok Adalat would be to determine and to arrive at a compromise or a settlement between the parties to a dispute and once the aforesaid settlement/compromise fails and no compromise or settlement could be arrived at between the parties, the Lok Adalat has to return the case to the Court from which the reference has been received for disposal in accordance with law and in any case, the Lok Adalat has no jurisdiction at all to decide the matter on meris once it is found that compromise or settlement could not be arrived at between the parties.

●

**45. MOTOR VEHICLES ACT, 1988 – Section 166**
**Contributory negligence – The plea of contributory negligence must be proved by the insurance company by adducing independent witness and/or with spot map – The fact of contributory negligence cannot be presumed just because of head-on collision.**

**मोटरयान अधिनियम, 1988 – धारा 166**

अंशदायी उपेक्षा – अंशदायी उपेक्षा का अभिवचन बीमा कंपनी द्वारा आवश्यक रूप से स्वतंत्र साक्षी एवं/या स्थल मानचित्र प्रस्तुत कर प्रमाणित किया जाना चाहिए – अंशदायी उपेक्षा का तथ्य मात्र आमने–सामने की दुर्घटना होने के आधार पर उपधारित नहीं किया जा सकता।

**Oriental Insurance Co. Ltd. v. Komalbai Chouhan and ors.**
**Judgment dated 23.11.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 3820 of 2019, reported in 2021 ACJ 2473**

**Relevant extracts from the judgment:**

In the present case, there is no spot map to establish a head-on collision between Truck and Maruti car. The Insurance Company did not examine any witness. The driver of the offending truck remained ex-parte before the Tribunal. The accident took place in the broad day-light. No independent witness has been examined by the appellant Insurance Co. to establish the plea of contributory negligence. Merely because there was a head-on collision, it cannot be presumed that the drivers of both the vehicles were equally responsible for the accident.

●

***46. MOTOR VEHICLES ACT, 1988 – Section 166**

**Determination of compensation – Applging appropriate multiplier – The relevant multiplier which should be applied is the age of the deceased at the time of accident and not the age of his or her parents.**

**मोटरयान अधिनियम, 1988 – धारा 166**

प्रतिकर का निर्धारण – उचित गुणांक का प्रयोग – दुर्घटना के समय मृतक की आयु के आधार पर सुसंगत गुणांक का प्रयोग किया जाना चाहिए न कि उसके माता–पिता की आयु के आधार पर।

**Chadra and ors. v. Branch Manager, Oriental Insurance Co. Ltd. and anr.**

**Judgment dated 09.09.2021 passed by the Supreme Court in Civil Appeal No. 5635 of 2021, reported in 2021 ACJ 2550 (SC)**

●

**47. MOTOR VEHICLES ACT, 1988 – Section 166**

**Assessment of income of deceased – The minimum wages notification cannot be the final yardstick to arrive at the income of the deceased – Some amount of guess work should be done if there is no documentary evidence on the record relating to income of deceased.**

**(Note:** ***In this case income of the deceased who was possessing heavy vehicle driving license at the time of accident in 2016 was assessed at ₹ 8000 per month*****)**

**मोटरयान अधिनियम, 1988 – धारा 166**

मृतक की आय का निर्धारण – मृतक की आय निर्धारण के लिये न्यूनतम मजदूरी से संबंधित अधिसूचना अंतिम निर्धारक नहीं हो सकती है – अभिलेख पर मृतक की आय संबंधी कोई दस्तावेजी साक्ष्य नहीं होने पर कुछ मात्रा में संभावनात्मक निर्धारण किया जाना चाहिए।

**(*इस प्रकरण में 2016 में दुर्घटना के समय भारी मोटरयान चलाने का लाइसेंस रखने वाले मृतक की आय ₹ 8000 मासिक निर्धारित की गई*)**

**Chandra @ Chanda @ Chandraram and anr. v. Mukesh Kumar Yadav and ors.**

**Judgment dated 01.10.2021 passed by the Supreme Court in Civil Appeal No. 6152 of 2021, reported in 2021 ACJ 2554**

**Relevant extracts from the judgment:**

In absence of salary certificate the minimum wage notification can be a yardstick but at the same time cannot be an absolute one to fix the income of the deceased. In absence of documentary evidence on record some amount of guesswork is required to be done. But at the same time the guesswork for assessing the income of the deceased should not be totally detached from reality.

Keeping in mind the enormous growth of vehicle population and demand for good drivers and by considering oral evidence on record we may take the income of the deceased at Rs. 8000/- per month for the purpose of loss of dependency.

