# JOTI JOURNAL

(BI-MONTHLY)

**JUNE 2020**

**MADHYA PRADESH STATE JUDICIAL ACADEMY**

HIGH COURT OF MADHYA PRADESH, JABALPUR - 482 007

# JOTI JOURNAL JUNE - 2020

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# EDITORIAL

Esteemed Readers,

We are half way through this year. As of early June, 2020, millions of people in the world have contracted and tragically, many of them have succumbed as a result of a micro lethal organism. Despite living through these difficult times, life is a horseback ride, galloping through the various ups and downs that are thrown at it. Charles Bukowski, a German-American poet and novelist is famously quoted saying, “What matters most is how well you walk through the fire”.

While we are still in the midst of combating the spread of epidemic, it is difficult to predict its long-term effects on our academic activities. But, ‘the show must go on’. We wouldn’t allow it to throw us in a loop. Thus, we have to innovate a way so as to balance our health concerns with admittance to the activities of the Academy. With an aim to strike this balance, the Academy came up with some alternative modes of judicial education in the last month. The idea was that since participation in social life has gone digital and Academy cannot function in the manner it did regularly, using technology now a days can help to some extent. We, as well as the Academy, need to be a pro-active force that will ensure courses to all the Judges for whom it is due, even during the present crisis.

The Academy has conducted one of its core programmes namely; First Phase Institutional Induction Course for the newly appointed Civil Judges Class II (Entry Level) Batch 2020, through online and other modes of telecommunication from 11th May to 6th June, 2020. This was the first time in the history of the judicial academies in our country that an Induction Training Course of four weeks duration was conducted online which entails a lot of responsibility with it.

Hon’ble Shri Justice Ajay Kumar Mittal, Chief Justice and Patron, while addressing the participants in the inaugural session of this maiden online course of Induction Training for the neophytes, has appreciated by saying that “the Academy welcomed this challenge as an opportunity by preparing a scheme of online training tools as it is well equipped in cutting edge information technology to ensure the quality of education imparted in this training session, at the very least, remains the same as traditional methods of teaching.” Hon’ble Shri Justice Sanjay Yadav, Judge In-charge, Judicial Education addressed the valedictory session online. Hon’ble Shri Justice Sujoy Paul and Hon’ble Shri Justice Atul Sreedharan have also addressed the participants through web platform on the topics “Judicial Ethics, Norms & Behaviour” and “Attributes of a Judge”, respectively. The joining of Hon’ble Judges through online mode with the opening attempt of Academy will certainly be a source of motivation for future path.

The pandemic has turned our annual calendar topsy turvy. Hence, arrangements were made to retroactively fit a new method by which some Specialized Judicial Educational Programmes can be conducted. Thus, besides Induction Course, the Academy organised few other Specialized Judicial Educational programmes online in the month of June namely, on the issues relating to cases under Protection of Women from Domestic Violence Act, 2005 and Criminal Appeal and Revision. The Academy, on similar lines, will be conducting some more programmes online and through other modes of telecommunication in the coming months.

Living in this new normal, what the Academy has achieved may be recognized but, it could only be made successful with the support extended by the District & Sessions Judges across the State by ensuring that this transition to online modes of training are as seamless and convenient as possible at their end which undoubtedly, deserve appreciation. Credit is also due towards the participant Judges as well, whose active and avid involvement does matter, as this training has always been a stable foundation because of the two-way communication between the trainers and the trainees.

We have been working constantly to iron out all the errors and slowdowns in our way. We are also looking at introducing other programmes in our itinerary to the digital populous of the judiciary and expect same if not better results as we have observed with our online Induction Training exercise. In this regard, the suggestions from the District Judiciary may be helpful to make it more purposive.

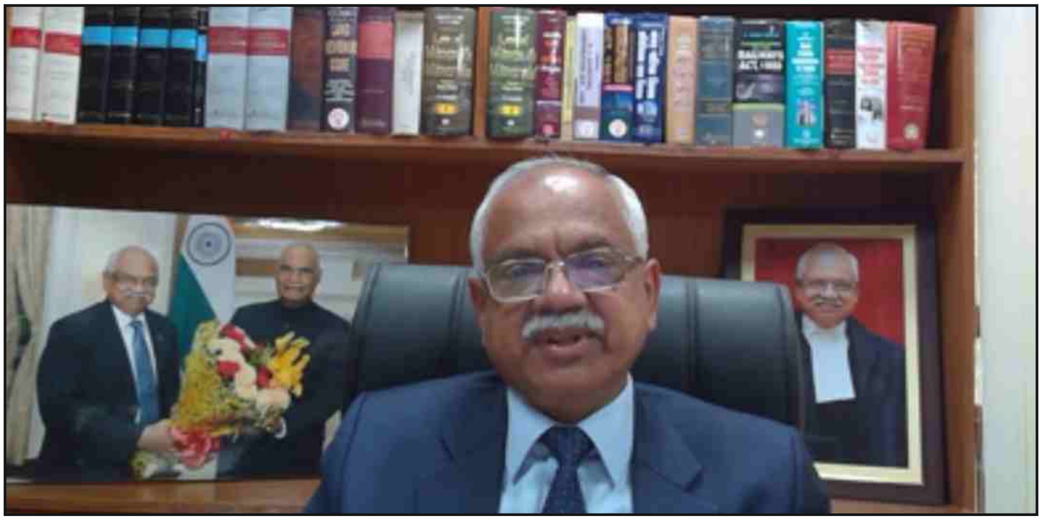
From this edition, we have resumed inclusion of some queries along with answers on legal issues of short extent. The decision to re-introduce the queries was taken keeping in mind to cover all bases in the quest for knowledge.

As always, we strive to provide quality content through this journal. The persistence to aim for nothing but the best when it comes to delivery of said content is a journey with very little obstacles, thanks to our excellent and esteemed readers who participate with the creative team behind this Journal with their suggestions and valuable insights. Hence, kindly provide your much valuable input that helps us astronomically in our pursuit of quality content delivery.

In closing, due to the inescapable result of lock down which set-off a chain reaction, one of the inconvenience caused was the delay in publication of April, 2020 edition of this Bi-monthly which subsequently led to the delay in delivery and we deeply regret.

**Ramkumar Choubey**
**Director**

**GLIMPSES OF FIRST PHASE INDUCTION COURSE (2020 BATCH) CONDUCTED ONLINE (11.05.2020 - 06.06.2020)**



**Hon’ble Shri Justice Ajay Kumar Mittal, Chief Justice, High Court of Madhya Pradesh, addressing the lnaugural Session of the programme online**

**Hon’ble Shri Justice Sanjay Yadav, Hon’ble Shri Justice Sujoy Paul and Hon’ble Shri Justice Atul Sreedharan addressing the participants online**

## GLIMPSES OF FIRST PHASE INDUCTION COURSE (2020 BATCH) CONDUCTED ONLINE (11.05.2020 - 06.06.2020)

**Participants at different District Headquarters**

## GLIMPSES OF E-INAUGURATION OF THE REGIONAL TRAINING CENTRE OF MPSJA AT GWALIOR (30.05.2020)

**Inaugural Plaque**

**Building of Regional Training Centre**

**Auditorium**

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

**Specialized Education Programme on – Protection of Women from Domestic Violence Act, 2005 conducted online (20.06.2020)**

**Specialized Education Programme on – Criminal Appeal and Criminal Revision conducted online ( 27.06.2020)**

**PART - I**

# पदार्थ की मात्रा और शुद्धता का आनुपातिक संबंध

## संदर्भः स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985

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

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 (संक्षेप में – एन.डी.पी.एस. एक्ट) के अधीन अपराध की विषय वस्तु स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा का प्रश्न सर्वाधिक महत्व का है क्योंकि अपराध के स्वरूप का निर्धारण अभियुक्त से जप्त स्वापक औषधि अथवा मनःप्रभावी पदार्थ की अल्प, मध्यम और वाणिज्यिक मात्रा पर ही निर्भर करता है। विशेष न्यायालय के समक्ष अपराध के विचारण ही नहीं जमानत के प्रक्रम पर भी स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा और शुद्धता के अनुपात को लेकर कई प्रश्न उत्पन्न होते हैं अतः स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा और शुद्धता का आपसी संबंध क्या है और इसका निर्धारण कैसे किया जाना चाहिए इस पर विधिक स्थिति स्पष्ट करने का प्रयास इस आलेख के माध्यम से किया गया है।

एन.डी.पी.एस. एक्ट के अधीन स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा के आधार पर अपराधों को वर्गीकृत किया गया है और दण्ड विहित किया गया है। मात्रा के आधार पर विहित दण्ड कतिपय अपराधों के विचारण की अधिकारिता तय करता है। जमानत के प्रक्रम पर भी अभियुक्त से जप्त स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा ही यह निर्धारित करती है कि एन.डी.पी.एस. एक्ट की धारा 37 का वर्जन लागू होगा या नहीं क्योंकि वाणिज्यिक मात्रा के अपराधों के लिए धारा 37 के उपबंध आकर्षित होते है।

एन.डी.पी.एस. एक्ट के अधीन स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा को इस प्रकार से परिभाषित किया गया है–

धारा 2(vii–क) के अनुसार स्वापक औषधि तथा मनःप्रभावी पदार्थ के संबध में **''वाणिज्यिक मात्रा''** से तात्पर्य स्वापक औषधि और मनःप्रभावी पदार्थ के संबंध शासकीय राजपत्र में अधिसूचना द्वारा केन्द्रीय सरकार द्वारा विनिर्दिष्ट की गई मात्रा से अधिक किसी मात्रा से होता है।

धारा 2(xxiii–क) **''अल्प मात्रा''** से तात्पर्य स्वापक औषधि और मनःप्रभावी पदार्थ के संबंध शासकीय राजपत्र में अधिसूचना द्वारा केन्द्रीय सरकार द्वारा विनिर्दिष्ट की गई मात्रा से न्यूनतर किसी मात्रा से होता है।

अधिनियम केवल **''अल्प मात्रा''** (small quantity) तथा **''वाणिज्यिक मात्रा''** (commercial quantity) को परिभाषित करता है अधिनियम में **''मध्यम मात्रा''** (medium quantity) को परिभाषित नहीं किया गया है। अल्प मात्रा अर्थात् केन्द्रीय सरकार द्वारा अधिसूचित मात्रा से कम तथा वाणिज्यिक मात्रा अर्थात् केन्द्रीय सरकार द्वारा अधिसूचित मात्रा से अधिक अभिप्रेत है। अतः **''अल्प मात्रा''** से अधिक किन्तु **''वाणिज्यिक मात्रा''** से कम मात्रा **'मध्यम मात्रा'** है। केन्द्रीय सरकार द्वारा अधिसूचित मात्रा की दृष्टि से इसे समझना उपयुक्त होगा।

केन्द्रीय सरकार द्वारा अधिसूचित, कुछ पदार्थ जिनसे संबंधित अपराधों के मामले बहुधा विशेष न्यायालयों के समक्ष विचारणार्थ प्रस्तुत किये जाते हैं, की मात्रा इस प्रकार है–

| क्र. No. | स्वापक औषधियों / मनःप्रभावी पदार्थों (Narcotics Drugs/ Psychotropic Substances) | अल्प मात्रा (Small Quantity) | वाणिज्यिक मात्रा (Commercial Quantity) |
|---|---|---|---|
| 1 | एसिटोफिन | 2 ग्राम | 50 ग्राम |
| 2 | एनिलेड्रीन | 2 ग्राम | 50 ग्राम |
| 3 | कैनाबीस एवं कैनाबीस रेसीन चरस | 100 ग्राम | 1 किलोग्राम |
| 4 | कोका उत्पाद (कोकेन छोड़कर) | 2 ग्राम | 50 ग्राम |
| 5 | कोका पत्ती | 100 ग्राम | 2 किलोग्राम |
| 6 | कोकेन | 2 ग्राम | 100 ग्राम |
| 7 | कोडीन | 10 ग्राम | 1 किलोग्राम |
| 8 | इथीलोमार्फीन | 10 ग्राम | 100 ग्राम |
| 9 | गांजा | 1 किलोग्राम | 20 किलोग्राम |
| 10 | हेरोइन | 5 ग्राम | 250 ग्राम |
| 11 | मार्फीन | 5 ग्राम | 250 ग्राम |
| 12 | अफीम | 25 ग्राम | 2 किलो 500 ग्राम |
| 13 | अफीम उत्पाद | 5 ग्राम | 250 ग्राम |
| 14 | पेपर (peper) | 2 ग्राम | 50 ग्राम |
| 15 | डोडाचूरा | 1 किलोग्राम | 50 किलोग्राम |
| 16 | मैथाक्विलोन (मैण्ड्रेक्स) | 20 ग्राम | 500 ग्राम |
| 17 | डायजापॉम | 20 ग्राम | 500 ग्राम |
| 18 | जीएचबी हाईड्रोक्सी एसिड | 10 ग्राम | 250 ग्राम |

अतः स्पष्ट है कि उपरोक्त तालिका में अल्प मात्रा के रूप में दी गई मात्रा से कम मात्रा **''अल्प मात्रा''** (small quantity) है और तालिका में वर्णित वाणिज्यिक मात्रा से अधिक मात्रा **''वाणिज्यिक मात्रा''** (commercial quantity) है। तालिका में दी गई अल्पमात्रा से वाणिज्यिक मात्रा तक की मात्रा **''मध्यम मात्रा''** (medium quantity) कही जाएगी है इसको उदाहरण से इस प्रकार समझा जा सकता है कि यदि किसी व्यक्ति से एक किलोग्राम अर्थात् एक हजार ग्राम गांजा जप्त होता है तो यद्यपि केन्द्रीय सरकार द्वारा अधिसूचित सूची में एक किलोग्राम गांजा अल्प मात्रा के कॉलम में उल्लेखित है किन्तु परिभाषा खण्ड 2(xxiii–क) **''अल्प मात्रा''** के अनुसार एक किलोग्राम गांजा से कम मात्रा अल्प मात्रा होगी इस प्रकार एक किलोग्राम गांजा **''मध्यम मात्रा''** (medium quantity) के रूप में विचारणीय होगा।

## जप्त पदार्थ की ''मात्रा'' का निर्धारण

अगला प्रश्न उत्पन्न होता है कि क्या जप्त पदार्थ की सम्पूर्ण मात्रा की माप को विचार में लिया जाए अथवा उसमें उपस्थित प्रतिषिद्ध पदार्थ की वास्तविक शुद्ध मात्रा को ही ''मात्रा'' निर्धारण के लिए विचार में लिया जाना चाहिए ? विभिन्न न्याय दृष्टांतों के आलोक में इस प्रश्न का हल देखा जा सकता है।

न्यायदृष्टांत ***ई. माइकल राज विरूद्ध इंटेलीजेन्स ऑफिसर, नारकोटिक कन्ट्रोल ब्यूरो, (2008) 5 एससीसी 161,*** जिसमें अभियुक्त के आधिपत्य से 4 किलोग्राम हेरोइन जप्त हुई थी जिसके दो नमूनों में क्रमशः 1.4% तथा 1.6% मार्फीन पाई गई, अर्थात् कुल जप्त पदार्थ 4 किलोग्राम हेरोइन में 60 ग्राम मार्फीन पाई गई थी, माननीय उच्चतम न्यायालय की नियमित पीठ ने यह मत दिया कि जप्त स्वापक औषधि अथवा मनःप्रभावी पदार्थ में वास्तविक रूप से उपस्थित प्रतिषिद्ध पदार्थ की वास्तविक मात्रा को विचार में लिया जाना चाहिए। इस प्रकरण में शीर्ष न्यायालय ने पूर्ववर्ती निर्णय ***अमरसिंह रामजी भाई बारोठ विरूद्ध गुजरात राज्य, (2005) 7 एससीसी 550***, में जप्त पदार्थ की कुल मात्रा को विचार में लेने तथा उसमें उपस्थित प्रतिषिद्ध पदार्थ तक सीमित नहीं रहने संबंधी अभिमत को विभेदित करते हुये यह अवधारित किया है कि स्वापक औषधि अथवा मनःप्रभावी पदार्थ के संबंध में **''अल्प मात्रा''** या **''वाणिज्यिक मात्रा''** का निर्धारण करने में सम्मिश्रण में से निष्पक्ष अथवा तटस्थ पदार्थ की मात्रा को विचार में नहीं लेना है। केवल प्रतिषिद्ध पदार्थ की वास्तविक मात्रा सुसंगत है। अभियुक्त से जप्त सम्मिश्रण में पाए जाने वाले स्वापक औषधि अथवा मनःप्रभावी पदार्थ में उपस्थित वास्तविक प्रतिषिद्ध पदार्थ के प्रतिशत पर ही दण्ड का निर्धारण निर्भर करेगा। इस न्यायदृष्टांत में उदाहरण के तौर पर दृष्टांत देकर समझाया गया कि यदि किसी व्यक्ति से 4 ग्राम हेरोइन जप्त होती है तो वह अल्प मात्रा है किन्तु यदि उक्त 4 ग्राम हेरोइन 50 किलोग्राम शक्कर के पाउडर के साथ सम्मिश्रण के रूप में जप्त होती है तो वह वाणिज्यिक मात्रा हो जाती है। इसी कारण इस प्रकार के सम्मिश्रण में उपस्थित वास्तविक प्रतिषिद्ध पदार्थ की मात्रा को ही विचार में लिया जाना चाहिए।

***ई. माइकल राज*** (पूर्वोक्त) के निर्णय के उपरांत दिनांक 18.11.2009 को केन्द्रीय सरकार द्वारा अधिसूचना संख्या का.आ. 2941(अ) के माध्यम से अधिसूचना संख्या 1055(अ) दिनांक 19.10.2001 में संशोधन करते हुये सारणी के अन्त में नोट (3) के पश्चात् निम्नलिखित नोट जोड़ा गया–