●

**48. MOTOR VEHICLES ACT, 1988 – Section 166**

**APPRECIATION OF EVIDENCE :**

**Negligence – Appreciation of – If information related to negligence disclosed in the FIR is contrary to the evidence taken by the Tribunal on same point then in such a situation evidence taken by Tribunal should be believed and not the information disclosed in FIR – No straitjacket formula can be formulated for deciding the point of negligence.**

**मोटरयान अधिनियम, 1988 – धारा 166**

**साक्ष्य का मूल्यांकन :**

उपेक्षा का मूल्यांकन – यदि प्रथम सूचना प्रतिवेदन में उल्लेखित उपेक्षा संबंधी तथ्य समान बिंदु पर अधिकरण द्वारा ली गई साक्ष्य से विपरीत हो तब ऐसी स्थिति में अधिकरण द्वारा ली गई साक्ष्य पर विश्वास किया जाना चाहिए न कि प्रथम सूचना प्रतिवेदन में उल्लेखित सूचना पर – उपेक्षा संबंधी तथ्य के निर्धारण हेतु कोई सीधा/सटीक सूत्र निर्धारित नहीं किया जा सकता है।

**National Insurance Co. Ltd. v. Chamundeswari and ors.**

**Judgment dated 01.10.2021 passed by the Supreme Court in Civil Appeal No. 6151 of 2021, reported in 2021 ACJ 2558**

**Relevant extracts from the judgment:**

If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weight age over the contents of the First Information Report.

Whether driver of the vehicle was negligent or not, there cannot be any straitjacket formula. Each case is judged having regard to facts of the case and evidence on record.

●

**49. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 118, 138 and 139**

**(i) Presumptions – Presumption as provided under sections 118 and 139 of the Act arises when the signature on the dishonored cheque is admitted.**

**(ii) Sentence – Nature of transaction and status of parties should also be considered while passing the sentence u/s 138 of the Act and this offence should not be compared with any other criminal offences for the purpose of sentence.**

परक्राम्य लिखत अधिनियम, 1881 – धाराएं 118, 138 एवं 139

(i) उपधारणायें – जब अनादरित चेक पर हस्ताक्षर स्वीकृत हों वहीं अधिनियम की धारा 118 एवं 139 के अंतर्गत उपलब्ध उपधारणायें उद्‌भूत होती हैं।

(ii) दण्डादेश – अधिनियम की धारा 138 के अंतर्गत दण्डादेश पारित करते समय संव्यवहार की प्रकृति एवं पक्षकारों की प्रास्थिति पर भी विचार करना चाहिए और दण्ड के आशय हेतु इस अपराध की तुलना किसी अन्य दाण्डिक अपराध से नहीं करना चाहिए।

**Triyambak S. Hegde v. Sripad**

**Judgment dated 23.09.2021 passed by the Supreme Court in Criminal Appeal No. 849 of 2011, reported in 2021 (4) Crimes 34 (SC)**

**Relevant extracts from the judgment:**

Since the signature on the agreement and more particularly the dishonored cheque was not disputed, the presumption as provided in law had arisen. Such presumption would remain till it is rebutted. The question however is as to whether, either from the material available on record or the nature of contentions put forth it could be gathered that the presumption had been rebutted by the respondent.

The subject cheque has been issued towards repayment of a portion of the advance amount since the sale transaction could not be taken forward. In that background, what cannot also be lost sight of is that more than two and half decades have passed from the date on which the transaction had taken place. During this period there would be a lot of social and economic change in the status of the parties. Further, as observed by this Court in ***Kaushalya Devi Massand v. Roopkishore Khore, (2011) 4 SCC 593***, the gravity of complaint under N.I. Act cannot be equated with an offence under the provisions of the Indian Penal Code, 1860 or other criminal offences.

●

**50. NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138**
**INDIAN PENAL CODE, 1860 – Section 420**

**(i) Dishonour of cheque and cheating – Mere dishonour of cheque cannot be construed as an act with a deliberate intention to cheat – Instantly, amount was advanced as business transaction and loan agreement was entered into – Held, offence u/s 420 of the IPC not made out.**

**(ii) Cheque issued as security; dishonour of – When constitutes offence u/s 138 of the NI Act? A security cheque cannot be considered as a worthless piece of paper under every circumstance – If a loan is advanced and borrower agrees to repay within a timeframe and issues a cheque as security; if the loan amount is not repaid in any other form within such**

**time or there in no other agreement between the parties to defer the payment, the security cheque would mature for presentation – If such cheque is dishonoured, consequences u/s 138 of the NI Act would flow.**

परक्राम्य लिखत अधिनियम, 1881 – धारा 138

भारतीय दण्ड संहिता, 1860 – धारा 420

(i) चेक का अनादरण एवं छल – मात्र चेक के अनादरण को छल कारित करने के आशय से किए गए कार्य के रूप में नहीं माना जा सकता है – हस्तगत मामले में, व्यवसायिक संव्यवहार के रूप में अग्रिम राशि दी गई थी और ऋण अनुबंध निष्पादित किया गया था – अभिनिर्धारित, धारा 420 भा.द.सं. के अंतर्गत अपराध गठित नहीं होता है।

(ii) सुरक्षार्थ जारी चेक का अनादरण – कब परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत अपराध गठित करता है? एक सुरक्षार्थ जारी चेक को हर परिस्थिति में बेकार कागज के टुकड़े के रूप में नहीं देखा जा सकता है – यदि कोई ऋण दिया जाता है और ऋणी एक समय सीमा के भीतर इसे चुकाने की सहमति देता है और सुरक्षार्थ चेक जारी करता है; तब यदि ऐसे समय के भीतर किसी अन्य तरीके से ऋण राशि का भुगतान नहीं किया जाता है या भुगतान को स्थगित करने के लिए पक्षकारों के मध्य कोई अन्य समझौता नहीं होता है, तो सुरक्षार्थ चेक भुगतान हेतु प्रस्तुति के लिए परिपक्व हो जाएगा – यदि ऐसा चेक अनादृत हो जाता है, तो परिणाम पराक्राम्य लिखत अधिनियम की धारा 138 के अपराध का गठन होगा।

**Sripati Singh (since deceased) through his son Gaurav Singh v. State of Jharkhand and anr.**

**Judgment dated 28.10.2021 passed by the Supreme Court in Criminal Appeal No. 1269 of 2021, reported in 2021 (4) Crimes 273 (SC)**

**Relevant extracts from the judgment:**

Even as per the case of the appellant the amount advanced by the appellant is towards the business transaction and a loan agreement had been entered into between the parties. Under the loan agreement, the period for repayment was agreed and the cheque had been issued to ensure repayment. It is no doubt true that the cheques when presented for realisation were dishonoured. The mere dishonorment of the cheque cannot be construed as an act on the part of the Respondent No. 2 with a deliberate intention to cheat and the *mens rea* in that regard cannot be gathered from the point the amount had been received. In the present facts and circumstances, there is no sufficient evidence to indicate the offence u/s 420 Indian Penal Code is made out and therefore on that aspect, we see no reason to interfere with the conclusion reached by the High Court.

Having arrived at the above conclusion and also having taken note of the conclusion reached by the High Court as extracted above, it is noted that the High Court has itself arrived at the conclusion that the instant case becomes a simpliciter case of non-refunding of loan which cannot be a basis for initiating criminal proceedings. The conclusion to the extent of holding that it would not constitute an offence of cheating, as already indicated above would be justified. However, when the High Court itself has accepted the fact that it is a case of non-refunding of the loan amount, the first aspect that there is a legally recoverable debt from the Respondent No. 2 to the appellant is *prima-facie* established. The only question that therefore needs consideration at our hands is as to whether the contention put-forth on behalf of Respondent No. 2 that an offence u/s 138 of the N.I. Act is not made out as the dishonorment alleged is of the cheques which were issued by way of 'security' and not towards discharge of any debt.

A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated u/s 138 and the other provisions of N.I. Act would flow.

When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the installment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated u/s 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil

litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

●

**51. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 141 and 142 Complaint – Averment – There must be necessary averments against those Directors of the company who neither signed the cheque nor at the post of Managing Director or Joint Managing Director at the time of offence in a complaint filed against a company and its Directors u/s 138 of the Act – In the lack of such necessary averment, process should not be issued against such Directors by the Magistrate.**

**परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138, 141 एवं 142**

परिवाद – प्रकथन – अधिनियम की धारा 138 के अंतर्गत किसी कंपनी एवं उसके निदेशकों के विरूद्ध प्रस्तुत परिवाद में कंपनी के ऐसे निदेशकों के संबंध में आवश्यक प्रकथन होना चाहिए जो न तो चेक के हस्ताक्षरकर्ता हैं, और न ही अपराध के समय प्रबंध निदेशक या संयुक्त प्रबंध निदेशक के पद पर थे – ऐसे आवश्यक प्रकथन का अभाव होने पर ऐसे निदेशकों के विरूद्ध मजिस्ट्रेट द्वारा आदेशिका जारी नहीं की जानी चाहिए।

**Ashutosh Ashok Parasrampuriya and anr. v. M/s. Gharrkul Industries Pvt. Ltd. and ors.**

**Judgment dated 08.10.2021 passed by the Supreme Court in Criminal Appeal No. 1206 of 2021, reported in 2021 (4) Crimes 132 (SC)**

**Relevant extracts from the judgment:**

We are concerned in this case with Directors who are not signatories to the cheques. So far as Directors who are not the signatories to the cheques or who are not Managing Directors or Joint Managing Directors are concerned, it is clear from the conclusions drawn in the afore¬stated judgment that it is necessary to aver in the complaint filed under Section 138 read with Section 141 of the Negotiable Instruments Act that at the relevant time when the offence was committed, the Directors were in charge of and were responsible for the conduct of the business of the company.

This averment assumes importance because it is the basic and essential averment which persuades the Magistrate to issue process against the Director. Thus, it is imperative that if this basic averment is missing, the Magistrate is legally justified in not issuing process.