''(4) कॉलम 2 के दर्शाई गई संबंधित औषधियों के संबंध में सारणी के कॉलम 5 और कॉलम 6 में दर्शाई गई मात्राएं सम्पूर्ण मिश्रण अथवा किसी घोल अथवा किसी एक या अधिक स्वापक औषधियों अथवा उस विशेष औषधि के मनःप्रभावी पदार्थों पर खुराक के रूप में अथवा आइसोमर्स, इस्टर्स, इथर्स और इन औषधियों के अवयव इस्टर्स, इथर्स और आइसोमर्स के अवयव सहित जहां भी ऐसे पदार्थ का अस्तित्व सम्भव है और न कि विशुद्ध औषधि अवयव के रूप में लागू होगी।''

इस संशोधन के द्वारा ***ई. माइकल राज*** (पूर्वोक्त) के निर्णय के प्रभाव को दूर किया गया। फलतः आपराधिक दायित्व तथा दण्ड का निर्धारण कुल वजन अर्थात् जप्त स्वापक औषधि अथवा मनःप्रभावी पदार्थ की कुल मात्रा के आधार पर किया जाने लगा। उक्त अधिसूचना संख्या का.आ. 2941(अ) दिनांक 18.11.2009 को माननीय उच्चतम न्यायालय द्वारा ***हरजीत सिंह विरूद्ध पंजाब राज्य, (2011) 4 एससीसी 441*** के मामले में मान्यता प्रदान करते हुये सम्मिश्रण के रूप में जप्त पदार्थ की कुल मात्रा को विचार में लेते हुये दण्ड अधिरोपित करने संबंधी अभिमत दिया गया।

***हीरा सिंह विरूद्ध भारत संघ, (2017) 8 एससीसी 162*** के मामले में केन्द्रीय सरकार की अधिसूचना संख्या का.आ. 2941(अ) दिनांक 18.11.2009 को इस आधार पर चुनौती दी गई कि वर्ष 2001 में अधिनियम की धारा 27 में प्रदत्त शक्तियों का प्रयोग करते हुये तालिका बनाई गई है जिसकी प्रविष्टि क्रमांक 239 में शब्दावली–''प्रविष्टि क्रमांक 1 लगायत 238 के साथ किसी निष्पक्ष पदार्थ के सम्मिश्रण'' का उल्लेख किया गया है। प्रविष्टि क्रमांक 239 को केन्द्रीय सरकार अधिसूचना संख्या का.आ. 2941(अ) दिनांक 18.11.2009 द्वारा अधिसूचना संख्या 1055 (अ) दिनांक 19.10.2001 में संशोधन करने की शक्ति का स्त्रोत नहीं बना सकती है। समसंख्यक पीठों ***अमरसिंह रामजी भाई बारोठ*** (पूर्वोक्त), ***ई. माइकल राज*** (पूर्वोक्त) एवं ***हरजीत सिंह*** (पूर्वोक्त) के तथ्यगत विभेद पर भिन्न अभिमतों को दृष्टिगत रखते हुये ***हीरा सिंह*** (पूर्वोक्त) के अन्तर्गत माननीय उच्चतम न्यायालय द्वारा निम्न बिन्दुओं पर मामला बृहद पीठ को रेफर किया गया –

(a) Whether the decision of this Court in ***E. Micheal Raj*** (supra) requires reconsideration having omitted to take note of entry no. 239 and Note 2 (two) of the notification dated 19.10.2001 as also the interplay of the other provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act") with Section 21?

(b) Does the impugned notification issued by the Central Government entail in redefining the parameters for constituting an offence and more particularly for awarding punishment?

(c) Does the NDPS Act permit the Central Government to resort to such dispensation?

(d) Does the NDPS Act envisage that the mixture of narcotic drug and seized material/substance should be considered as a preparation in totality or on the basis of the actual drug content of the specified narcotic drugs?

(e) Whether Section 21 of the NDPS Act is a stand along provision or intrinsically linked to the other provisions dealing with "manufactured drug" and "preparation" containing any manufactured drug?

***हीरा सिंह व अन्य विरूद्ध भारत संघ व अन्य, 2020 एससीसी ऑनलाइन सु.को. 382*** में दिनांक 22 अप्रैल, 2020 को माननीय उच्चतम न्यायालय की तीन सदस्यीय पीठ द्वारा रेफरेंस का उत्तर निम्नानुसार दिया–

I. The decision of this Court in the case of ***E. Micheal Raj*** (Supra) taking the view that in the mixture of Narcotic Drugs or Psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while determining the small quantity or commercial quantity of a Narcotic Drug or Psychotropic Substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

II. In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;

III. Section 21 of the NDPS Act is not stand-alone provision and must be construed along with other provisions in the statute including provisions in the NDPS Act including Notification No. S. O. 2942(E) dated 18.11.2009 and Notification No. S. O. 1055(E) dated 19.10.2001;

IV. Challenging to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act.

इस प्रकार ***हीरा सिंह*** (पूर्वोक्त) में ***ई. माईकल राज*** (पूर्वोक्त) में प्रतिपादित सिद्धांत को 'अच्छी विधि' नहीं माना है। यदि जप्त पदार्थ सम्मिश्रण के रूप में है तो उक्त सम्मिश्रण में प्रयोग किये गये निष्पक्ष पदार्थ की मात्रा को कुल मात्रा से बाहर नहीं किया जा सकता है। जप्त सम्मिश्रण की कुल मात्रा को अल्प मात्रा या वाणिज्यिक मात्रा के निर्धारण में विचार में लेना होगा।

## औषधि और प्रसाधन सामग्री अधिनियम, 1940 और एन.डी.पी.एस. एक्ट, 1985 में अन्तरसंबंध

ऐसे मामले भी आते हैं जिनमें जप्त की गई ''विनिर्मित औषधि'' में प्रतिषिद्ध स्वापक अथवा मनःप्रभावी पदार्थ पाया जाता है। ऐसे मामले औषधि और प्रसाधन सामग्री अधिनियम, 1940 (संक्षेप में–''डी.सी. एक्ट'') के साथ ही एन.डी.पी.एस. एक्ट के अधीन अपराध के मामले होते हैं। तब कई बार यह प्रश्न उत्पन्न होता है कि ऐसे पदार्थ के संबंध में अभियुक्त का अभियोजन दोनों में से किस अधिनियम के अंतर्गत किया जावे?

इस संबंध में एन.डी.पी.एस. एक्ट की धारा 80 अवलोकनीय है जिसके अनुसार अधिनियम के अधीन बनाए गए नियमों के उपबंध डी.सी. एक्ट या इसके अधीन बनाए गए नियमों के अतिरिक्त होंगे न कि उसके अल्पीकरण में। न्यायदृष्टांत ***मोहम्मद सहाबुद्दीन विरूद्ध असम राज्य, (2012) 13 एससीसी 491,*** में जहां अभियुक्त के आधिपत्य से बड़ी मात्रा में कोडीन फास्फेट युक्त कफ सिरप जप्त की गई थी, यह अभिनिर्धारित किया गया कि यदि कोई व्यक्ति अपने आधिपत्य में बड़ी मात्रा में विनिर्मित औषधि जिसमें प्रतिषिद्ध स्वापक अथवा मनःप्रभावी पदार्थ उपस्थित है, रखता है या परिवहन करता है तो आधिपत्य के संबंध वैध दस्तावेज दर्शित करने होंगे कि ऐसा किसी चिकित्सीय उपयोग अथवा उपचार हेतु किया जा रहा है। वैध प्रयोजन एवं वैध दस्तावेज के अभाव में ऐसे मामलों में एन.डी.पी.एस. एक्ट के प्रावधान लागू होंगे।

इसी संबंध में न्यायदृष्टांत ***यूनियन ऑफ इंडिया विरूद्ध संजीव वी. देशपांडे, (2014)13 एससीसी 1***, में अभिनिर्धारित किया गया कि बड़ी मात्रा में विनिर्मित औषधि जिसमें प्रतिषिद्ध स्वापक औषधि अथवा मनःप्रभावी पदार्थ उपस्थित है, के आधिपत्य के संबंध में अभियुक्त का केवल डी.सी. एक्ट के अंतर्गत अभियोजन एक अच्छा कानून नहीं है। शीर्ष न्यायालय ने स्पष्ट किया कि ऐसा नहीं है कि डी.सी. एक्ट के प्रावधान एन.डी.पी.एस. एक्ट के प्रावधान को बाहर कर देते है।

न्यायदृष्टांत ***पंजाब राज्य विरूद्ध राकेश कुमार, (2019) 2 एससीसी 466,*** में अभिनिर्धारित किया गया कि डी.सी. एक्ट उस औषधि की बात करता है जो चिकित्सीय उपयोग अथवा उपचार हेतु आशयित है। एन.डी.पी.एस. एक्ट का आशय उन औषधियों के प्रयोग को प्रतिबंधित एवं दण्डित करना है जो नशे तथा उत्तेजना हेतु उपयोग की जाती हैं। ऐसे मामलों में डी.सी. एक्ट का कोई वर्जन नहीं है लेकिन डी.सी. एक्ट के प्रावधानों के अतिरिक्त एन.डी.पी.एस. एक्ट के प्रावधान भी लागू होंगे।

उपरोक्त न्यायदृष्टांतो का अवलंबन लेते हुए माननीय मध्यप्रदेश उच्च न्यायालय की एकलपीठ द्वारा हाल ही में ***आशा विश्वकर्मा विरूद्ध मध्यप्रदेश राज्य,*** (MCRC - 9917–2020 आदेश दिनांक 18.03.2020) में यह अभिनिर्धारित किया गया है कि यदि किसी व्यक्ति के आधिपत्य से कफ सिरप या कोडीन फास्फेट मिश्रित दवा बिना वैध दस्तावेज के पायी जाती है तो वह एन.डी.पी.एस. एक्ट के प्रावधान के अंतर्गत अभियोजित किया जाएगा। इस प्रकरण में अभियुक्त के आधिपत्य से 100 मि.ली. की कफ सिरप की 316 बॉटल जप्त हुई थी जिसमें इस कफ सिरप में कोडीन फास्फेट उपस्थित था। इस प्रकरण में केन्द्रीय सरकार की अधिसूचना दिनांक 18.11.2009 तथा ***हरजीत सिंह*** (पूर्वोक्त) का अवलंबन लेते हुए कफ सिरप के सम्मिश्रण की कुल मात्रा को अपराध के स्वरूप के निर्धारण हेतु विचार में लिया गया है।

इस प्रकार पदार्थ की मात्रा, माप और शुद्धता का आनुपातिक संबंध तथा डी.सी. एक्ट और एन.डी.पी.एस. एक्ट में अन्तर संबंध विषयक वर्तमान विधिक स्थिति इस प्रकार है–

1. जप्त स्वापक औषधि अथवा मनःप्रभावी पदार्थ की मात्रा को वर्गीकृत करने में अधिसूचित सूची तथा एन.डी.पी.एस. एक्ट के अंतर्गत दी गई परिभाषा को एक साथ पढ़ना आवश्यक है।
2. अधिसूचित सूची में अल्प मात्रा के कॉलम में उल्लेखित मात्रा से कम मात्रा **''अल्प मात्रा''** (small quantity) है और सूची में वाणिज्यिक मात्रा के कालम में उल्लेखित मात्रा से अधिक मात्रा **''वाणिज्यिक मात्रा''** (commercial quantity) है। सूची में उल्लेखित अल्पमात्रा से वाणिज्यिक मात्रा तक की मात्रा **''मध्यम मात्रा''** (medium quantity) कही जाती है।
3. ***हीरा सिंह*** (पूर्वोक्त) निर्णय दिनांक 22.04.2020 में ***ई. माईकल राज*** (पूर्वोक्त) में प्रतिपादित सिद्धांत को अच्छी विधि नहीं माना है। यदि जप्त पदार्थ सम्मिश्रण के रूप में है तो उक्त सम्मिश्रण में प्रयोग किये गये निष्पक्ष पदार्थ की मात्रा को कुल मात्रा से बाहर नहीं किया जा सकता है। जप्त सम्मिश्रण की कुल मात्रा को अल्पमात्रा या वाणिज्यिक मात्रा के निर्धारण में विचार में लेना है।
4. एन.डी.पी.एस. एक्ट के उपबंध डी.सी. एक्ट या इसके अधीन बनाए गए नियमों के अतिरिक्त है न कि उसके अल्पीकरण में।
5. यदि किसी व्यक्ति के आधिपत्य से बड़ी मात्रा में विनिर्मित औषधि जिसमें प्रतिषिद्ध स्वापक औषधि अथवा मनःप्रभावी पदार्थ उपस्थित है जैसे कफ सिरप या कोडीन फास्फेट मिश्रित दवा आदि बिना चिकित्सीय प्रयोजन हेतु एवं बिना वैध दस्तावेज के पायी जाती है तो वह एन.डी. पी.एस. एक्ट के प्रावधान के अंतर्गत भी अभियोजन के दायित्वाधीन होगा।

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# COGNIZANCE AND TRIAL OF OFFENCES REGISTERED FOR VIOLATION OF PROHIBITORY ORDERS ISSUED TO ENFORCE LOCKDOWN

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**Introduction**

The country has witnessed an unprecedented event in the past few months wherein several steps have been taken by legislature, executive and judiciary which were not imaginable for the present generation before the outbreak of Novel Corona Virus (COVID-19). World Health Organization had declared COVID-19 as a pandemic on 11$^{th}$ March, 2020. It was declared as a National Disaster by Government of India on 24$^{th}$ March, 2020 and absolute lockdown was imposed from 24$^{th}$ March, 2020 in the country which continued till 31$^{st}$ May, 2020.

Various restrictive orders and preventive measures were taken by the Ministry of Home Affairs, Government of India under the provisions of Disaster Management Act, 2005 to impose the lockdown. Various prohibited orders were also passed by the District Magistrates and other Executive Authorities in their jurisdiction to ensure the strict enforcement of lockdown measures.

However, as the society comprises law abiding and non-law abiding citizens, a large number of cases have been registered throughout the country for violation of these lockdown measures. Some of these cases have also been reported where accused persons have assaulted the frontline warriors such as police and health workers who are fighting with COVID-19 for common people. As per an estimate, nearly 2500 cases have been registered for violation of COVID-19 related orders in district Jabalpur itself.

All these reported cases would now be filed in Magisterial Courts. However, a lot of confusion has been raised as to the legality of registration of FIR, competency to take cognizance, trial procedure, requirement of complaint and expeditious disposal of these cases. This article is an attempt to address these issues.

### Offences that may be registered

The most used provision for violation of orders, regulations or directions issued to prevent the spread of COVID-19 is Section 188 IPC. However, this is not the only provision in which an offence can be registered for violation of such orders, regulations and directions.

Sections 269 and 270 of IPC, Sections 51 to 60 of the Disaster Management Act, 2005, Section 3 of the Epidemic Diseases Act, 1897, various provision of Epidemic Disease (Amendment) Ordinance, 2020, Regulation 4 of Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020 and Sections 143-144 of Madhya Pradesh Public Health Act, 1949 are other provisions under which such offences may be registered. Sentence that may be passed upon conviction under these offences also vary. Some of these offences are cognizable, some non-cognizable, some bailable and some are non-bailable. There are certain offences for which cognizance can only be taken by Magistrate on complaint of a particular public servant. Composite offences may also be registered in certain circumstances where lockdown measures are violated by accused alongwith commission of some other cognizable offence(s).

A detailed chart of various acts or omissions which may constitute an offence under present subject may be classified in the table appended at the end of this Article.

### Whether registration of FIR is permissible?

A perusal of the second-last column of appended table suggest that most of the offences mentioned therein are non-cognizable. Therefore, registration of FIR therein is not permissible. However, if any one of the offences of alleged incident is cognizable, the whole case will become a cognizable case making way for registration of FIR. Section 188 of IPC is a peculiar provision which would be applicable in almost every case registered for violation of orders, regulations and directions issued to prevent the spread of COVID-19. Offence under Section 188 of IPC is a cognizable offence. Moreover, vide notification No.33207-F No.6-59-74-B-XXI dated 19.11.1975 of Govt. of Madhya Pradesh, Section 188 IPC has been made a non-bailable offence in the State of Madhya Pradesh.

It means officer in charge of police station has power to arrest a person who is accused of an offence punishable under Section 188 IPC with or without other offences, without warrant of a Magistrate. High Court of Madhya Pradesh in the case of ***Manish Kumar Chouksay v. State of M.P., 2017 LawSuit (MP) 1424*** has held that there cannot be any detention of any accused beyond 24 hours of arrest in absence of FIR and investigation. Further, after relying upon the judgment of Hon'ble Supreme Court, ***State of Haryana v. Bhajan Lal, (1992) Supp. SCC 335*** and ***Lalita Kumari v. State of U.P., (2014) 2 SCC 1,*** it was held that registration of FIR upon disclosure of commission of a cognizable offence is mandatory on part of police.

In case of ***Pankaj Agrawal v. State of Delhi, 2001 LawSuit (SC) 427,*** an FIR was registered for offences punishable under Sections 186 and 332 IPC. Hon'ble Supreme Court held that the FIR was valid. Therefore, when an offence otherwise cognizable is also committed alongwith Section 188 IPC and some other non-cognizable offences, FIR may be registered.

A question arises whether an FIR may be registered where offence punishable under Section 188 IPC is committed alone or with some other non-cognizable offences. Hon'ble Supreme Court in ***M.L. Sethi v. R.P. Kapoor, AIR 1967 SC 528*** has considered the meaning of term "cognizance" in detail and laid down in paragraph 31 that the stage of taking cognizance comes after the investigation is complete and registration of FIR is nothing to do with taking cognizance. Therefore, the bar created by Section 195 CrPC for taking cognizance of offence punishable under Sections 172 to 188 of IPC would come after filing of report under Section 173(2) CrPC and not before.