●

**52. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 141 and 142**

**(i) Offence against company – Form of complaint – Company being juristic person is represented by a natural person – There could be a format where company's name is described first, suing through Managing Director – But format cannot be said to be defective merely because name of Managing Director is stated first followed by post held in company.**

**(ii) Offence against company – Complaint by authorized person – Whether it is always necessary to elaborate upon the authorization of person in body of complaint? Held, no – It would be too technical view to defeat complaint because of failure to elaborate about authorization – Existence of authorization could be verified.**

**परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138, 141 एवं 142**

**(i)** कंपनी के विरुद्ध अपराध – परिवाद का प्रारूप – विधिक व्यक्ति होने के कारण कंपनी का प्रतिनिधित्व एक नैसर्गिक व्यक्ति द्वारा किया जाता है – एक प्रारूप हो सकता है जहां कंपनी का नाम पहले वर्णित करते हुए प्रबंध निदेशक के माध्यम से परिवाद लाया जाता है – परन्तु प्रारूप को मात्र इस कारण दोषपूर्ण नहीं कहा जा सकता है कि प्रबंध निदेशक का नाम पहले लिखते हुए कंपनी में धारित पद बाद में लेख किया गया है।

**(ii)** कंपनी के विरुद्ध अपराध – अधिकृत व्यक्ति द्वारा परिवाद – क्या परिवाद के मुख्य भाग में व्यक्ति के प्राधिकार के बारे में विस्तार से बताया जाना सदैव आवश्यक है? अवधारित, नहीं – प्राधिकार के बारे में विस्तार से बताने में विफलता के कारण परिवाद को अस्वीकार करना अत्यंत तकनीकी दृष्टिकोण होगा – प्राधिकार के अस्तित्व को सत्यापित किया जा सकता है।

**Bhupesh Rathod v. Dayashankar Prasad Chaurasia and anr.**

**Judgment dated 10.11.2021 passed by the Supreme Court in Criminal Appeal No. 1105 of 2021, reported in 2021 (4) Crimes 282 (SC)**

**Relevant extracts from the judgment:**

As to what would be the governing principles in respect of a corporate entity which seeks to file the complaint, an elucidation can be found in the judgment of this Court in ***Associated Cement Co. Ltd. v. Keshavanand, (1998) 1 SCC 687***. If a complaint was made in the name of the company, it is necessary that a natural person represents such juristic person in the court and the court looks upon the natural person for all practical purposes. It is in this context that observations were made that the body corporate is a *de jure* complainant while the human being is a *de facto* complainant to represent the former in the court proceedings. Thus, no Magistrate could insist that the particular person whose statement was taken on oath alone can continue to represent the company till

the end of the proceedings. Not only that, even if there was initially no authority the company can at any stage rectify that defect by sending a competent person.

If we look at the format of the complaint which we have extracted aforesaid, it is quite apparent that the Managing Director has filed the complaint on behalf of the company. There could be a format where the company's name is described first, suing through the Managing Director but there cannot be a fundamental defect merely because the name of the Managing Director is stated first followed by the post held in the company.

It is also relevant to note that a copy of the Board Resolution was filed along with the complaint. An affidavit had been brought on record in the Trial Court by the company, affirming to the factum of authorisation in favour of the Managing Director. A Manager or a Managing Director ordinarily by the very nomenclature can be taken to be the person in-charge of the affairs company for its day-to-day management and within the activity would certainly be calling the act of approaching the court either under civil law or criminal law for setting the trial in motion. It would be too technical a view to take to defeat the complaint merely because the body of the complaint does not elaborate upon the authorisation. The artificial person being the company had to act through a person/official, which logically would include the Chairman or Managing Director. Only the existence of authorisation could be verified.

The description of the complainant with its full registered office address is given at the inception itself except that the Managing Director's name appears first as acting on behalf of the company. The affidavit and the cross-examination in respect of the same during trial supports the finding that the complaint had been filed by the Managing Director on behalf of the company. Thus, the format itself cannot be said to be defective though it may not be perfect. The body of the complaint need not be required to contain anything more in view of what has been set out at the inception coupled with the copy of the Board Resolution. There is no reason to otherwise annex a copy of the Board Resolution if the complaint was not being filed by the appellant on behalf of the company.

●

**53. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 7**
**EVIDENCE ACT, 1872 – Sections 63, 65 and 76**
**INTERPRETATION OF STATUTES :**

**(i) Sexual assault – Interpretation of words "touch", "physical contact" and "sexual intent" – Whether "skin to skin" contact is necessary for constituting offence u/s 7 of the POCSO Act? Held, no – Most important ingredient of offence of sexual assault u/s 7 is sexual intent and not skin to skin contact with the child – Any narrow or pedantic interpretation will frustrate the very object of the POCSO Act.**

(ii) **Certified copy of documents – How to be prepared – Held, as contemplated in Section 76 of the Evidence Act, a certificate that copy is the true copy of original document must be written at the foot of the certified copy – Any other practice would allow the miscreants to manipulate or commit mischief in public documents having great significance in judicial proceedings.**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 7

साक्ष्य अधिनियम, 1872 – धाराएं 63, 65 एवं 76

संविधियों का निर्वचन :

(i) लैंगिक हमला – "स्पर्श", "शारीरिक संपर्क" और "लैंगिक आशय" शब्दों का निर्वचन – क्या पॉक्सो अधिनियम की धारा 7 के अधीन अपराध के गठन के लिए "त्वचा से त्वचा" संपर्क आवश्यक है? अभिनिर्धारित, नहीं – धारा 7 के अधीन लैंगिक हमले के अपराध का सबसे महत्वपूर्ण घटक लैंगिक आशय है न कि बालक के साथ त्वचा से त्वचा का संपर्क – कोई भी संकीर्ण या रूढ़िवादी व्याख्या पॉक्सो अधिनियम के उद्देश्य को विफल कर देगी।

(ii) दस्तावेजों की प्रमाणित प्रतिलिपि – कैसे तैयार की जानी चाहिए – अभिनिर्धारित, साक्ष्य अधिनियम की धारा 76 के अनुसार इस आशय का प्रमाणीकरण कि प्रतिलिपि मूल दस्तावेज की सत्य प्रति है, प्रमाणित प्रतिलिपि के नीचे दिया जाना चाहिए – कोई अन्य प्रथा विधर्मियों को लोक दस्तावेजों में हेरफेर अथवा अपकार करने की अनुमति देगी जिनका न्यायिक कार्यवाहियों में बहुत महत्व है।

**Attorney General for India v. Satish and anr.**

**Judgment dated 18.11.2021 passed by the Supreme Court in Criminal Appeal No. 1410 of 2021, reported in 2021 (4) Crimes 370 (SC) (Three Judge Bench)**

**Relevant extracts from the judgment:**

From the bare reading of section 7 of the Act, which pertains to the "sexual assault", it appears that it is in two parts. The first part of the section mentions about the act of touching the specific sexual parts of the body with sexual intent. The second part mentions about "any other act" done with sexual intent which involves physical contact without penetration. Since the bone of contention is raised by Ld. Senior Advocate, Mr. Luthra with regard to the words "Touch", and "Physical Contact" used in the said section, it would be beneficial first to refer to the dictionary meaning of the said words.

The word "Touch" as defined in the Oxford Advanced Learner's Dictionary means "the sense that enables you to be aware of things and what are like when you put your hands and fingers on them". The word "physical" as defined in the Advanced Law Lexicon, 3rd Edition, means "of or relating to body....." and the word "contact" means "the state or condition of touching; touch; the act of touching.....". Thus, having regard to the dictionary meaning of the words

"touch" and "physical contact", the Court finds much force in the submission of Ms. Geetha Luthra, learned Senior Advocate appearing for the National Commission for Women that both the said words have been interchangeably used in section 7 by the legislature. The word "Touch" has been used specifically with regard to the sexual parts of the body, whereas the word "physical contact" has been used for any other act. Therefore, the act of touching the sexual part of body or any other act involving physical contact, if done with "sexual intent" would amount to "sexual assault" within the meaning of section 7 of the POCSO Act.

There cannot be any disagreement with the submission made by Mr. Luthra for the accused that the expression "sexual intent" having not been explained in section 7, it cannot be confined to any predetermined format or structure and that it would be a question of fact, however, the submission of Mr. Luthra that the expression 'physical contact' used in Section 7 has to be construed as 'skin to skin' contact cannot be accepted. As per the rule of construction contained in the maxim *"Ut Res Magis Valeat Quam Pereat"*, the construction of a rule should give effect to the rule rather than destroying it. Any narrow and pedantic interpretation of the provision which would defeat the object of the provision, cannot be accepted. It is also needless to say that where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. Restricting the interpretation of the words "touch" or "physical contact" to "skin to skin contact" would not only be a narrow and pedantic interpretation of the provision contained in section 7 of the POCSO Act, but it would lead to an absurd interpretation of the said provision. "Skin to skin contact" for constituting an offence of "sexual assault" could not have been intended or contemplated by the legislature. The very object of enacting the POCSO Act is to protect the children from sexual abuse, and if such a narrow interpretation is accepted, it would lead to a very detrimental situation, frustrating the very object of the Act, inasmuch as in that case touching the sexual or non sexual parts of the body of a child with gloves, condoms, sheets or with cloth, though done with sexual intent would not amount to an offence of sexual assault u/s 7 of the POCSO Act. The most important ingredient for constituting the offence of sexual assault u/s 7 of the Act is the "sexual intent" and not the "skin to skin" contact with the child.

The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialized or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" u/s 7. As held by this Court in case of ***Balaram Kumawat v. Union of India, (2003) 7 SCC 628***, the law would have to be interpreted having regard to the subject matter of the offence and to the object of the law it seeks to achieve. The purpose of the law cannot be to allow the offender to sneak out of the meshes of law.

x x x

It is very surprising to note that the Registry of High Court of Bombay, Nagpur Bench, has certified the copy of the impugned judgment by affixing the stamp on the back side of every page of the judgment which is blank. The said copy of the judgment appears to have been downloaded from the website and, therefore, does not bear even the signature or the name of the concerned judge at the end of the judgment. The certificate that the said copy is a true copy of the judgment, is also not written at the foot of the judgment as contemplated in Section 76 of the Indian Evidence Act. Such a practice, if followed by the Nagpur Bench of the Bombay High Court, may allow the miscreants to manipulate or commit mischief in the judicial orders which are used as the public documents having great significance in the judicial proceedings. The Registrar General of the Bombay High Court, therefore, is directed to look into the matter and ensure that proper procedure for preparing the certified copies of the judgments/orders of the Court in accordance with law is followed.