Similar view was taken in ***Vishal Agrawal v. Chhattisgarh State Electricity Board and anr., (2014) 3 SCC 396.*** Paragraph 23 is relevant for the purpose which is as follows :

> "Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that no other avenue is opened and the complaint/ FIR cannot be lodged with the police. In view thereof, we are of the opinion that the respondent's Counsel is right in his submission that if the offence under the Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same."

In ***Dr. Varsha Gautam v. State of U.P., 2006 LawSuit (All.) 1043,*** an FIR was registered for offences punishable under the provisions of PC & PNDT Act, 1994 alongwith Section 312/511 IPC. There is a special provision under Section 28 of the PC & PNDT Act, 1994 for taking cognizance of offences punishable under that Act. It provides that cognizance can only be taken on complaint of appropriate authority etc. It was held that the bar is on taking cognizance and not on investigation. Therefore, registration of FIR and consequent investigation was held to be valid.

Similarly, in ***Mahesh Datt Mishra v. State of M.P., 2019 LawSuit (MP) 575*** offence was committed inside the police station for which FIR was registered for offences punishable under Sections 147 and 188 IPC. High Court of Madhya Pradesh refused to quash the proceedings and held that if an offence is committed inside the police station and the offence is cognizable, then the officer in charge of the police station or any other police officer having jurisdiction to arrest, may take action *suo motu* and can proceed further in the investigation.

Thus, even for offence punishable under Section 188 IPC alone or alongwith some other non-cognizable offences, FIR can be registered.

**Special provisions relating to cognizance .-**

Section 195 CrPC, Section 60 of Disaster Management Act, 2005 and Section 148 of Madhya Pradesh Public Health Act, 1949 make special provisions for taking cognizance of offence registered under the above special Acts and under Section 188 IPC.

It is apposite to mention the said provisions :

**Section 195(1)(a) of Cr.P.C.**

**195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence :-**

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

**Section 60 of Disaster Management Act, 2005**

**60. Cognizance of offences:-**

No court shall take congnizance of an offence under this Act except on a complaint made by –

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

**Section 148 of Madhya Pradesh Public Health Act, 1949**

**148. Cognizance of Offences:-**

No Court shall take cognizance of any offence punishable under this Act except on a complaint in writing of the facts constituting such offence filed by an Executive Authority or such other officer as may be authorised by it.

The offences registered for violation of orders, regulations and directions issued to prevent the spread of COVID-19 may be classified in to two categories. First, where offence is punishable under Section 188 IPC alone or with some other non-cognizable offence. For example a case where FIR is registered under Section 188 IPC and Section 143 of Madhya Pradesh Public Health Act, 1949. Second category of offences are those where FIR is registered under Section 188 IPC alongwith some cognizable offence. For example a case where FIR is registered under Section 188 IPC alongwith Section 269 or 270 or 332 of IPC. Law and procedure for taking cognizance in these two categories of cases would be different.

## 1. Cognizance of offence registered under Section 188 IPC alone

Section 195 CrPC provides that without a written complaint of the public servant concerned, no prosecution for an offence under Section 188 can be launched nor any cognizance of the offence can be taken by the Court. However, registration of FIR and investigation by police in such cases is permissible as has been discussed above.

In State of ***Madhya Pradesh v. Jyotiraditya Scindia, 2014 (1) JLJ 326 (DB),*** and more recently in ***Sarvesh Soni v. State of M.P., 2019 LawSuit (MP) 396,*** High Court of Madhya Pradesh considered the question and held that the registration of FIR and the launching of proceedings thereafter against the petitioner without complaint of public servant is not permitted by the Code and thus, cannot be allowed to be sustained.

Therefore, even if FIR is registered and offence is investigated by police, a complaint containing above particulars of the District Magistrate is required for taking cognizance of such cases.

However, there are certain offences for which complaint of some other authorities are required. For example, as per Section 60 of the Disaster Management Act, 2005, cognizance can be taken on complaint of the National Authority, State Authority, Central Government or State Government or District Authority or an Officer Authorized by such authority or Government. Government of Madhya Pradesh, Home Department by order No.F.2-1472/2020/Two/C-2 dated 23rd April, 2020 has authorized all the officers incharge of police station (not below the rank of Sub-Inspector) to file a complaint in the Court for offences punishable under Sections 51 to 59 of the Disaster Management Act, 2005. Similarly, by order No. IDSP/2020/266 dated 23rd March, 2020 of the Directorate of Health Services, Govt. of Madhya Pradesh, District Magistrates, Chief Medical and Health Officers as well as Civil Surgeon cum Hospital Superintendent have been authorized to take action under Madhya Pradesh Public Health Act, 1949. By the same order District Magistrates have been appointed as Executive Authorities under that Act. Therefore, District Magistrate is alone is empowered to file complaint for offences punishable under Madhya Pradesh Public Health Act, 1949 before the concerned Magistrates.

**2. Cognizance of offence under Section 188 IPC alongwith other offences.**

This question was considered by Hon'ble Supreme Court in ***C. Muniappan and others v. State of Tamilnadu, (2010) 9 SCC 567***. It was held that -

> "In case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned."

Meaning thereby, in cases of composite offences, cognizance cannot be taken for offence punishable u/s 188 IPC except on complaint of public servant concerned. But for other offences, there is no bar and court can proceed on the basis of chargesheet to take cognizance and proceed towards trial/committal as the case may be.

Therefore, if FIR is registered for offences punishable under Sections 188, 269 and 270 IPC and after investigation police files a charge sheet which is not supported by complaint of District Magistrate, still Magistrate would be competent to take cognizance of offence punishable under Sections 269 and 270 IPC.

Offences punishable under Regulation 4 of Madhya Pradesh Epidemic Disease, COVID-19 Regulations, 2020 have been made punishable under Section 187/188/269/270/271 IPC. The question of cognizance shall be decided accordingly and for Section 188 IPC complaint by District Magistrate would be required.

**Form of Complaint**

No form of complaint is provided under Schedule I of CrPC. Section 2(d) CrPC defines complaint as follows -

> **“2(d) “Complaint”** means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
>
> *Explanation.-* A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

Therefore, every complaint in relation to violation of orders, regulations and directions to enforce lockdown measures should contain details relating to allegation of commission some offence, details and particulars of person against whom allegation is made and a request to the Magistrate to take action under the Code.

The proper procedure which may be adopted by investigating officer is that after completing investigation, he must submit the final report to the District Magistrate or public servant authorized to file complaint (officer in charge of police station in case of offences under Disaster Management Act, 2005). The District Magistrate or public servant concerned must then formulate a complaint alleging commission of offence(s) upon which they propose to take action. The complaint must be addressed to the jurisdictional Magistrate containing a request to take action against the accused. The complaint alongwith final report of investigating officer may then be either returned to the investigating officer for filing before the Magistrate or may be directly send to the Magistrate for initiating proceedings under CrPC. Where complaint is returned to the investigating officer, he may also file the same before jurisdictional Magistrate and physical presence of complainant public servant is not necessary.

At the time of scrutiny of complaint and report of investigation officer attached therewith, Magistrate should impress upon full and complete address alongwith mobile number and email (if using) of the accused. This will ensure the proper service of process upon accused.

So far as court fees on complaint is concerned, Rule 550 (40) of Madhya Pradesh Rules and Orders (Criminal) provide that court fees payable on a complaint before criminal courts on behalf of State are exempted. Since all these complaints would be filed on behalf of State, no court fees would be required.

### Procedure when cognizance cannot be taken

Where after investigation police files a charge sheet for offence punishable under Section 188 IPC or offence under Section 60 of Disaster Management Act etc. without any of the cognizable offences, Magistrate must refuse to take cognizance on the ground of specific bar created by Section 195 CrPC, Section 60 Disaster Management Act etc. and must drop the proceeding resulting into release of the accused. Taking cognizance without complaint would be abuse of process of law and would result into illegality.

However, where a charge sheet is filed alleging offence punishable under Section 188 IPC alongwith some other offences where cognizance is not barred by any law (such as Sections 269 and 270 IPC), Magistrate must take cognizance in those offences leaving Section 188 IPC or other offences for which a complaint is required. These offences may be tried by the Magistrate notwithstanding that a complaint has not been preferred by a public servant concerned.

It is to be kept in mind that if at or before the framing of charges or explanation of particulars of offences to accused, a private complaint is filed, the Magistrate may frame charge or explain particulars of offences punishable under Section 188 IPC or Disaster Management Act etc.

**Procedure to be followed after taking cognizance**

A Magistrate is competent to take cognizance on a private complaint by virtue of Section 190(1)(a) CrPC. Hon'ble Supreme Court in ***Devarapalli Lakshminarayana Reddy & ors. v. Narayana Reddy and ors., AIR 1976 SC 1672*** has observed that when on receiving a complaint the Magistrate applies his mind for the purpose of proceeding under Sec. 200 and the succeeding sections in Chapter XV of Cr.P.C., he is said to have taken cognizance of the offence within the meaning of Sec. 190(1)(a). Therefore, as soon as a Magistrate proceeds under Section 200 CrPC for examination of complainant and his witnesses, it is said that he has taken cognizance of offence.

Whenever a complaint is filed by a public servant, Section 200 CrPC makes an exception to the general rule of examination of complainant and witnesses and Magistrate is not required to examine the public servant and witnesses on oath. Thus, physical presence of complainant shall not be necessary at this stage.

Therefore, upon receiving the complaint, Magistrate may scrutinize it and proceed to register the case as RCT under the offences disclosed by the complaint. Thereafter, summons must be issued to ensure presence of accused. Warrant should never be issued at first instance. If accused remains present before the court at the time of filing of complaint in compliance of notice issued by investigating officer, bail may be taken for ensuring his presence during the trial.

It is to be remembered that although, offence punishable under Section 188 IPC is non-bailable in Madhya Pradesh, but it does not mean that Magistrate should deny bail in all such cases. We are in the process of de-congestion of jails. Most of these offences are triable by procedure of summons trials.

Therefore, it is advised that except in extremely peculiar facts warranting judicial custody of accused, any person accused of these offences should be released on bail.

**Procedure for trial of such cases**

Most of the offences that may be registered for violation of orders, regulations or directions issued for prevention of spread of COVID-19 as mentioned in the above table are punishable for a period of imprisonment which is less than two years. There are only few exceptions such as offences punishable under the provisions of Epidemic Diseases (Amendment) Ordinance, 2020 or offence punishable under Section 332 IPC. Therefore, most of such case would be triable by the procedure for trial of summons cases. Where offence is punishable for a period of more than two years, the offence will be triable by procedure for trial of warrant cases.

It is also apposite to mention here that Magistrates empowered to try cases summarily should consider adopting the procedure of summary trial of offences punishable for a maximum period of two years, including offence punishable under Section 188 IPC, Disaster Management Act, 2005 etc.

So far as summons or summary trial are concerned, there is no confusion as the procedure is same whether cognizance is taken on police report or complaint. However, while adopting the procedure for warrant trial, a question would arise whether Magistrate should follow the procedure for warrant trial instituted on police report or warrant trial instituted otherwise than on police report?

Offences for which maximum punishment prescribed by law is more than two years would be cognizable cases and no complaint of any public servant or authority would be required. Therefore, even though Section 188 IPC is applicable in that case, Magistrate must follow the procedure for trial of warrant cases instituted on police report as the cognizance could have been taken in such cases even without complaint of the public servant concerned. In other words, in such cases the complaint of public servant will not change the procedure for trial. Since, such cases are instituted at the instance of State, Additional District Public Prosecutor must be permitted and directed to represent the State. In this way, there would not be any chance of absence of complainant during trial.

So far as the applicability of Section 258 CrPC is concerned, where cognizance is taken on complaint of public servant concerned, Section 258 CrPC would not be applicable as it is applicable only on cases in which cognizance is taken on police report. Therefore, Magistrate must decide the appropriate procedure for trial of such cases accordingly.

**Some Special Efforts : Adjudication of cases through Plea Bargaining**

Although some legal issues relating to registration of FIR, competency to take cognizance, appropriate procedure to be followed after taking cognizance and cases where cognizance cannot be taken have been discussed above, however, principal issue which still remains is the proper adjudication and disposal of these cases.

In my humble opinion, Magistrates must be conscious of the fact that the accused of offences registered for violation of orders, regulations and directions issued to impose lockdown are not habitual or hardened criminals. Although, few cases may be found where a person may have deliberately and willingly disobeyed the prohibitory order. But, in most of the cases the accused persons would have left their home for securing their daily needs to support their family. One must also be conscious of the fact that these kind of lockdown measures were imposed for the first time in generations, no one had seen it before and there was no time for preparation to face the situation of lockdown.

The cases registered during lockdown period for violation of lockdown measures are again creating arrears in already over burdened courts. Most of these cases are petty offences committed in a casual manner without any intention to spread COVID-19. Therefore, a casual violation of lockdown measures must not be viewed as an offence against society. Courts are required to deal with these cases with a different mind set and not as trial of traditional cases. Plea Bargaining may be a successful tool for disposal of these kind of cases expeditiously.

As per section 265-A CrPC, these cases do not fall under the category which are kept out of the purview of plea bargaining. At the time of taking cognizance or framing of charge/explaining particulars of accusation, Magistrate may consider apprising the accused about the provisions of “Plea Bargaining” contained in Chapter XXV-A CrPC. Upon receiving an application for plea bargaining from accused, complainant i.e. District Magistrate or officer in charge of police station may be called along with the accused persons in a batch of cases for taking preliminary meeting under Section 265-B CrPC. This meeting may be attended by ADPO and the Advocates of accused persons one-by-one. A large number of cases may be settled through this mode in a single day. More than one meeting may be called looking to the number of cases in a particular court.

After such meeting and reaching to a mutual satisfactory disposition, Magistrate should make a proper report under Section 265-D CrPC and may proceed to dispose the cases as per Section 265-E. Since, no minimum sentence is prescribed for these offences, except offences made punishable by Epidemic Diseases (Amendment) Ordinance, 2020, it would be appropriate to resort to the provision for Section 360 CrPC i.e. releasing the accused on probation of good conduct or admonition, as the court may consider appropriate.

In this way, without going into the detailed trial of large number of cases registered during the lockdown period for violation of lockdown measures, the same may be disposed of expeditiously. This will ensure that the Courts will not be called upon to spend their precious time on these petty cases and that time instead may be utilized for trial of more urgent matters.

**Sentencing Policy in such cases**

Of course, after the termination of trial holding accused guilty or on reaching to a mutual satisfactory disposition through plea bargaining, Magistrate would be required to consider the quantum of sentence to be imposed upon accused. Hon'ble Supreme Court in ***Shivu v. Registrar General, High Court of Karnataka, (2007) 4 SCC 713*** had an opportunity to emphasize on the doctrine of proportionality of sentence. It was observed that -

> "The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. Indeed, the requirement that punishment should not be disproportionately great, which is a corollary of just desert, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt."

Sentencing the accused upon conviction is very sensitive issue. Particularly in cases where *mens rea* is not an essential element of the offence, accused is found to be a first time offender, offence is not accompanied by any perpetration and there is a casual, not planned violation of lockdown measures, a lenient view is desirable from courts. Remember, lockdown was imposed, but has been lifted now. That too, when cases on graph are rising. As has already been observed, all the offences relating to violation of lockdown measures neither carry a minimum sentence nor is punishable with imprisonment for period of more than seven years, except offences made punishable by Epidemic Diseases (Amendment) Ordinance, 2020. Therefore, most of these cases fall under the category where Section 360(1) CrPC would be applicable and accused may be released on probation of good conduct. Accused persons may also be released after admonition under Section 360(1) CrPC in case of Section 188 IPC only (punishable with not more than two years of imprisonment). It is to be remembered that Section 360(3) CrPC applies to offences other than IPC in cases which are punishable with fine only. Therefore, where an accused is convicted for offences punishable under the Act of 2005, he cannot be released after admonition.

So far as the applicability of provisions of Probation of Offenders Act, 1958 are concerned, it is not advisable to resort to those provisions. Recently, Hon'ble

Supreme Court in ***Lakhanlal @ Lakhan Singh v. State of M.P., 2019 (3) Crimes 95 (SC)*** has held that under the 1958 Act, the Court is required to seek report from the Probationary Officer before allowing an offender the benefit of probation apart from satisfying other conditions, whereas there is no such limitation while exercising the powers under Section 360 of the CrPC. Section 360 will not affect the provisions of 1958 Act.

If courts start directing the Probation Officers to provide report of each accused in these cases, then it will result into chaos as it would be highly impracticable for Probation Officers to gather the relevant information in case of each accused and file report in court within a reasonable time. Therefore, applying Section 360 CrPC would be the appropriate and pragmatic approach. It is also to be kept in mind that where same act or omission of accused constitute different offences under different provisions of law, accused can only be punished in anyone of those offences (for which maximum punishment is prescribed) by virtue of Section 71 IPC.

**Some Questions:**

**Ques.1 What steps may be taken when cognizance has already been taken of offence punishable u/s 188 IPC etc. without complaint?**

**Ans.** Where cognizance has already been taken of an offence in absence of complaint for which special provision has been made for taking cognizance, further proceedings would depend upon the nature of case. In case of composite offences, trial for other offences for which there is no requirement of complaint shall continue while discharging the accused from offences for which complaint was required. In case charges had already been framed, trial shall continue but there cannot be any conviction under the provisions for which complaint was required.