●

***54. SERVICE LAW :**

**Burden of proof – Burden of proof in departmental proceedings is not of beyond reasonable doubt as is the principle in the criminal trial but probabilities of the misconduct – Delinquent may examine himself to rebut the allegations of misconduct.**

सेवा विधि :

सबूत का भार – विभागीय कार्यवाही में सबूत का भार संदेह से परे का नहीं होता है जैसा कि आपराधिक विचारण का सिद्धांत है बल्कि कदाचार की अधिसंभाव्यता का होता है – अपचारी कदाचार के आरोपों के खण्डन के लिए स्वयं की परीक्षा करवा सकता है।

**Union of India and ors. v. Dalbir Singh**

**Judgment dated 21.09.2021 passed by the Supreme Court in Civil Appeal No. 5848 of 2021, reported in 2021 (4) Crimes 122 (SC)**

●

**55. WAKF ACT, 1995 – Sections 6, 7, 83 and 85**

**Jurisdiction of Wakf Tribunal – If the tenant pleads in his defence in written statement in suit for eviction that the disputed property is not Wakf property and therefore, the Tribunal has no jurisdiction to decide such suit and the Wakf Tribunal considers this defence by making a specific issue in such suit then the Wakf Tribunal gets the jurisdiction to decide the suit for eviction even though such dispute about the nature of property was not considered under sections 6 and 7 of the Wakf Act by the Tribunal in a separate proceeding.**

वक्फ अधिनियम, 1995 – धाराएं 6, 7, 83 एवं 85

वक्फ अधिकरण का क्षेत्राधिकार – यदि निष्कासन के वाद में किरायेदार अपने

लिखित कथन में इस आशय का बचाव प्रस्तुत करता है कि विवादित संपत्ति वक्फ संपत्ति नहीं होने के कारण ऐसे वाद की सुनवाई का क्षेत्राधिकार वक्फ अधिकरण को नहीं है और वक्फ अधिकरण इस बचाव के बारे में विशिष्ट वाद प्रश्न बनाकर विचार करता है तो वक्फ अधिकरण को निष्कासन के ऐसे वाद को निराकृत करने का क्षेत्राधिकार होता है भले ही संपत्ति की प्रकृति से संबंधित ऐसे विवाद का निराकरण वक्फ अधिकरण द्वारा वक्फ अधिनियम की धारा 6 एवं 7 के अंतर्गत पृथक कार्यवाही में नहीं किया गया हो।

### Telangana State Wakf Board and anr. v. Mohamed Muzafar

**Judgment dated 03.08.2021 passed by the Supreme Court in Civil Appeal No. 4522 of 2021, reported in (2021) 9 SCC 179**

**Relevant extracts from the judgment:**

The dispute in effect is to question the extent of land beyond 667.8 sq. yards being included to be the property of the Wakf Institution which is included in the list and as such whether that extent in the list is Wakf property. That will be a question which falls under Section 7 of the Waqf Act. The very observation of the High Court indicating that an opportunity is to be afforded to the respondent to question the correctness of the contents of the gazette notification by following the procedure established by law is to allow the respondent to invoke the provisions of Section 6 and 7 of the Wakf Act and seek appropriate orders.

When that is the position, it will have to be noted that in the instant case, though the legal remedy had not been availed by the respondent within the time frame as provided under Section 6 of the Act, the issue had fallen for consideration before the Wakf tribunal in view of the defence put forth by the respondent and the Wakf tribunal had rendered its finding on that aspect based on the evidence placed before it. Since the gazette notification had been questioned to indicate that the property which is in the occupation of the respondent was not a part of the notified Wakf property, the same applied both to the suit Schedule 'A' as well as Schedule 'B' properties. In such circumstance, the Wakf tribunal had the jurisdiction to determine that question which had been framed as an issue in this suit. Further as already noted, on the facts evolving in the instant case, the tribunal had relied upon the evidence available and had arrived at the conclusion that the property in question is Wakf property and had accordingly decreed the suit.

In that view, we are of the opinion that the judgment dated 12.10.2012 passed by the Wakf Tribunal in O.S. No. 126/2006 was rendered in a suit which was maintainable before the Wakf Tribunal and it had the jurisdiction to do so.

●

# PART - IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

### THE MADHYA PRADESH LAND REVENUE CODE (AMENDMENT) ACT, 2021

**No. 2 OF 2022**

[Received the assent of the Governor on the 3rd January, 2022; assent first published in the "Madhya Pradesh Gazette (Extraordinary)", dated 6th January, 2022.

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

BE it enacted by the Madhya Pradesh Legislature in the Seventy Second year of the Republic of India as follows :-

1. **Short title.**– This Act may be called the Madhya Pradesh Land Revenue Code (Amendment) Act, 2021.

2. **Insertion of Section 13-A.**– Section 13-A of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) (hereinafter referred to as the principal Act), shall be renumbered as. Section 13-B and before Section 13-B as so renumbered, the following new Section shall be inserted, namely:-

> "***13-A. Cyber Tehsil*** – The State Government may create a Cyber Tehsil, comprising of one or more than one district, along with its headquarter, for the purpose of dealing with such class of cases, as the State Government may, by general order, notify, and may abolish or alter the limits of such Cyber Tehsil."

3. **Amendment of Section 19.**– In Section 19 of the principal Act, after sub-section (3), the following sub-sections shall be added, namely:-

> "(4) The State Government may appoint for each Cyber Tehsil a Revenue Officer or any Gazetted Officer as it thinks fit to be a Cyber Tahsildar, who shall exercise such powers and perform such duties conferred or imposed on a Tahsildar by or under this Code or by or under any other enactment for the time being in force and such Cyber Tahsildar may enquire into such cases as the State Government may, by general order, notify under section 13-A, in such manner as may be prescribed.
>
> (5) The Cyber Tahsildar shall be a revenue officer for the purpose of Section 11 as well as other provisions of the Code and rules made thereunder".

4. **Insertion of Section 55.**– After Section 54 of the principal Act, the following new Section shall be inserted, namely:-

"***55. Appeal, review or revision of order passed by Cyber Tahsildar.***– The provisions of this Chapter shall be applicable on all proceedings of, and orders passed by, a Cyber Tahsildar in the matters related to Cyber Tehsil as they are applicable to the proceeding of, and orders passed by, a Tahsildar having jurisdiction over his Tehsil."

5. **Amendment of Section 110.**– In Section 110 of the principal Act, after sub-section (7), the following new sub-section shall be added, namely;-

"(8) Notwithstanding anything contained in this section, the Tahsildar shall make entries in appropriate column of Khasra, within three days from the date of receipt of intimation from -

(a) any bank or financial institution established and regulated under the provisions of the Reserve Bank of India Act, 1934 (No. 2 of 1934) or the Banking Regulation Act, 1949 (No. 10 of 1949) regarding mortgage or hypothecation, as the case may be, including its period, against the advances given or to be given by it to the tenure-holder; or

(b) any Court regarding -

(i) Any charge, penalty or any liability created or imposed by it upon tenure-holder; or

(ii) any decree or order passed by it, and after making such entries, the Tahsildar shall inform the Bhumiswami, who, may object against such entries and may apply for its correction before the Tahsildar. The Tahsildar may after making such enquiry, as he may deem fit, make such correction as he may consider necessary.

**Explanation.** – For the purpose of clause (b) of sub-section (8), "Court" means any Civil, Criminal or Revenue Court."

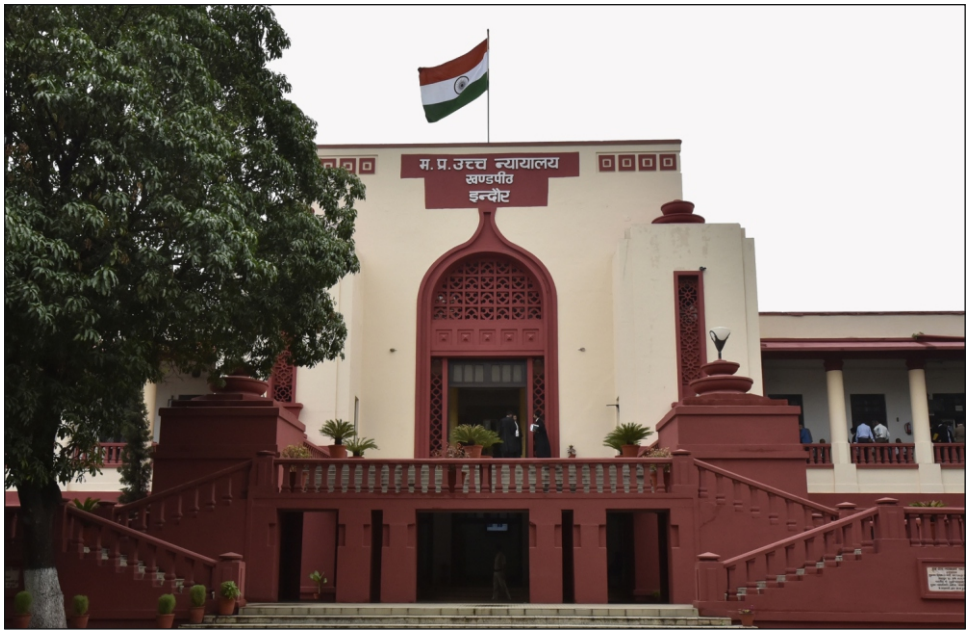
6. **Amendment of Section 247.**– In Section 247 of the Principal Act, for sub-section (7) and sub-section (8), the following sub-section shall be substituted, namely:-

"(7) Such class of cases, in which minerals have been extracted or removed without lawful authority from any mine or quarry, the right to which vests in, and has not been assigned by the Government, shall be dealt with under the Mines and Minerals (Regulation and Development) Act, 1957 (No. 67 of 1957) and rules made thereunder."