In case of sole offence, Section 258 CrPC may be resorted to stop the proceedings whether particulars of accusation have been explained or not, provided that the procedure of summons trial has been followed. In case of warrant trial, accused is entitled to discharge. In case charges have already been framed, only remedy available to the accused is to either file a revision against order of framing of charge or to move for quashment of proceedings under Section 482 CrPC. Magistrate cannot go to correct the previous stage in the light of law laid down by Supreme Court in ***Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338.***

**Ques. 2 What steps may be taken when police files a chargesheet for offence punishable under Section 188 IPC without complaint of public servant concerned?**

**Ans.** There is a specific bar created by Section 195(1)(a) CrPC on the power of Magistrate to take cognizance for offence punishable under Section

188 IPC without complaint of public servant concerned. Therefore, proper procedure would be to drop the proceedings and release the accused as held by the Division Bench of High Court of Madhya Pradesh in ***State of M.P. v. Jyotiraditya Scindia*** (supra).

**Ques. 3 Whether subsequent complaint is maintainable where Magistrate had refused to take cognizance under Section 188 IPC on police report?**

**Ans.** Yes. Refusal to take cognizance and release of accused does not amount to charged, tried, convicted or acquitted under Section 300 CrPC. Therefore, even when Magistrate had refused to take cognizance in absence of complaint of competent public servant, the defect may be cured and a complaint may again be filed before the Magistrate for taking cognizance in same case. Reliance may be placed on the judgment of High Court of Madhya Pradesh in ***In Reference v. Alok Singhai, I.L.R. (2009) M.P. 264***.

**Ques. 4 Whether complaint may be made by a person who is subordinate to the public servant concerned?**

**Ans.** There is a difference between Section 195(1)(a) CrPC and Section 148 Madhya Pradesh Public Health Act, 1949 on one hand and Section 60 of Disaster Management Act, 2005 on the other hand on this point. While Section 148 of the Act of 1949 only authorizes Executive Authority (District Magistrate at present) to file complaint for offences punishable under the Act, Section 195 CrPC provides that complaint can only be made by the public servant concerned (whose order has been violated) or public servant whom he is administratively subordinate. Therefore, such a complaint cannot be made by any public servant who is subordinate to the public servant concerned so far as offences punishable under Section 188 IPC and Act of 1949 is concerned.

Reliance may be made on the judgment of Hon'ble Supreme Court in ***P.D. Lakhani v. State of Punjab, (2008) 5 SCC 150*** where it was observed that Section 195 CrPC, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned.

On the other hand, Section 60 of the Act of 2005 *inter alia* provides that a complaint alleging offences punishable under the Act may be made by District Authority or officer authorized in this behalf by that authority. It means District Authority, i.e., District Magistrate (as Chairman of District Authority) can delegate its power by authorizing any subordinate officer to file complaint under that Act.

Section 60 of the Act of 2005 is *pari materia* with Section 28 of the PC & PNDT Act, 1994. In ***Dr. Preetinder Kaur v. State of Punjab, 2011 CriLJ 876,*** Hon'ble Punjab and Haryana High Court has held that where complaint is filed by a subordinate officer of Appropriate Authority appointed under PC & PNDT Act without any authorization, the irregularity may be ratified by subsequent authorization. The same analogy is also applicable for complaints filed under the Act of 2005.

**Ques. 5 Whether physical presence of public servant concerned in court is necessary?**

**Ans.** Hon'ble Supreme Court in ***Associated Cement Co. Ltd. v. Keshavanand, (1998) 1 SCC 687*** followed by ***National Small Industries Corporation Limited v. State (NCT of Delhi), (2009) 1 SCC 407,*** has held that examination of complainant on oath can be dispensed with only under two situations, one if the complaint is filed by a public servant acting or purporting to act in the discharge of his official duties and other when a court has made the complaint. Except under the above understandable situations, the complainant has to make his physical presence for being examined by the Magistrate.

Therefore, physical presence of complainant public servant is not at all necessary before the Magistrate where his examination under Section 200 CrPC is not required.

**Ques. 6 Whether more than one complaint would be required for Section 188 IPC and Sections 51-59 of Disaster Management Act, 2005?**

**Ans.** For offence punishable under Section 188 IPC, complaint of District Magistrate as public servant concerned is mandatory. District Magistrate himself is the Chairman of District Disaster Management Authority constituted under the Act of 2005. Therefore, as per Section 195(1)(a) CrPC and Section 60 of the Act of 2005, a single complaint of District Magistrate would be sufficient.

However, where complaint alleging offences punishable under Sections 51-59 of the Act of 2005 is made by the officer in charge of police station being empowered by order of State Government dated 23.04.2020, a separate complaint of District Magistrate for Section 188 IPC would be required for convincing the jurisdictional Magistrate to take cognizance.

## Conclusion

- After the registration of FIR and completion of investigation, investigating officer may submit the report under Section 173 CrPC before the public servant concerned (District Magistrate in case of Covid-19 violations).
- The public servant shall then have to formulate a complaint setting forth the detailed facts which constitute the commission of alleged offence. For e.g., the details of order passed, the act or omission by which order is violated and a request to take action against the accused.
- The complaint must be addressed to the jurisdictional Magistrate. Such a complaint along with the report of investigating officer may be produced before jurisdictional Magistrate by any person and personal presence of public servant is not necessary.
- In case of offence punishable under Section 188 IPC alone, Magistrate may take cognizance on such complaint and proceed to register the case as examination of public servant and inquiry u/s 202 CrPC is not required. Thereafter, procedure of summons trial shall be followed.
- In case of composite offences, Magistrate may take cognizance of offence punishable under Section 188 IPC on the basis of complaint and of other offences on the basis of police report. Thereafter, as per Section 210(2) CrPC trial of the case shall begin as if the case was registered on police report. The procedure of trial shall be determined by the maximum sentence that can be imposed on any one of such offences. In case of summons trial, there is no confusion. In case of warrant trial, procedure of trial of warrant cases instituted on police report shall have to be followed.
- Every endeavour should be made to dispose of these cases without going into detailed trial and provisions relating to plea bargaining should be resorted to.
- After the termination of trial holding accused guilty or on reaching to a mutual satisfactory disposition through plea bargaining, provisions of Section 360 CrPC may be resorted to for releasing the accused on probation of good conduct.

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**Offences that may be registered for violation of orders passed to prevent the spread of COVID-19**

| Relevant Legislation with Section/ Rule | Act or Omission | Punishment | Cognizable/Non-cognizable Bailable/Non-bailable | Special provisions relating to cognizance |
|---|---|---|---|---|
| Indian Penal Code, 1860<br><br>Section 188 | Disobedience to an order duly promulgated by District Magistrate u/s 144 CrPC.<br>if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray | simple imprisonment for one month or with fine of Rs. 200 or both:<br>imprisonment for six months, or fine of Rs. 1000, or both. | Cognizable<br>Non-bailable | Section 195 CrPC<br>Cognizance can be taken only on complaint of the public servant concerned of whom he is administratively subordinate. |
| Indian Penal Code, 1860, Section 269 | Negligently doing any act known to be likely to spread infection of any disease dangerous to life | imprisonment for six months, or fine, or both. | Cognizable<br>Bailable | None. |
| Indian Penal Code, 1860, Section 270 | Malignantly doing any act known to be likely to spread infection of any disease dangerous to life | imprisonment for two years, or fine, or both. | Cognizable<br>Bailable | None. |
| Indian Penal Code, 1860, Section 271 | Knowingly disobeying any quarantine rule | imprisonment for six months, or fine, or both. | Cognizable<br>Bailable | None. |
| Epidemic Diseases Act,1897, Section 3(1) | Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under Section 188 IPC | Same as in case of Section 188 IPC. | Cognizable<br>Non-bailable | Same as in case of Section 188 IPC. |
| Epidemic Diseases Act, 1897, Section 3 (2) (i) | Act or abetment of violence against a healthcare service personnel; | imprisonment for not less than three months, but which may extend to five years, and with fine not less than fifty thousand rupees, but which may extend to two lakh rupees. | Cognizable<br>Non-bailable | None. |

| Relevant Legislation with Section/ Rule | Act or Omission | Punishment | Cognizable/Non-cognizable Bailable/Non-bailable | Special provisions relating to cognizance |
|---|---|---|---|---|
| Epidemic Diseases Act, 1897, Section 3 (2) (ii) | Abetment or causing damage or loss to any property | - do - | Cognizable<br>Non-bailable | None. |
| Epidemic Diseases Act, 1897, Section 3 (3) | Causing grievous hurt to a healthcare service personnel while committing an act of violence against him | imprisonment for not less than six months, but which may extend to seven years and with fine not less than one lakh rupees, but which may extend to five lakh rupees. | Cognizable<br>Non-bailable | None. |
| Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020, Regulation 4 | Spread of any unauthenticated information<br>Failure to record travel history by hospitals<br>Violation of advisories issued by the Government of India on COVID-19. | Violating any provisions of the regulation shall be deemed to have committed an offence punishable under Section 187/188/269/ 270/271 of IPC | Similar to section 187/188/269/270/ 271, as the case may be. | Similar to section 187/ 188/269/270/271, as the case may be. |
| Disaster Management Act, 2005, Section 51 | Obstructing or refusing to comply with any direction given by Government employee in the discharge of his functions under this Act;<br>Such obstruction or refusal results in loss of lives | imprisonment for one year or with fine, or with both<br>imprisonment for two years or with fine, or with both | Non-cognizable<br>Bailable | Section 60.- Cognizance can be taken only on complaint of –<br>(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorized in this behalf |

| Relevant Legislation with Section/ Rule | Act or Omission | Punishment | Cognizable/Non-cognizable Bailable/Non-bailable | Special provisions relating to cognizance |
|---|---|---|---|---|
| Disaster Management Act, 2005 Sections 52-53 | Making false claim Misappropriation of money or materials | imprisonment for two years and with fine | | by that Authority or Government, as the case may be; or<br>(b) any person who has given notice of not less than thirty days in the manner prescribed. |
| Disaster Management Act, 2005 Sections 54 | Making or circulating false alarm or warning | imprisonment for one year or with fine | | |
| Madhya Pradesh Public Health Act, 1949 Section 143 | Contravention of any provision of this Act or any rule or bye-law made thereunder<br>wilful disobedience or obstructing or refusing to comply with any direction given by person or authority under this Act | fine of two hundred rupees.<br>fine which may extend to one hundred rupees and if the breach is a continuing one, with fine of twenty rupees per day | Non-cognizable<br>Bailable | Section 148<br>No Court shall take cognizance of any offence punishable under this Act except on a complaint in writing of the facts constituting such offence filed by an Executive Authority or such other officer as may be authorized by it. |
| Madhya Pradesh Public Health Act, 1949 Section 144 | Preventing the Executive Authority or the Health Officer or any person to whom the Executive Authority or the Health Officer has lawfully delegated his power of entering on or into any land or building, from exercising his lawful power of entering thereon or there into | imprisonment for three months, or with fine of five hundred rupees, or with both | Non-cognizable<br>Bailable | |

# INTERIM CUSTODY OF PROPERTY IN FOREST OFFENCES

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## Introduction

Protection of forest, environment, eco-system and ecology is enshrined in Articles 48 and 51A(g) of the Constitution of India. Some very stringent penal provisions have also been made in special statutes enacted by Parliament and State Legislature to carry out these constitutional directives. However, offences relating to illegal mining, unauthorized quarrying and degradation of forests, forest produce and wildlife are often reported. In such cases, question of interim custody of property immediately comes before a Court. Since, the general law of CrPC is not always applicable in these cases, the question of interim custody requires special attention.

Provisions of CrPC apply to investigation, inquiry and trial of all offences under the Indian Penal Code, 1860. Section 4(2) of CrPC provides for application of the Code to other laws. It stipulates that offences under "any other law" are also to be investigated, inquired into, tried and otherwise dealt with according to the same provisions. This is subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. Hence, unless a special Act provides to the contrary, provisions of CrPC would be applicable.

According to the principles of Jurisprudence, special law overrides the provisions of the general law. Further, Section 5 of CrPC, which is the Saving Clause also specifically provides that nothing contained in CrPC shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force. This principle *Generalia Specialibus Non Derogant,* i.e., special provision must prevail over the general law has been reinstated by Hon'ble the Apex Court on numerous occasions. (***Motiram Ghelabhai v. Jagan Nagar, (1985) 2 SCC 279*** and ***Kamal Singh v. State of UP, 1990 CrLJ 1721***).

The Supreme Court, in ***State (Union of India) v. Ram Saran, (2003) 12 SCC 578*** while holding specifically in the context of CrPC, has also mentioned that where a special law envisages special procedure for manner or place of investigation the provisions thereof of the special law must prevail and no provisions of the CrPC can apply. It is pertinent to mention here that the Indian Forest Act, 1927 (hereinafter referred as 'Forest Act') is a special law for the matters relating to forests. Hence, in a situation of any conflict between the provisions of CrPC and Forest Act, the latter shall take predominance.

**Provisions of Forest Act regarding seizure of property**

Before dwelling on the topic, it is pertinent to refer relavant provision of the Act. Section 52 of the Forest Act forms a part of Chapter IX which deals with penalties and procedure. In relation to Madhya Pradesh, Section 52 was amended and substituted by MP Act No. 25 of 1983 and is in the following terms:

**52. Seizure of property liable to confiscation and procedure therefor.—**

(1) When there is reason to believe that a forest offence has been committed in respect of any reserved forest and protected forest or forest produce, the produce, and all tools, boats, vehicles, ropes, chains or any other article used in committing such offence, may be seized by any forest officer or police officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before an officer not below the rank of an Extra Assistant Conservative of Forests by the State Government in this behalf by notification (hereinafter referred to as the authorized officer) or where it is, having regard to the quantity of bulk or other genuine difficulty, not practicable to produce property seized before the authorized officer, make a report about the seizure to the authorized officer, or where it is intended to launch criminal proceedings against the offender immediately, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

Provided that, when the forest produce with respect to which offence is believed to have been committed is the property of the Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorized officer upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate forest-produce so seized together with all tools, vehicles, boats, ropes, chains or any other article used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the Conservators of Forests of the forest circle in which the timber or the forest-produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under sub-section (3) unless the authorized officer—

(a) sends an intimation in form prescribed about initiation of proceedings for confiscation of property to the magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purpose.

Section 52-C contains a bar to the jurisdiction of courts, tribunals and authorities which is as follows :

**52-C. Bar of Jurisdiction of court, etc., under certain circumstances.—**

(1) On receipt of intimation under sub-section (4) of section 52 about initiation of proceedings for confiscation or property by the magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than the authorised officer, Appellate Authority and Court of Sessions referred to in sections 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under section 52, notwithstanding anything contrary in this Act, or any other law for the time being in force.

*Explanation.*— Where under any law for the time being in force, two or more Courts have jurisdiction to try forest-offence, then receipt of intimation under sub-section (4) of section 52 by one of the Courts of Magistrate having such jurisdiction shall be construed to be receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under section 61.

Section 53 deals with the power to release property which is seized u/s 52. It provides that :

**53. Power to release property seized under Section 52.–** Any Forest officer of a rank not inferior to that of a Ranger, who, or whose sub-ordinate, has seized any tools, boats, vehicles or any other article Section 52, may release the same on the execution by the owner thereof, of a security in a form as may be prescribed of an amount equal to the value of such property, as estimated by such officer, for the production of the property so released, when so required, before the authorised officer under Section 52 or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

**54. Procedure thereupon.–** Upon the receipt of any such report, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law:

Provided that before passing any order for disposal of property, the Magistrate shall satisfy himself that no intimation under sub-section (4) of Section 52 has been received by his Court or by another Court having jurisdiction to try the offence on account of which the seizure of property has been made.

The proceedings for confiscation envisaged under the Forest Act and provisions relating to criminal prosecution, as amended by the MP Act No. 25 of 1983 are distinct. Section 52(2) stipulates that where it is intended to launch a criminal proceeding against an offender immediately, a report of the seizure has to be made to the Magistrate having jurisdiction to try the offence. Where the property which has been seized u/s 52 is released by an Authorised Officer u/s 53, it must be upon execution of security in such form as may be prescribed, equal to the value of the property, so as to ensure the production of the property when required before the Magistrate having jurisdiction to try the offence. On receipt of a report u/s 52(2), Section 54 stipulates that the Magistrate must take all measures necessary for the arrest and trial of the offender and the disposal of the property according to law.

**Amendment in provisions and its objectives**

As underlined by Hon'ble the Supreme Court in case of ***State of Madhya Pradesh v. Uday Singh, 2019 SCC OnLine SC 420,*** the underlying object of these amending provisions clears the picture and necessity to adhere these law

> "The Madhya Pradesh amendments to the Indian Forest Act, 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48A of the Directive Principles and the Fundamental Duty of every citizen incorporated in Article 51A(g). By isolating the confiscation of forest produce and the instruments utilised for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the Legislature to be a deficiency in the legal regime. The State Amendment has sought to overcome that deficiency by imposing stringent deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation."

In ***Kailash Chand v. State of MP, AIR 1995 MP 1,*** a Division Bench of the High Court of Madhya Pradesh considered a challenge to the constitutional validity of the State Amendments to the Forest Act through MP Act 25 of 1983. Noticing that a criminal prosecution and a proceeding for confiscation are distinct, each with its own purpose and object, the High Court held that criminal prosecution is not an alternative to confiscation proceedings. The two proceedings are parallel proceedings, each having a distinct purpose and object. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence. The object of the prosecution is to punish the offender. Explaining the underlying purpose and object of the State amendment, the Division Bench further noted that the scheme of the Central Act contemplating successful prosecution of the offender leading to confiscation has been drastically modified by the 1983 Act to provide for an additional procedure for confiscation, a procedure which is less cumbersome and more expeditious than the procedure of prosecution and at the same time, assuring necessary safeguards to the affected persons. The scheme of the Central Act provides for prosecution incidentally leading to confiscation of property. The scheme of the amendments introduced by the 1983 Act prescribes an independent procedure for confiscation. The intention is to ensure that the vehicle used in the transaction is no longer available for such misuse and to act as deterrent for the other offender and others. These objects can be well served by confiscating the vehicle.

**Jurisdiction of Magistrate to release seized property in Forest Offences**

Section 52-C contains a bar to the jurisdiction of courts, tribunals and authorities. In the case of ***State of M.P. v. Kunwarlal, 1994 (I) MPWN SN 48,*** High Court of Madhya Pradesh held that after perusal of Section 52, 52-A, 52-B and 52-C of the Indian Forest Act (as amended by M.P. Amendment), it is clear that the Forest Authorities had seized the tractor trolley, laden with stone-slabs, as they had reason to believe that a forest offence had been committed in respect of the forest produce and that the same was liable for confiscation and, hence, intimation of the aforesaid seizure had been sent to the Chief Judicial Magistrate, Raisen, who had, therefore, rightly rejected the application u/s 457 of Criminal Procedure Code, for return of the aforesaid seized property on supurdiginama.

This stand has continued with in ***Vishambhar Yadav v. State of M.P., 2002 (3) MPLJ 245*** and also in ***Biresh Kumar Singh v. State of M.P. & ors., 2014 (3) MPHT 192.*** Recently in ***Anil Kumar Sharma v. State of Madhya Pradesh, 2019 SCC OnLine MP 4172*** our Hon'ble High Court has observed that :

> "This proviso is significant, because before passing any order for disposal of the property, the Magistrate must be satisfied that no intimation has been received under Section 52(4)."

Impact of these provisions and authority of Magistrate to release the property on interim custody has been dealt at length by Hon'ble the apex court in the case of ***Uday Singh*** (supra). In para no. 33 it was held in unequivocal terms that :

> "Our analysis of the amendments brought by MP Act 25 of 1983 to the Indian Forest Act, 1927 leads to the conclusion that Specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences. Upon a seizure under Section 52(1), the officer effecting the seizure has to either produce the property before the Authorised Officer or to make a report of the seizure under sub-section (2) of Section 52. Upon being satisfied that a forest offence has been committed, the Authorised Officer is empowered, for reasons to be recorded, to confiscate the forest produce together with the tools, vehicles, boats and articles used in its commission. Before confiscating any property under sub-section (3), the Authorised Officer is required to send an intimation of the initiation of the proceedings for the confiscation of the property to the Magistrate having jurisdiction to try the offence. Where it is intended to immediately launch a criminal proceeding, a report of the seizure is made to the Magistrate having jurisdiction to try the offence. The order of confiscation under Section 52(3) is subject to an appeal under Section 52-A and a revision under Section 52-B. Section 52-C stipulates that on the receipt of an intimation by the Magistrate under sub-section (4) of Section 52, no court, tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (under Sections 52, 52-A and 52-B) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property in regard to which confiscation proceedings have been initiated. Sub-section (1) of Section 52-C has a non obstante provision which operates notwithstanding anything to the contrary contained in the Indian Forest Act, 1927 or in any other law for the time being in force. Hence, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4)(a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted."

Therefore, as soon as Magistrate receives a report of initiation of confiscation proceedings of seized articles relating to a forest offence u/s 52(4) of the Forest Act, he *sans* jurisdiction to release the seized articles on interim custody u/s 457 or 451 CrPC. Apart from that, before releasing any property in absence of intimation, it is the statutory duty of Magistrate to satisfy himself that no intimation has been received in his Court u/s 52(4) of the Forest Act.

In cases relating to forest offences ***State of M.P . v. Madhukar Rao, (2008) 14 SCC 624*** is generally cited and creats a confusion. Therefore it is pertinent to discuss this law laid down by Hon'ble Supreme Court while approving Full Bench decision of High Court of Madhya Pradesh. The issue in that case was whether upon the seizure of a vehicle or vessel u/s 50(1)(c) of the Wildlife Protection Act, 1972, the Magistrate has no power to direct its release u/s 451 of the CrPC during the pendency of a trial. Significantly, in that case the provisions of the Wildlife Protection Act, 1972 did not contain provisions analogous to the M.P. State Amendments to the Forest Act. The decision in ***Madhukar Rao*** (supra) involved interpretation of provisions distinct from the special provisions contained in the State Amendment to the Forest Act in relation to Madhya Pradesh. Indeed, application of ***Madhukar Rao*** (supra) in forest offences has been well distinguished in ***Uday Singh,*** (supra).

**Whether confiscation is subject to conviction of the accused?**

Hon'ble the Apex Court in the case of ***State of M.P. v. Kallo Bai, (2017) 14 SCC 502*** while construing the provisions of the Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 has held that by virtue of the amendments made to the Adhiniyam, Section 15-A to 15-D were introduced to provide for confiscation proceedings in line with the provisions contained in the Forest Act as amended in relation to the State of Madhya Pradesh. It was held that :

> "23.Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.
>
> 24. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraphs we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established."

Moving a step ahead while dealing with the issue of staying confiscation proceedings during the pendency of the trial Hon'ble the Apex Court in ***Uday Singh*** (supra) has observed that:

> "The mere fact that there was an acquittal in a criminal trial before a Magistrate due to a paucity of evidence would not necessarily result in nullifying the order of confiscation passed by an Authorised Officer based on a satisfaction that a forest offence had been committed."

Therefore, it can be concluded that final outcome of criminal trial has no relation to the confiscation proceedings and both are mutually independent.

**Effect of Section 52-C in composite offences**

In the case of ***Anil Kumar Sharma*** (Supra) it was held that :

> "From bare perusal of the Section 52-C of Indian Forest Act (as amended by M.P. Amendment), it is apparent that in prosecution solely or inter alia for offences under the Forest Act, once a Magistrate receives information under Section 52 (4) of Forest Act about initiation of confiscation proceedings, its jurisdiction to release the disputed property on Supurdnama ceases."

It means the bar created by Section 52-C not only applies in offences registered under Forest Act but also applies when an offence is registered under any other law in addition to the Forest Act.

**Summary**

The discussion in this article can be summarized as follows:

- Only when the vehicle involving in a forest offence is seized and is produced before the Magistrate and no confiscation proceeding is pending then and then only the Magistrate would have jurisdiction to pass any order of interim custody in exercise of power u/s 457/451 CrPC.
- Once a Magistrate receives information u/s 52 (4) of Forest Act about initiation of confiscation proceedings, his jurisdiction to release the disputed property on interim custody ceases.
- Before passing any order for disposal of the property in forest offences, the Magistrate must be satisfied that no intimation has been received u/s 52(4).
- Criminal prosecution is distinct and can run parallel to confiscation proceedings. Confiscation proceeeding is not subject to conviction of the accused. The mere fact that there was an acquittal in a criminal trial before a Magistrate due to a paucity of evidence would not necessarily result in nullifying the order of confiscation passed by an Authorised Officer based on a satisfaction that a forest offence had been committed.

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# विधिक समस्याएँ एवं समाधान

(जून 2020 के अंक के साथ पुनः प्रारंभ 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 न्यायिक अधिकारी अपनी विधिक समस्याएं संस्थान को भेज सकते हैं। चयनित समस्याओं के समाधान आगामी अंको में प्रकाशित किये जाएंगे।)

1. **क्या पुलिस अभिरक्षा में निरोध का आवेदन स्वीकार अथवा अस्वीकार किये जाने के आदेश के विरूद्ध पुनरीक्षण याचिका पोषणीय है और क्या अभियुक्त को निरोध में भेजे जाने से प्रथम पन्द्रह दिवस की अवधि के पश्चात भी पुनरीक्षण न्यायालय द्वारा अभियुक्त को पुलिस निरोध में प्राधिकृत किया जा सकता है?**

धारा 167 दण्ड प्रक्रिया संहिता, 1973 के अंतर्गत किसी अभियुक्त को पुलिस निरोध में रखा जाना प्राधिकृत किये जाने हेतु आवेदन स्वीकार करने का आदेश धारा 397 (2) दण्ड प्रक्रिया संहिता के निबंधनों में एक अंतर्वर्ती आदेश है, जिसके विरूद्ध पुनरीक्षण याचिका पोषणीय नहीं है जैसा कि माननीय उच्चतम न्यायालय ने ***राज्य द्वारा पुलिस इंस्पेक्टर एवं अन्य विरूद्ध एन. एम.टी. ज्वाय इम्माकुलेट, ए.आई.आर. 2004 सुप्रीम कोर्ट 2282,*** में प्रतिपादित किया है। माननीय गुजरात उच्च न्यायालय ने ***कंधल सरमन जडेजा विरूद्ध गुजरात राज्य, 2012 क्रि.ला.ज. 4165,*** में माननीय उच्चतम न्यायालय के ***एन.एम.टी. ज्वाय इम्माकुलेट*** (पूर्वोक्त) निर्णय को विचार में लेते हुए अवधारित किया है कि पुलिस निरोध प्राधिकृत करने से अस्वीकार करने का आदेश अंतिम आदेश है, अन्तर्वर्ती आदेश नहीं है अर्थात् पुलिस निरोध प्राधिकृत करने से अस्वीकार करने के आदेश के विरूद्ध पुनरीक्षण याचिका पोषणीय है।

माननीय उच्चतम न्यायालय ने ***सीबीआई नई दिल्ली विरूद्ध अनुपम जे. कुलकर्णी, (1992) 3 एससीसी 141,*** में स्पष्ट किया है कि धारा 167 (2) के प्रभाव से अभियुक्त को प्रथम बार अभिरक्षा में दिये जाने की दिनांक से पन्द्रह दिवस की अवधि के पश्चात पुलिस निरोध में रखा जाना प्राधिकृत करना अनुज्ञेय नहीं है।

न्यायदृष्टांत ***बुध सिंह विरूद्ध पंजाब राज्य, (2000) 9 एससीसी 266,*** में अग्रिम जमानत का आवेदन अस्वीकार होने के बाद अभियुक्त ने मुख्य न्यायिक मजिस्ट्रेट के न्यायालय में समर्पण किया जहां से उसका पहले न्यायिक निरोध प्राधिकृत किया गया तथा पश्चातवर्ती प्रक्रम पर पुलिस निरोध प्राधिकृत किया गया। अनुसंधान अधिकारी ने एक आवेदन प्रस्तुत कर अभियुक्त का पुनः पुलिस निरोध चाहा किन्तु मुख्य न्यायिक मजिस्ट्रेट द्वारा आवेदन अस्वीकार किया गया। उक्त आदेश के विरूद्ध सत्र न्यायालय में पुनरीक्षण याचिका प्रस्तुत की गई जो निरस्त कर दी गई। सत्र न्यायाधीश के आदेश के विरूद्ध उच्च न्यायालय के समक्ष याचिका प्रस्तुत की गई जो स्वीकार की जाकर मुख्य न्यायिक मजिस्ट्रेट को अभियुक्त को पुलिस अभिरक्षा में निरोध प्राधिकृत करने संबंधी आवेदन स्वीकार करने हेतु निर्देशित किया गया। उच्च न्यायालय के आवेदन के विरूद्ध उच्चतम न्यायालय में विशेष अनुमति से अपील प्रस्तुत की गई। उच्चतम न्यायालय ने अभिमत दिया कि उच्च न्यायालय का आदेश धारा 167 द.प्र.स. में उपबंधित विधिक उपबंधों का उल्लंघन करता है। पुलिस अभिरक्षा केवल प्रारंभिक पन्द्रह दिवस में ही स्वीकार की जा सकती है। उच्च न्यायालय का आदेश अपास्त किया गया।

न्यायदृष्टांत ***स्टेट रिप्रेजेन्टेड बाय डीएसपी विरूद्ध जी.के. मुरलीकृष्णा एवं अन्य, क्रिमिनल रिवीजन क्र. 366/2015 दिनांक 27.04.2015 मद्रास हाईकोर्ट,*** में अनुसंधान अधिकारी द्वारा अभियुक्तगण के न्यायिक अभिरक्षा में रहते हुये पुलिस अभिरक्षा में निरोध का आवेदन प्रस्तुत किया गया जो विशेष न्यायालय द्वारा अनावश्यक होना मानते हुये अस्वीकार किया गया। उक्त आदेश के विरूद्ध उच्च न्यायालय में पुनरीक्षण याचिका प्रस्तुत की गई तब तक प्रथम अभिरक्षा की दिनांक से पन्द्रह दिवस की अवधि व्यतीत हो चुकी थी। अभियोजन द्वारा तर्क प्रस्तुत किया गया कि प्रथम पन्द्रह दिवस में ही पुनरीक्षण याचिका प्रस्तुत कर दी गई थी। इस प्रकरण में मद्रास उच्च न्यायालय द्वारा याचिका निरस्त करते हुये अभिमत दिया गया कि पुलिस अभिरक्षा किसी भी स्थिति में प्रथम पन्द्रह दिवस की अवधि में ही स्वीकार की जा सकती है और यह सिद्धान्त सभी न्यायालयों पर समान रूप से लागू होता है। इसलिए पुनरीक्षण न्यायालय को भी ऐसा आदेश नहीं करना चाहिए।

2. **क्या दोषसिद्धि के विरूद्ध अपील में अपीलार्थी की अनुपस्थिति में अपील का निराकरण गुणदोष पर किया जा सकता है तथा दोषमुक्ति के विरूद्ध की गई अपील में अपीलार्थी की अनुपस्थिति में प्रक्रिया क्या होगी?**

माननीय उच्चतम न्यायालय ने ***बानी सिंह एवं अन्य विरूद्ध उत्तर प्रदेश राज्य, एआईआर 1996 एससी 2439,*** में स्पष्ट किया है कि यदि अपीलार्थी का प्रतिनिधित्व किसी अधिवक्ता द्वारा नहीं किया जा रहा है और ऐसा अपीलार्थी निरंतर अनुपस्थित रहता है, तब ऐसे अपीलार्थी की अनुपस्थिति में अभिलेख के आधार पर अपील का निराकरण गुण दोष पर किया जा सकता है। अपील दोषसिद्धि के विरूद्ध की गई हो अथवा दोषमुक्ति के विरूद्ध, दोनों ही परिस्थितियों में अपीलार्थी की अनुपस्थिति में अपील के निराकरण की प्रक्रिया समान होगी।

न्यायदृष्टांत ***रामनरेश यादव व अन्य विरूद्ध बिहार राज्य, एआईआर 1987 एससी 1500,*** में अपीलार्थी की अनुपस्थिति में अपील को गुण दोष पर निराकृत न करके केवल अनुपस्थिति में निरस्त करने संबंधी अभिमत दिया गया था किन्तु न्यायदृष्टांत ***श्याम देव पाण्डे व अन्य विरूद्ध बिहार राज्य, 1971 एससीआर 133,*** में अपीलार्थी की अनुपस्थिति में भी अपील का निराकरण गुण दोष पर करने संबंधी अभिमत दिया गया था और न्यायदृष्टांत ***रामनरेश यादव*** (पूर्वोक्त) में ***श्यामदेव*** (पूर्वोक्त) को विचार में नहीं लिया गया था। उपरोक्त दोनों न्यायदृष्टांतों को विचार में लेते हुए ***बानी सिंह*** (पूर्वोक्त) के प्रकरण में अपील का निराकरण अपीलार्थी की अनुपस्थिति में गुण दोष पर करने का अभिमत दिया गया है।

न्यायदृष्टांत ***के. एस. पाण्डुरंगा विरूद्ध कर्नाटक राज्य, (2013) 3 एससीसी 721,*** में अभिमत दिया गया है कि अपीलार्थी के जेल में होने तथा न्यायालय में उपस्थित नहीं होने पर सुनवाई स्थगित की जा सकती है जिससे आगामी नियत दिनांक को अपीलार्थी को उपस्थित रहने का अवसर मिल सके। यदि अपीलार्थी के अभिभाषक उपस्थित नहीं हो और न्यायालय उचित समझता है तो शासकीय व्यय पर अभिभाषक नियुक्त कर सकता है। यह सुझाव भी दिया गया है कि जेल में निरूद्ध अपीलार्थी की ओर से अपना पक्ष रखने हेतु न्याय मित्र (amicus curiae) अथवा विधिक सहायता प्रकोष्ठ से अभिभाषक भी नियुक्त किया जा सकता है।

**3. उच्चतम न्यायालय द्वारा *Suo Motu Writ Petition (Civil) No. 3/2020* में दिये आदेश दिनांक 23.03.2020 तथा 06.05.2020 का धारा 167 (2) द.प्र.सं. के अन्तर्गत निरोध की अवधि की गणना पर क्या प्रभाव होगा?**

कोरोना वायरस (कोविड–19) महामारी से उत्पन्न परिस्थिति में माननीय उच्चतम न्यायालय द्वारा ***Suo Motu Writ Petition (Civil) No.3/2020*** में दिनांक 23.03.2020 को आदेश पारित कर याचिकाएं, आवेदन, वाद, अपील और अन्य सभी कार्यवाहियों को दायर करने के लिए परिसीमा विषयक सामान्य अथवा विशेष विधि के अधीन विहित परिसीमा काल को दिनांक 15.03.2020 से आगामी आदेश तक के लिए आगे बढ़ाया गया है। माननीय उच्चतम न्यायालय ने अपने आदेश दिनांक 23.03.2020 में स्पष्ट किया है कि संविधान के अनुच्छेद 142 सहपठित अनुच्छेद 141 में प्रदत्त शक्तियों के प्रयोग में पारित यह आदेश समस्त न्यायालयों, अधिकरणों और प्राधिकारियों पर बंधनकारी है।

आदेश का सुसंगत अंश इस प्रकार है – "..... difficulties that may be faced by litigants across the country in filing their petitions/applications /suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15$^{th}$ March 2020 till further order/s to be passed by this Court in present proceedings...."