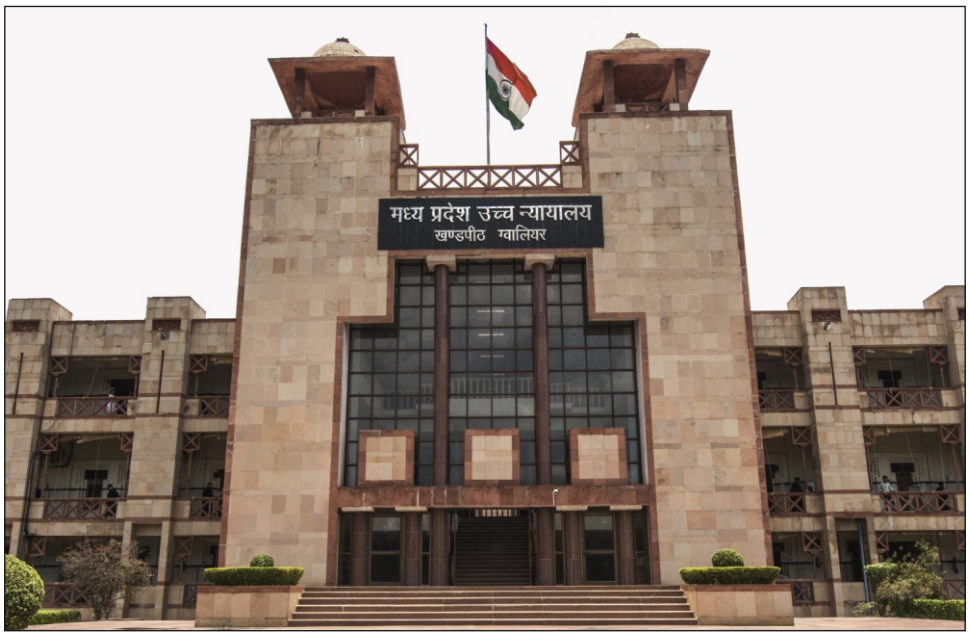
7. **Amendment of Section 258.**– In sub-section (2) of Section 258 of the principal Act, after clause (i-a), the following clause shall be inserted, namely:-

"(i-b) manner of dealing class of cases in a Cyber Tehsil;".

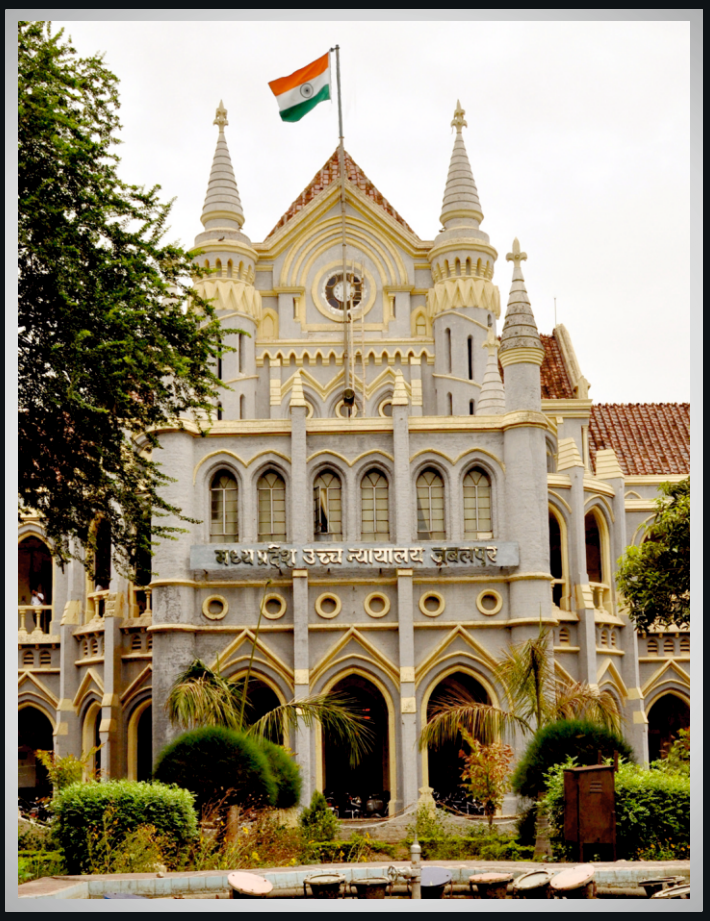
●




मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर




मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर




मध्यप्रदेश उच्च न्यायालय, जबलपुर

**मध्यप्रदेश राज्य न्यायिक अकादमी, जबलपुर**

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007