माननीय उच्चतम न्यायालय ने आदेश दिनांक 23.03.2020 के अनुक्रम में पुनः आदेश दिनांक 06.05.2020 पारित कर मध्यस्थता एवं सुलह अधिनियम, 1996 एवं परक्राम्य विलेख अधिनियम, 1881 के अधीन सभी विहित परिसीमा कालों को दिनांक 15.03.2020 से आगे आगामी आदेश तक के लिए बढ़ा दिया है। साथ ही यह स्पष्ट किया है कि जहां परिसीमा काल 15.03.2020 के पश्चात् समाप्त हुआ है वहां संबंधित क्षेत्र, जिसमें विवाद या वाद कारण उत्पन्न हुआ है, में लॉक डाउन समाप्त होने से और आगे पन्द्रह दिनों तक के लिए विस्तारित माना जायेगा।

आदेश इस प्रकार हैं– "In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 .........., it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown."

कोरोना वायरस (कोविड–19) महामारी के कारण पुलिस और अन्य अन्वेषण एजेन्सी अपराधों का अन्वेषण पूर्ण करने और धारा 167 (2) द.प्र.सं. में निर्दिष्ट अवधि 60 अथवा 90 दिवस के

भीतर अभियोग पत्र प्रस्तुत करने में असमर्थ रहीं हैं। ऐसे मामलों में ***Suo Motu Writ Petition (Civil) No.3/2020*** में पारित आदेश दिनांक 23.03.2020 और आदेश दिनांक 06.05.2020 के प्रभाव से क्या धारा 167 (2) द.प्र.सं. में निर्दिष्ट अवधि 60 अथवा 90 दिवस का विस्तार माना जाएगा और निर्दिष्ट अवधि 60 अथवा 90 दिवस पूर्ण होने पर भी अभियुक्त को अनिवार्य जमानत का लाभ नहीं मिलेगा? इस बिन्दु पर सर्वप्रथम मद्रास उच्च न्यायालय ने ***Settu v. State (Cr. OP (MD) No.5291/2020, D/ 08.05.2020)*** में अभिमत दिया कि धारा 167 (2) द.प्र.सं. में निर्दिष्ट अवधि 60 अथवा 90 दिवस के भीतर अभियोग पत्र प्रस्तुत नहीं होने पर अभियुक्त को जमानत का लाभ मिलेगा। लेकिन मद्रास उच्च न्यायालय की ही एक अन्य एकल पीठ ने ***S. Kasi v. State (Cr. OP (MD) No.5296/2020, D/11.05.2020)*** में विपरीत मत व्यक्त करते हुए जमानत के इस अधिकार से इंकार किया जिसके विरूद्ध उच्चतम न्यायालय में अपील की गई। उक्त अपील ***S. Kasi v. State, (Criminal Appeal No. 452 of 2020, D/ 19.06.2020)*** में माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि न तो उच्चतम न्यायालय के आदेश दिनांक 23.03.2020 से धारा 167(2) द.प्र.सं. में विहित अवधि को आच्छादित किया गया है और न ही सरकार द्वारा लॉक डाउन के दौरान अधिरोपित कोई भी प्रतिबंध अभियुक्त के धारा 167(2) के द्वारा संरक्षित उसके जमानत के अजेय अधिकार पर रोक लगाता है। माननीय उच्चतम न्यायालय के आदेश दिनांक 19.06.2020 का सुसंगत अंश इस प्रकार है– "We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed."

इस प्रकार ***S. Kasi v. State*** (पूर्वोक्त) में माननीय उच्चतम न्यायालय द्वारा स्पष्ट किया गया कि ***Suo Motu Writ Petition (Civil) No. 3/2020*** में दिये आदेश दिनांक 23.03.2020 तथा 06.05.2020 का धारा 167(2) द.प्र.सं. के अन्तर्गत, विहित अवधि 60 अथवा 90 दिवस में अभियोग पत्र प्रस्तुत नहीं हो पाने से, अभियुक्त के पक्ष में उत्पन्न जमानत के अजेय अधिकार पर कोई प्रभाव नहीं पड़ेगा।

माननीय उच्चतम न्यायालय के आदेशों का युक्तियुक्त अर्थान्वयन यह हो सकता है कि विहित परिसीमा काल में विस्तार संबंधी आदेश पक्षकारों के उन अधिकारों की रक्षा के लिए है जो अन्यथा कोरोना वायरस (कोविड–19) महामारी से उत्पन्न परिस्थिति में, लॉक डाउन और सरकार द्वारा लागू प्रतिबंधों के कारण समाप्त हो जाते क्योंकि पक्षकार इस अवधि में अपने अधिकारों का प्रयोग करने हेतु असमर्थ थे। लेकिन जहां व्यक्ति का कोई अधिकार विधि के किसी नियम में निर्धारित समयावधि के अवसान पर उत्पन्न होता है वहां ऐसी निर्धारित समयावधि का अवसान लॉक डाउन या सरकार द्वारा लागू प्रतिबंधों की अवधि के दौरान होने पर भी ऐसा अधिकार उत्पन्न हुआ माना जाएगा। अधिकार का उत्पन्न होना विलंबित या स्थगित नहीं होगा।

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# PART - II

## NOTES ON IMPORTANT JUDGMENTS

**118. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 36**
**LIMITATION ACT, 1963 – Article 136**
**Filing of execution – Execution petition of arbitral award may be instituted after disposal of application u/s 34 and such petition cannot be termed as time barred.**

**माध्यस्थम् और सुलह अधिनियम, 1996 – धाराएं 34 एवं 36**
**परिसीमा अधिनियम, 1963 – अनुच्छेद 136**

निष्पादन की याचिका का दायर किया जाना – माध्यस्थम् पंचाट के निष्पादन की याचिका धारा 34 के अधीन आवेदन के निपटारे के पश्चात् संस्थित की जा सकती है और ऐसी याचिका समय वर्जित नहीं कही जा सकती।

**Ushadevi and anr. v. Cotton Corporation of India Ltd. and anr.**
**Order dated 28.02.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 6029 of 2018, reported in 2020 (1) MPLJ 200**

**Relevant extracts from the order:**

So far as the issue of limitation is concerned, Article 136 of the Limitation Act, 1963 provides the limitation of 12 years from the date when decree becomes enforceable. Before amendment in Section 36 of the Arbitration and Conciliation Act, 1996, the award would become enforceable after expiry of the time for making an application to set-aside the arbitral award under Section 34 and dismissed or such application has not been made, the award shall be enforced under the CPC in the same manner as if it were a decree of the Court. The Respondent No.1 initiated the executing proceedings after dismissal of the application filed under Section 34 of the Arbitration and Conciliation Act, 1996. Section 36 of the Arbitration and Conciliation Act, 1996 undergone substantial amendment w.e.f. 31.12.2015 and before that there was an automatic stay of an enforcement of the award, the moment application under Section 34 of the Arbitration and Conciliation Act, 1996 is filed. The aforesaid view has been confirmed by the Apex Court in the case of ***BCCI v. Kochi Cricket (P) Ltd., (2018) 6 SCC 287***. Therefore, the objection of the petitioners that the execution proceedings has become time barred is also not tenable, hence liable to be dismissed.

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**119. CIVIL PRACTICE:**

**(i) Reasons must be assigned while passing any order.**

**(ii) To make any order legally sustainable, facts of the case and legal questions arising in that case must be properly examined by the Appellate Court.**

सिविल प्रथाः

(i) किसी भी आदेश को पारित करते समय कारणों को अवश्य बताना चाहिए।

(ii) किसी आदेश को विधितः धारण योग्य बनाने के लिए, अपीलीय न्यायालय द्वारा मामले के तथ्यों एवं उस मामले में उत्पन्न विधिक प्रश्नों का उचित तौर पर परीक्षण किया जाना चाहिए।

**Shri Revansiddeshwar Pattan Sahakari Bank Niyamit v. Taluka Tokrekoli (Ambiga Samaji C. Vikas Sangh Indi) (Earlier Gangamath Sangha) and anr.**

**Judgment dated 25.02.2019 passed by the Supreme Court in Civil Appeal No. 2013 of 2019, reported in 2019 (4) MPLJ 549 (SC)**

**Relevant extracts from the judgment:**

The need to remand the case to the High Court has occasioned for the reason that firstly, the High Court did not assign any reasons for allowing the writ petition and secondly, the High Court seemed to have passed somewhat inconsistent order.

We are, therefore, unable to agree with the view taken by the High Court as the High Court neither examined the facts of the case properly nor the legal questions arising in the case, therefore such order is legally unsustainable.

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**120. CIVIL PROCEDURE CODE, 1908 – Section 9**

**Jurisdiction of Civil Court – Exclusion of the jurisdiction of Civil Court is not readily to be inferred unless there is an express bar under a particular Act.**

सिविल प्रक्रिया संहिता, 1908 – धारा 9

सिविल न्यायालय का क्षेत्राधिकार – सिविल न्यायालय के क्षेत्राधिकार का अपवर्जन आसानी से अनुमानित नहीं किया जाना चाहिये जब तक कि किसी अधिनियम विशेष के अंतर्गत इसे स्पष्टतः वर्जित न किया गया हो।

**Meena alias Munni and ors. v. State of M.P. and ors.**

**Order dated 09.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Appeal No. 232 of 2015, reported in 2020 (1) MPLJ 91 (DB)**

**Relevant extracts from the order:**

Exclusion of the jurisdiction of the civil court, as held by Hon'ble Surpeme

Court in ***Dhulabhai v. State of M.P. and anr., AIR 1969 SC 78*** is not readily to be inferred. Therefore, as appellants having remedy before the Civil Court and in view of such legal position when judgment of learned Single Judge is tested and in view of the fact that there exists disputed questions of facts, learned Single Judge has rightly observed that parties are free to get their rights determined before the competent court of civil jurisdiction.

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**121. CIVIL PROCEDURE CODE, 1908 – Section 11 and Order 1 Rule 10**

**(i) *Res judicata* – Application for same relief which was denied earlier by the Court can be filed at later stage again if fresh cause of action arises in favour of party and in such a situation, bar of *res judicata* does not apply.**

**(ii) Impleadment of parties – Where a transferee *pendente lite* acquires any substantial interest in property, he should be impleaded as necessary party in the suit even if *dominus litis* lies with the plaintiff.**

**सिविल प्रक्रिया संहिता, 1908 – धारा 11 एवं आदेश 1 नियम 10**

(i) पूर्वन्याय – यदि पक्षकार के पक्ष में कोई नया वाद कारण उत्पन्न हो गया हो तब उसी अनुतोष हेतु, जिसे पूर्व में न्यायालय ने प्रदान करने से मना कर दिया था, आगे के प्रक्रम पर पुनः आवेदन प्रस्तुत किया जा सकता है और ऐसी परिस्थिति में पूर्वन्याय का वर्जन लागू नहीं होता है।

(ii) पक्षकारों का जोड़ा जाना – जहां एक वादकालीन अंतरिती संपत्ति में कोई तात्विक हित प्राप्त करता है तब उसे वाद में एक आवश्यक पक्षकार के रूप में जोड़ा जाना चाहिए यद्यपि वाद का अधिस्वामित्व वादी के पास होता है।

**Tilak Sahkari Grah Nirman Sanstha Maryadit v. Aqeel Ahmed and ors.**

**Order dated 16.09.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 2496 of 2019, reported in 2020 (1) MPLJ 332**

**Relevant extracts from the order:**

Learned counsel for the petitioner has relied upon a decision passed in the case of ***Savitri Devi v. District Judge, Gorakhpur and others, (1999) 2 SCC 577*** in which the Supreme Court has observed as under:-

> "9. Order I Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code.

10. In ***Khemchand Shankar Choudhari v. Vishnu Hari Patil, (1983) 1 SCC 18,*** this Court held that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit is a representative in the interest of the party from whom he has acquired that interest and has a right to be impleaded as a party to the proceedings. The Court has taken note of the provisions of Section 52 of the Transfer of Property Act, 1882 as well as the provisions of Rule 10 of Order XXII CPC. The Court said:

> "It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard."

11. In ***Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay, (1992) 2 SCC 524,*** this Court discussed the matter at length and held that though the plaintiff is a *"dominus litis"* and not bound to sue every possible adverse claimant in the same suit, the Court may at any stage of the suit direct addition of parties and generally it is a matter of judicial discretion which is to be exercised in view of the facts and circumstances of a particular case. The Court said;

> "8. The case really turns on the true construction of the rule in particular the meaning of the words 'whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit'.
>
> The court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject-matter of the existing action, the court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions."

The Court also observed that though prevention of actions cannot be said to be the main object of the Rule, it is a desirable consequence of the Rule. The test for impleading parties prescribed in ***Razia Begum v. Sahebzadi Anwar Begum,***

> ***AIR 1958 SC 886*** that the person concerned must be having a direct interest in the action was reiterated by the Bench."

As per the view taken by the Supreme Court, it is clear that despite the fact that the *"dominus litis"* lies with the plaintiff, the Court is not bound to follow the said principle, but can exercise its discretion at any stage of the suit directing addition of parties, if the Court finds that without impleading the said party in the suit, the Court would not be in a position to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of multiplicity of proceedings is also one of the objects of the said provision in the Code.

Learned counsel for the petitioner has also placed reliance upon a decision of the Supreme Court passed in the case of ***Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and ors., (2013) 5 SCC 397*** in which the Supreme Court has observed as under:-

> "It is well settled that no one other than the parties to an agreement to sell is a necessary and proper party to a suit for specific performance thereof. However, a simple reading of Order 22 Rule 10 CPC would show that in cases of assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. Thus, independent of Order 1 Rule 10 CPC the prayer for addition/impleadment made by the appellant can be considered in the light of Order 22 Rule 10 CPC and thus the appellant can be added as a party-defendant to the suit. The application which the appellant made was only under Order 1 Rule 10 CPC but the enabling provision of Order 22 Rule 10 CPC can always be invoked if the fact situation so demands.
>
> The Supreme Court in many cases has held that a transferee *pendente lite* can be added as a party to the suit lest the transferee suffered prejudice on account of the transferor losing interest in the litigation post transfer. Sometimes, a transferor *pendente lite* may not even defend the title properly as he has no interest in the same or may collude with the plaintiff in which case the interest of the purchaser *pendente lite* will be ignored. To avoid such situations the transferee *pendente lite* can be added as a party-defendant to the case provided his interest is substantial and not just peripheral. This is particularly so where the transferee *pendente lite* acquires the interest in the entire estate that forms the subject-matter of the dispute."

From the facts of this case, it is apparent that the plaintiffs were contesting the suit for declaration of their title at one point of time, but thereafter, they lost interest and entered into a compromise with the defendants. The petitioner purchased the suit property from the plaintiffs and their sale was based upon the fate of the suit and as per the contingent contract executed between the plaintiffs and defendants, the sale had to be given effect only if the instant suit is decided in favour of the plaintiffs. Accordingly, the petitioner was trying to defend his right and to establish the title of the plaintiff, but that cannot be done unless it is allowed to be added as a party/co-plaintiff.

Thus the view taken by the Supreme Court as above, transferee pendente lite can be added as a party especially when his interest is substantial and not just peripheral.

In view of the discussion made herein above it is clear that the interest of the petitioner was substantial and not just peripheral and accordingly its application ought to have been allowed and it be permitted to be added as party.

So far as the decision of the Supreme Court in the case of ***Hameeda Begum and anr. v. Champa Bai Jain and ors., 2009 (3) MPLJ 472*** relied upon by the learned counsel for the respondent No.6 that the principle of res judicata is also applicable in the interim stages of the suit, is concerned, this legal position is undisputed that the principle of res judicata is also applicable in the proceeding of same suit but at different stages. However, here in this case, it is not a contention raised by learned counsel for the petitioner that the principle of res judicata would not be applicable in a pending suit or at different stages, but it has been contended that in the changed cause of action, principle of res judicata will not be applicable and as per his submission, when the plaintiffs and defendants entered into a compromise and sought compromise decree, then the petitioner got a fresh cause of action for making request before the Court for its impleadment just to protect its interest or to prosecute the suit further as a co-plaintiff. Agreeing with the contention raised by learned counsel for the petitioner, I am not satisfied with the view taken by the Court below that the application submitted by the petitioner for impleadment as a co-plaintiff, is hit by *res judicata*.

The learned counsel for the respondent No.6 has relied upon the decision reported in ***Junior Telecom Officers Forum and others v. Union of India and others, AIR 1993 SC 787*** which is relating to Section 11 of CPC in which it is observed by the Supreme Court that the issue of res judicata applies when the issue has already been decided then the same cannot be reopened. But, here in this case and discussion made hereinabove it is observed that in the present case since new cause of action acquired by the petitioner and as such application can be filed again. Therefore, this judgment is not helpful for respondent No.6.

In the case of ***Ishwar Dutt v. Land Acquisition Collector and another, (2005) 7 SCC 190,*** the Supreme Court has considered the fact regarding application of principle of res judicata at different stages of the same proceeding but here in this case since new cause of action accrued in favour of the petitioner as alleged colluded compromise application was moved by the plaintiff and defendant, therefore, in view of the law laid down by the Supreme Court in case of ***Hameeda Begum*** (supra), subsequent application for the same purpose would not be hit by the principle of *res judicata*.

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**122. CIVIL PROCEDURE CODE, 1908 – Order 3 Rules 1 and 2**

**Power of attorney – Scope – Power of attorney holder cannot be permitted to depose on behalf of the Principal for the acts done by the Principal and therefore, evidence of power of attorney holder does not foreclose the right of Principal to enter into the witness box.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 3 नियम 1 एवं 2**

मुख्तारनामा – विस्तार – मुख्तारनामा धारक को मालिक द्वारा किये गये कृत्यों हेतु मालिक के स्थान पर अभिसाक्ष्य देने की अनुमति नहीं दी जा सकती और इसलिये मुख्तारनामा धारक की साक्ष्य मालिक के साक्षी के रूप में प्रस्तुत होने के अधिकार को प्रतिबंधित नहीं करती है।

**Narmada Prasad v. Bedilal Burman**

**Order dated 16.04.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Petition No. 1623 of 2017, reported in 2020 (1) MPLJ 217**

**Relevant extracts from the order:**

A plain glance of the judgments passed in ***Janki Vashdeo Bhojwani & anr. v. Indusind Bank Ltd. & ors., AIR 2005 SC 439*** and ***S. Kesari Hanuman Goud v. Anjum Jehan & ors., (2013) 12 SCC 46*** will lead to an inevitable conclusion that a power of attorney holder has a limited right to depose. He cannot be permitted to depose on behalf of the principal for the acts done by the principal.

As a necessary corollary, he cannot be cross-examined on those aspects in respect of the principal. Thus, right to adduce evidence by the power of attorney holder is available to a limited extent. By no stretch of imagination, he can be treated to be a representative of principal in all aspects and, therefore, it cannot be said that stand of defendant will deprive him from entering the witness-box. In other words, this is trite that no estoppel operates against the law. In view of Order 3 Rules 1 & 2 CPC and the law laid down by the Supreme Court in the cases of ***Janki Vashdeo Bhojwani*** (supra) and ***S. Kesari Hanuman Goud*** (supra), I am unable to hold that son/power of attorney holder had entered into the shoes of father and his statement can be treated to be statement of father/principal. To this extent, the order of Court below becomes vulnerable.

In the peculiar factual backdrop of this case, once it is held that defendant has a right to enter the witness-box and evidence of power of attorney holder will not foreclose his right, the question of abuse of process of Court does not arise. Resultantly, impugned order dated 28.11.2017 is set aside. The application dated 04.10.2017 (Annexure-P/6) is allowed. The Court below shall proceed from this stage in accordance with law.

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

**Amendment in plaint – If the relief claimed by the proposed amendment is already existing in plaint in substance in any other form, then amendment application should not be rejected inspite of some delay and despite filing affidavit under Order 18 Rule 4 CPC.**

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

वादपत्र में संशोधन – यदि प्रस्तावित संशोधन में चाहा गया अनुतोष पूर्व से ही वादपत्र में किसी अन्य रूप में सारतः विद्यमान है, तब संशोधन हेतु आवेदन कुछ विलंब होने के उपरांत भी एवं सिविल प्रक्रिया संहिता के आदेश 18 नियम 4 के अंतर्गत शपथपत्र प्रस्तुत करने के बावजूद भी अस्वीकार नहीं किया जाना चाहिए।

**Vallabh Electronics v. Branch Manager, United Bank of India**

**Order dated 21.06.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Petition No. 1396 of 2019, reported in 2020 (1) MPLJ 100**

**Relevant extracts from the order:**

The first question for consideration is that whether the relief claimed by the petitioner is time barred or not? Admittedly, the application for amendment has been filed after the period of three years from the date of filing of the suit. The plaintiff in his plaint had sought a declaration that the amount so debited by the respondents from the account of the petitioner is liable to be adjusted. Thus it cannot be said that the petitioner had already abandoned his claim of recovery of money. In fact the claim of money was already in substance in plaint though was not formally made. The petitioner in spite of recovery of an amount of ₹ 2,65,000/- has sought relief for adjustment of the amount, therefore, this Court is of the considered opinion that by seeking amendment the petitioner has not tried to set up a new case but the relief claimed by the proposed amendment was already in substance in another form.

So far as the delay in making the application for amendment of plaint is concerned, it is well established principle of law that mere delay cannot be a ground for rejection of the application unless and until a serious prejudice is caused to the defendants.

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

**(i) Question of limitation – The plaint cannot be rejected on the question of limitation under Order 7 Rule 11 of the Code because this question cannot be decided in summary manner.**

**(ii) Compromise decree – A party can challenge the compromise decree passed by the Lok Adalat in which he/she was not a party.**

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

(i) परिसीमा का प्रश्न –सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अंतर्गत वादपत्र परिसीमा के प्रश्न पर नामंजूर नहीं किया जा सकता क्योंकि यह प्रश्न संक्षिप्ततः निर्णीत नहीं किया जा सकता।

(ii) समझौता डिक्री – एक पक्षकार लोक अदालत द्वारा पारित उस समझौता डिक्री को चुनौती दे सकता है जिसमें वह पक्षकार नहीं था/नहीं थी।

**Bondar v. Mishribai and ors.**

**Order/Judgment dated 17.09.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Civil Revision No. 800 of 2018, reported in 2020 (1) MPLJ 571**

**Relevant extracts from the order:**

This Court has carefully gone through the entire record of the case. Undisputedly, the trial Court has dismissed the application preferred by the present applicant, who is defendant No.1 vide order dated 14.09.2018. In the present case in the civil suit there is an issue involved in respect of limitation and as the issue of limitation is a mixed question of law and fact the same cannot be decided summarily on application preferred under Order 7 Rule 11 of the Code of Civil Procedure.

In the considered opinion of this Court, as the trial Court is yet to decide whether the suit was within limitation or not by framing an issue during the trial, this Court is not commenting upon the issue of limitation at all. This Court has carefully gone through the order passed by the trial Court rejecting the application preferred under Order 7 Rule 11 of the Code of Civil Procedure. The decree in which the plaintiff / respondent No.1 was not a party is not binding upon her at all. The so called compromise has taken place before the Lok Adalat on 13.12.2014 meaning thereby much after the death of her husband who was defendant No.1 as the death has taken place on 30.05.2012 and therefore, the respondent No.1 was not at all required to file a writ petition under Article 226 / 227 of the Constitution of India as argued by the learned counsel.

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**125. CIVIL PROCEDURE CODE, 1908 – Order 9 Rule 4**
**LIMITATION ACT, 1963 – Section 5**
**Condonation of delay – In absence of any explanation of delay of 3 years and 2 months, the Court should not adopt a lenient view to condone unexplained delay in presenting application under Order 9 Rule 4 CPC.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 9 नियम 4**
**परिसीमा अधिनियम, 1963 – धारा 5**

विलंब के लिये माफी – 3 वर्ष और 2 माह के विलंब हेतु किसी भी स्पष्टीकरण के अभाव में न्यायालय को सिविल प्रक्रिया संहिता के आदेश 9 नियम 4 के अंतर्गत प्रस्तुत किये गये आवेदन में अस्पष्टीकृत विलंब की माफी पर उदारात्मक दृष्टिकोण नहीं अपनाना चाहिए।

**Rajeev Singh v. Ram Singh and ors.**
**Order dated 11.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 90 of 2015, reported in 2020 (1) MPLJ 134**

**Relevant extracts from the order:**

If the grounds raised by the applicant in his application under Section 5 of the Limitation Act are considered, then it is clear that the suit was dismissed under Order IX Rule 2 CPC on 01.02.2010 and the application under Order IX Rule 4 CPC was filed on 30.04.2013. In the application filed under Section 5 of Limitation Act the applicant has merely mentioned that he came to know about the dismissal of the suit on 13.04.2013, i.e. after expiry of more than three years and two months. Except the above explanation, no other explanation has been given as to why the applicant was keeping silent for a period of three years and two months. From the impugned order, it appears that a submission was made by the counsel for the applicant that the earlier counsel, namely, Shri Deepak Sharma had assured the applicant that he should not unnecessarily bother about the suit, as his presence on each and every date is not necessary and whenever the presence of the applicant is required, he would inform him, however, no information was given by his earlier counsel. It is clear from the application filed under Section 5 of the Limitation Act that no such averment has been made. The application under Section 5 of the Limitation Act was supported by an affidavit of the applicant, whereas the submissions which were made by the counsel for the applicant before the trial court were *de hors* the pleadings of the applicant. When the applicant in his application under Section 5 of the Limitation Act had not pleaded that he was assured by his earlier counsel that his presence is not required and he will inform as and when required, then any submission made by the counsel for the applicant during the course of arguments cannot be treated as the statement of the applicant, but at the most it can be treated as an afterthought statement made by the counsel himself. Under the Bar Council of India Rules, the counsel has to act on the instructions of his party. Any statement made by the counsel without there being any factual foundation, cannot be said to be a statement on the instructions of the party and if the counsel wants to substitute his own submission, then it would amount to travelling beyond the authority given by his party by executing a Vakalatnama. Therefore, the verbal submissions made by the counsel for the applicant before the trial court to the effect that the applicant was instructed by his earlier counsel that he would be informed as and when required, cannot be accepted. Thus, it is clear that there is absolutely no ground in the application filed under Section 5 of the Limitation Act explaining the delay of three years and two months. When no explanation has been given by the applicant, then the Court cannot substitute its reasoning under the garb of lenient view. First of all it is for the party to raise a contention and only then, the Court would come in picture to consider that contention. When there is no contention at all, then there is no question of any interpretation.

Under these circumstances, this Court is of the considered opinion that even after adopting a lenient view, no favour can be shown to the applicant, who has failed to make out any case for condonation of delay under Section 5 of the Limitation Act.

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**126. CIVIL PROCEDURE CODE, 1908 – Order 14 Rule 5**

**Framing of issues – If the question of possession is relevant and materially disputed fact then issue related to maintainability of the suit in absence of consequential relief of possession must be framed by the trial Court.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 14 नियम 5**

विवाद्यकों का निर्धारण – यदि कब्जे का प्रश्न सुसंगत तथा सारभूत विवादित तथ्य है तब कब्जे के पारिणामिक अनुतोष के अभाव में वाद की प्रचलनशीलता संबंधी विवाद्यक विचारण न्यायालय द्वारा अवश्य ही विरचित किया जाना चाहिए।

**Salim Khan alias Pappu Khan and anr. v. Shahjad Khan and anr.**
**Order dated 09.04.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Writ Petition No. 8177 of 2013, reported in 2020 (1) MPLJ 355**

**Relevant extracts from the order:**

Where the question of possession is in dispute, then this Court is of the considered opinion that the trial Court must frame an issue with regard to the maintainability of the suit in absence of consequential relief of possession.

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**127. CIVIL PROCEDURE CODE, 1908 – Order 22 Rules 5 and 12**

**Legal representatives in execution case – The Executing Court has the jurisdiction to determine who is a legal heir under the provision of Order 22 Rule 5 of the Code – Limitation to bring legal heirs on record which applies to suits, does not apply to cases relating to death of the decree-holder or the judgment-debtor in execution proceedings.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 22 नियम 5 एवं 12**

**निष्पादन प्रकरण में विधिक प्रतिनिधि – निष्पादन न्यायालय को सिविल प्रक्रिया संहिता के आदेश 22 नियम 5 के प्रावधानों के अंतर्गत यह अवधारित करने की क्षेत्राधिकारिता है कि कौन वैध वारिस है – विधिक प्रतिनिधि को अभिलेख पर लेने की परिसीमा, जो कि वादों के लिये लागू होती है, निष्पादन कार्यवाहियों में डिक्रीधारी या निर्णीतऋणी की मृत्यु पर लागू नहीं होती है।**

**Varadarajan v. Kanakavalli and ors.**

**Judgment dated 22.01.2020 passed by the Supreme Court in Civil Appeal No. 5673 of 2009, reported in AIR 2020 SC 740**

**Relevant extracts from the judgment:**

We find that the order of the High Court is not sustainable in law.

The appellant claims to be the legal representative of Umadevi on the basis of the Will executed by her. He has produced an attesting witness and the scribe of the Will. The witnesses have deposed the execution of the Will by Umadevi in favour of the appellant who is the son of her sister. No one else has come forward to seek execution of decree as the legal representative of the deceased decree-holder. It is Umadevi who has filed the execution petition but after her death, the appellant has filed an application to continue with the execution. In the absence of any rival claimant claiming to be the legal representative of the deceased decree-holder, the High Court was not justified in setting aside the order of the Executing Court, when in terms of Order XXII Rule 5 of the Code, the jurisdiction to determine who is a legal heir is summary in nature.

We may state that Order XXII of the Code is applicable to the pending proceedings in a suit. But the conflicting claims of legal representatives can be decided in execution proceedings in view of the principles of Rule 5 of Order XXII. This Court in a judgment reported as ***V. Uthirapathi v. Ashrab & ors., (1998) 3 SCC 148*** held that the normal principle arising in a suit — before the decree is passed — that the legal representatives are to be brought on record within a particular period is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings. This Court held as under:-

> "11. Order 22 Rule 12 of the Code of Civil Procedure reads as follows:

"***Order 22 Rule 12: Application of order to proceedings*.**— Nothing in Rules 3, 4 and 8 shall apply to proceedisngs in execution of a decree or order."

12. In other words, the normal principle arising in a suit — before the decree is passed – that the legal representatives are to be brought on record within a particular period and if not, the suit could abate, – is not applicable to cases of death of the decree-holder or the judgment-debtor in execution proceedings.

13. In ***Venkatachalam Chetti v. Ramaswami Servai, AIR 1932 Mad 73 (FB)***, a Full Bench of the Madras High Court has held that this rule enacts that the penalty of abatement shall not attach to execution proceedings. Mulla's Commentary on CPC [(Vol. 3) p. 2085 (15th Edn., 1997)] refers to a large number of judgments of the High Courts and says:

> "Rule 12 engrafts an exemption which provides that where a party to an execution proceedings dies during its pendency, provisions as to abatement do not apply. The Rule is, therefore, for the benefit of the decree-holder, for his heirs need not take steps for substitution under Rule 2 but may apply immediately or at any time while the proceeding is pending, to carry on the proceeding or they may file a fresh execution application."

14. In our opinion, the above statement of law in Mulla's Commentary on CPC, correctly represents the legal position relating to the procedure to be adopted by the parties in execution proceedings and as to the powers of the civil court."

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**128. CIVIL PROCEDURE CODE, 1908 – Order 32 Rule 5**

**Appointment of guardian – Mere absence of formal order of appointment of next friend or guardian *ad litem* by the Court does not render the judgment and decree as null and void when the interest of the person of unsound mind was well protected by other defendants and such interest was not prejudical at all.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 32 नियम 5**

संरक्षक की नियुक्ति – जब विकृतचित्त व्यक्ति का हित अन्य प्रतिवादियों द्वारा अच्छी तरह संरक्षित किया गया है और इस तरह हित पर प्रतिकूल प्रभाव डालने वाला नहीं था तब न्यायालय द्वारा वाद मित्र या वादार्थ संरक्षक की नियुक्ति के औपचारिक आदेश का अभाव मात्र, निर्णय या डिक्री को अकृत या शून्य नहीं बनाता है।

## Kaluram v. Sitaram and ors.

**Order dated 27.02.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Petition No. 5864 of 2018, reported in 2020 (1) MPLJ 411**

**Relevant extracts from the order:**

Assuming there is a formal defect or irregularity in the proceedings for appointment of next friend or *guardian ad litem*, unless; it is shown to the satisfaction of the Court that interest of such person is seriously prejudiced or deprived of some good and valid defence, it is not open to declare the judgment and decree bad in law [***Ram Rekha Singh v. Ganga Prasad Mukharaddhwaj, AIR 1926 All 545 (FB)***, referred to].

The instant suit for partition and possession is between the plaintiff who was real brother of Narayan Rathod. The original plaintiff had filed the suit against the sons, wife, daughter-in-law of late son and minor grand daughter of late Narayan Rathod with the claim of half share in the suit property jointly purchased by him and late Narayan Rathod. Admittedly, as well reflected from paragraph 3 of the judgment dated 07.05.2007 (supra), the defendant No.1 all along looked after the defendant No.8 and filed the written statement on behalf of defendant No.8 and on his behalf protecting the common interest. He contested the suit with the plea that the plaintiff has no right to the suit property or claim partition. It was pleaded that the suit property (house and agricultural land) though jointly purchased but during the life time of late Narayan Rathod, partition had taken place between the plaintiff, Sitraram and late Narayan Rathod in the year 1971. The suit property since has fallen to the share of late Narayan Rathod and after his death, by way of natural succession fallen to the share of the defendants who are in possession having succeeded to the rights, interest and tittle to the suit property. It was also denied that the plaintiff at any point of time was in possession of the suit property. The suit property has been developed by the defendants by spending huge money, etc.

As such, by no stretch of imagination, any prejudice to the rights and interest of defendant No.8 can be inferred with or understood or adverse to the interest of defendant No.1.

Upon reading of the pleadings and the judgment rendered on 07.05.2007 (supra), this Court is of the view that no prejudice was caused to the interest of defendant No.8 since the defendant No.1 has acted on behalf of the defendant No.8 and on his behalf effectively with the common rights and interest. The preliminary decree for partition attained finality with the judgment passed in F.A.No.411/2007 on 07.03.2014 by this Court. There was no further challenge to the same. Under the circumstances, mere absence of formal order of appointment of next friend or *guardian ad litem* by the Court shall not render the judgment and decree as *null* and *void*. As discussed above, the judgment rendered by the Hon'ble Supreme Court in the case of ***Ram Chandra Arya v. Man***

***Singh and another, AIR 1968 SC 954*** is clearly distinguishable on facts and is of no assistance to the petitioner.

Defendant No.8, Kaluram died on 14.08.2018 during pendency of the proceedings. Now at the stage of proceedings under Order 20 Rule 18 read with section 54 CPC for separation of shares under the partition deed, the application filed by Ahilya Bani styling herself to be sister of Kaluram and seeking initiation of review proceedings under section 47 CPC is rightly held to be misconceived and misdirected, as the said provision is referable to the execution proceedings. Likewise, the question of appointment of next friend or guardian ad litem under Order 32 Rule 5 CPC is equally misconceived. The application under Order 22 Rule 4 CPC is also rightly held to be of no consequence in the teeth of the fact that defendant No.l – the real brother; a Class I heir looked after the defendant No.8 all along has filed the written statement on behalf of the defendant No.8 and also on his behalf having effectively represented the defendant No.8 with common interest as well as contested the suit.

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**129. CIVIL PROCEDURE CODE, 1908 – Order 39 Rule 2-A**

**Application for breach of injunction – Maintainability – An application under Order 39 Rule 2-A is maintainable only during pendency of civil suit, in case the interim order passed by the court or undertaking given by the party is violated.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 39 नियम 2–क**

व्यादेश के उल्लंघन के संबंध में आवेदन – पोषणीयता – यदि न्यायालय द्वारा पारित अंतरिम आदेश अथवा पक्षकार द्वारा दिए गए परिवचन का भंग किया जाता है तो आदेश 39 नियम 2–क के अधीन आवेदन उक्त प्रकरण के लंबित रहने के दौरान ही पोषणीय है।

**Kanhaiyalal and anr. v. Rameshwar s/o Hardev and ors.**

**Order dated 22.08.2019 passed by the High Court of Madhya Pradesh Bench at Indore in Civil Revision No. 443 of 2018, reported in AIR 2020 MP 7**

**Relevant extracts from the order:**

In the present case, a civil suit has been filed by the non-applicant No.1 for declaration of title and permanent injunction. Along with the said suit, the non-applicant No.1 has also filed an application under Order 39 Rule 2-A of the CPC for temporary injunction. The said application was allowed by the trial court vide order dated 29.10.2013 and temporary injunction has been passed in favour of the non-applicant No.1 and the applicants were restrained from making any interference in the possession of the suit property. Thereafter, vide order dated 30.6.2014 the suit was decreed by the trial Court. After final disposal of the said civil suit, on 8.9.2014 an application was filed by the non-applicant No.1 under

Order 39 Rule 2-A of the CPC complaining the breach of injunction on 5.2.2014. Thus, admittedly, the application under Order 39 Rule 2-A of the CPC was filed by the non-applicant No.1 after final disposal of the civil suit. The Apex Court in the case of ***Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307***, has held as under:

> "An application under Order 39 Rule 2-A CPC lies only where disobedience/ breach of an injunction granted or order complained of was one that is granted by the court under Order 39 Rules 1 and 2 CPC, which is naturally to ensure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order and the court cannot entertain an application under Order 39 Rule 2-A. An application under Order 39 Rule 2-A is maintainable only during the pendency of the suit in case the interim order passed by the court or undertaking given by the party is violated."

Thus, as per the said judgment, an application under Order 39 Rule 2-A is maintainable only during the pendency of the civil suit in case the interim order passed by the court or undertaking given by the party is violated.

In the present case, the learned Additional District Judge has allowed the appeal on the ground that on the date when violation of the injunction was alleged, the civil suit was pending, which cannot be accepted in the light of the judgment passed by the Apex Court in the case of ***Kanwar Singh Saini*** (supra).

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**130. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 22**
**Cross-objection – A defendant has no right to file cross-objection in an appeal filed by the co-defendant against the decree passed in favour of the plaintiffs.**

**सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 22**

प्रत्याक्षेप – एक प्रतिवादी को सहप्रतिवादी द्वारा वादी के पक्ष में पारित डिक्री के विरूद्ध दायर अपील में, प्रत्याक्षेप दायर करने का अधिकार नहीं है।

**Vidyabai and ors. v. Laxmi Rajoriya and ors.**
**Order/Judgment dated 19.08.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Second Appeal No. 38 of 2018, reported in 2020 (1) MPLJ 156**

**Relevant extracts from the judgment:**

From the plain reading of Order 41 Rule 22 CPC, it is clear that in order to maintain the cross-objection, a party may not only support the decree, but may also state that the findings against him in respect of any issue ought to have been in his favour. In the present case, the entire decree was against the appellants. The decree was not in their favour and they had not challenged any findings recorded by the trial court, but in fact the entire decree was challenged by filing the cross-objection in an appeal filed by co-defendant/respondent no.7.

Under these circumstances, this Court is of the considered opinion that once the suit was decreed against the appellants and their counter-claim was rejected, then they should have filed two separate appeals under Section 96 of CPC and they could not have filed a cross-objection in an appeal filed by the co-defendant against the decree passed in favour of the plaintiffs. The cross-objection can be filed by a successful party challenging some of the findings which according to the said party should have been answered in his favour, but the cross-objection cannot be filed challenging the entire decree passed against the party filing the cross-objection. Under these circumstances, this Court is of the considered opinion that the cross-objection filed by the appellants before the first appellate court was not maintainable.

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

**Remand – When each and every oral and documentary evidence is appreciated by the Trial Court and every issue was decided on the basis of available evidence by the Trial Court then it is not proper to remand the whole case by the Appellate Court for retrial and in such cases, Appellate Court should decide the appeal in accordance with law on its own merit.**

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

प्रतिप्रेषण –जब विचारण न्यायालय द्वारा प्रत्येक मौखिक एवं दस्तावेजी साक्ष्य का मूल्यांकन कर लिया गया हो और उपलब्ध साक्ष्य के आधार पर प्रत्येक वादप्रश्न निर्णीत कर दिये गये हों, तब अपीलीय न्यायालय द्वारा संपूर्ण मामले को पुनः विचारण हेतु प्रतिप्रेषित करना उचित नहीं है तथा ऐसे मामलों में अपीलीय न्यायालय को अपील विधितः मामले के गुणागुण पर निर्णीत करना चाहिए।

**Sudesh Kohli v. Chandarani Mishra and anr.**

**Order dated 24.06.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 904 of 2019, reported in 2020 (1) MPLJ 377**

**Relevant extracts from the order:**

On a bare perusal of the order of the First Appellate Court it is gathered that nowhere it is stated by the First Appellate Court that respondent No.1 herein who was appellant before the First Appellate Court has at any point of time raised issue before the First Appellate Court that the trial Court has left any oral and documentary evidence untouched or not allowed to be taken on record, otherwise, the reasoning would have been different. It was also not a ground that any issue left undecided but from the order of First Appellate Court, it reflects that the finding given by the First Appellate Court is wrong. However, the First Appellate Court in paragraph 12 of its judgment has observed that from document Ex.P-8, which is a possession letter, reveals that the plaintiff was given the possession of plot No.114-A but has not given any specific reason as to why, the finding of the trial Court, in this respect made in paragraph 22, is not proper though arrived after appreciating the statement of the witnesses adduced by the plaintiff and also taking note of the documents including the document Ex.P-8 and thereafter, the First Appellate Court, in paragraph 13 of its judgment has observed that the trial Court has not resolved regarding dissimilarity of plot No.114-A and 114 whereas, the trial Court very categorically given finding in this regard holding that the plaintiff failed to prove that plot No.114-A existed in the sanctioned layout plan of Society from which, such plot has been purchased. The First Appellate Court has also observed that the finding of the trial Court is based upon the presumption and assumption but has not specified as to which finding is based upon the presumption. Accordingly, in my opinion, the First Appellate Court has acted beyond the scope of the provision which empowers the Appellate Court to remand the matter wholesale for retrial and without appreciating the jurisdiction conferred on it under Rule 23 and 23-A of Order 41 of the Code of Civil Procedure, instead of deciding the appeal on merits, directed the trial Court for conducting the fresh trial. The order passed by the First Appellate Court, therefore is not sustainable in the eye of law considering the scope of remand as laid down by the Supreme Court, this Court and other High Court as well discussed in ***P. Purushottam Reddy and anr v. M/s Pratap Steel Ltd., 2002 AIR SCW 417, A.A. Prakasan v. Anupama and ors., (2017) 11 SCC 392, Municipal Corporation, Hyderabad v. Sunder Singh, (2008) 8 SCC 485, Shri Deo Raghunathji Bada Mandir, Bina v. Prahlad Singh and anr., 2003 (4) MPLJ Note 27, Ashwin Kumar K. Patel v. Upendra J. Patel & ors., 1999 AIR SCW 780, Murarilal v. Ram Kumar Ojha and anr., 2015 (1) MPLJ 243, Pushpadevi v. Harvilas, 2013 (4) MPLJ 135, Smt. Umrao Bai and ors. v. Sardarilal Khatri, AIR 1997 MP 62, Nilamani Dibya v. Bishwanath Mohapatra, AIR 1987 Orissa 227*** and ***Middi Ramakrishna Rao v. Middi Rangayya and ors., AIR 1954 Madras 783.***

In view of the law laid down by the Hon'ble Supreme Court as also by the different High Courts as mentioned hereinabove, I am of the opinion that it is a fit case in which, it can be held that the First Appellate Court has not exercised its discretion as conferred under the provisions of Order 41 Rule 23 or 23-A of the Code of Civil Procedure. The First Appellate Court instead of remitting the matter could have decided the same on merits. However, the respondents have also not contended that since the Society did not come forward to file any written statement nor entered into the witness-box, adverse inference can be drawn but failed to demonstrate as to against whom adverse inference would be drawn.

Accordingly, the cases relied by the respondent in any manner are not helpful for the respondent/plaintiff and infact are not applicable in the present case as has been discussed hereinabove. Accordingly, I allow the appeal, set aside the impugned judgment and decree passed by the First Appellate Court in RCA No.07- A/2014 and remit the matter to the First Appellate Court i.e. Third Additional District Judge, Jabalpur for deciding the appeal afresh on its own merits by giving opportunity of hearing to the parties concerned. The parties shall appear before the First Appellate Court on 05.08.2019 and the Appellate Court is further directed to decide the appeal within a further period of three months thereafter. The Appellate Court will decide the appeal in accordance with law on its own merits without being influenced by any of the observations made by this Court in relation to the merits of the case of the parties.

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**132. CONSUMER PROTECTION ACT, 1986**

**Medical negligence – A child reduced to a vegetative state after surgery because of medical negligence must be adequately compensated and Forum should take into account the requirement of nursing care, medical help and other attendant requirements of the child for the future, while awarding compensation.**

**उपभोक्ता संरक्षण अधिनियम, 1986**

चिकित्सीय उपेक्षा – चिकित्सीय उपेक्षा के कारण शल्य क्रिया के बाद शारीरिक व मानसिक रूप से पूर्णतः निष्क्रिय हो चुके बालक को पर्याप्त प्रतिकर दिया जाना चाहिए एवं प्रतिकर अधिनिर्णीत करते हुए अधिकरण को भविष्य में उसकी देखभाल, चिकित्सीय सहायता और बच्चे की अन्य परिचर आवश्यकताओं की जरूरतों को ध्यान में रखना चाहिए।

**Shilaben Ashwinkumar Rana v. Bhavin K. Shah and anr.**
**Judgment dated 04.02.2019 passed by the Supreme Court in Civil Appeal No. 1442 of 2019, reported in 2019 ACJ 3020 (SC)**

**Relevant extracts from the judgment:**

While some element of redress has been provided to the appellant by the enhancement of compensation by the NCDRC, the enhancement, in our view, does not take into account the requirements of nursing care, medical help and other attendant requirements of the child for the future. Taking an overall view of the matter, we are of the view that the ends of justice would be served by enhancing the compensation, which has been awarded by the NCDRC, by an amount of ₹ 7,00,000 (Rupees Seven Lakh), which shall carry interest at the rate which has been awarded by the NCDRC.

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**133. CONTEMPT OF COURTS ACT, 1971 – Sections 2(c) and 12**

**Criminal Contempt – Contemnor during lunch hour, without taking permission from CJM, entered into his chamber and started hurling filthy abuses, raised his hand to beat and also threatened him of dire consequences – Such acts amount to criminal contempt of**

**Court – Concerned advocate was not authorised to malign and scandalize the Subordinate Court – The action has the effect of weakening the confidence of the people in Courts – Considering the nature of his conduct, Apex Court while upholding the conviction for criminal contempt, modified the sentence.**

**न्यायालय अवमान अधिनियम, 1971 – धाराएं 2(ग) एवं 12**

आपराधिक अवमान – अवमानकर्ता ने भोजन अवकाश के समय मुख्य न्यायिक मजिस्ट्रेट की अनुमति के बिना उनके विश्राम कक्ष में प्रवेश किया और बहुत ही खराब अर्थहीन संवाद प्रारंभ किया, प्रहार करने के लिये हाथ उठाया और उन्हें खतरनाक परिणाम की धमकी भी दिया – ऐसे कृत्य न्यायालय के आपराधिक अवमान की श्रेणी में आते हैं – संबंधित अधिवक्ता को अधीनस्थ न्यायालय की निन्दा करने एवं उस पर दोषारोपण करने का कोई अधिकार नहीं था – इस कृत्य का प्रभाव न्यायालयों में जनता के विश्वास को कमजोर करने वाला है – उसके आचरण की प्रकृति पर विचार करते हुए शीर्ष न्यायालय ने आपराधिक अवमान हेतु दोषसिद्धि को स्थिर रखते हुए दण्डादेश उपांतरित किया।

**Rakesh Tiwari, Advocate v. Alok Pandey, C.J.M.**

**Judgment dated 10.05.2019 passed by the Supreme Court in Criminal Appeal No. 1223 of 2015, reported in 2019 (4) Crimes 365 (SC)**

**Relevant extracts from the judgment:**

In the instant case the advocate has acted contrary to the obligations. He has set a bad example before others while destroying the dignity of the Court and the Judge. The action has the effect of weakening the confidence of the people in courts. The judiciary is one of the main pillars of democracy and is essential to peaceful and orderly development of society. The Judge has to deliver justice in a fearless and impartial manner. He cannot be intimidated in any manner or insulted by hurling abuses. Judges are not fearful saints. They have to be fearless preachers so as to preserve the independence of the judiciary which is absolutely necessary for survival of democracy.

The act stated amounts to criminal contempt of court. The High Court has noted that the concerned advocate did not apologise and has maligned and scandalised the Subordinate Court. He has made bare denial and has not shown any remorse for his misconduct. Considering the gravamen of the allegations the High Court has imposed the imprisonment of SI for 6 months with fine of ₹ 2000/- and in default to pay fine or to undergo SI for 15 days. He has been restrained from entering the judgeship of Allahabad for a period of 6 months that was to commence from 15.07.2015 and he had been kept under watch for a period of 2 years. Considering the nature of misconduct, while upholding the conviction for criminal contempt, we modify the sentence in the following manner.

1. The sentence of imprisonment of 6 months shall remain suspended for further period of 3 years subject to his maintaining good and proper conduct with a condition that he shall not enter the premises of the District Judgeship, Allahabad for a further period of three years in addition to what he has undergone already. The period shall commence from 01.07.2019 to 30.06.2022. In case of non-violation of aforesaid condition the sentence after three years shall be remitted.
2. However, sentence of imprisonment may be activated by this Court in case it is found that there is breach of any condition made by the concerned advocate during the period of three years.
3. He shall deposit fine of ₹ 2000/- as imposed by the High Court. In case of failure to deposit fine he shall not enter the premises of District Judgeship for a period of three months.

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**134. CRIMINAL PROCEDURE CODE, 1973 – Sections 2(h), 156(3) and 173(8)**

**(i) Words 'investigation', 'enquiry' and 'trial', meaning of – Investigation is conducted by police leading to a charge-sheet – It can also be ordered by Magistrate in 'complaint' cases.**

**(ii) Further investigation – Power of Police – Police is empowered to continue investigation even after filing of police report, till commencement of trial.**

**(iii) Wide powers to Magistrate – Satisfaction of a proper investigation – Includes ordering of further investigation after receipt of a report u/s 173(2) till commencement of the trial.**

**(iv) When a Magistrate can order such an investigation during entire process, he may also order further investigation u/s 173 (8). (*Devrapalli Lakshminarayna Reddy v. Narayana Reddy, (1976) 3 SCC 252 distinguished*)**

**दण्ड प्रक्रिया संहिता, 1973 – धाराएं 2 (ज), 156 (3) एवं 173 (8)**

**(i)** शब्द 'अन्वेषण', 'जांच' और 'विचारण' का तात्पर्य – पुलिस द्वारा किया गया अन्वेषण अभियोग पत्र की ओर ले जाता है – 'परिवाद' मामलों में मजिस्ट्रेट द्वारा भी यह आदेशित किया जा सकता है।

**(ii)** आगे अन्वेषण – पुलिस की शक्तियां – पुलिस रिपोर्ट दाखिल करने के पश्चात् भी जब तक विचारण प्रारंभ नहीं होता अन्वेषण जारी रखने के लिए पुलिस सशक्त है।

**(iii)** मजिस्ट्रेट की विस्तृत शक्ति – उचित अन्वेषण की संतुष्टि – धारा 173 (2) के अन्तर्गत प्रतिवेदन की प्राप्ति के पश्चात् विचारण प्रारंभ होने तक आगे अन्वेषण का आदेश करना भी सम्मिलित है।

(iv) प्रक्रिया के दौरान जब मजिस्ट्रेट ऐसा अन्वेषण का आदेश कर सकता है तब वह धारा 173 (8) के अधीन आगे अन्वेषण का आदेश भी कर सकता है। (*देवरापल्ली लक्ष्मीनारायण रेड्डी वि. नारायण रेड्डी, (1976) 3 एस.सी.सी. 252 विभेदित*)

**Vinubhai Haribhai Malaviya and ors. v. State of Gujarat and anr.**
**Judgment dated 16.10.2019 passed by the Supreme Court in Criminal Appeal No. 478 of 2017, reported in 2019 (4) Crimes 267 (SC) (Three Judge Bench)**

**Relevant extracts from the judgment:**

The statutory scheme contained in the CrPC puts "inquiry" and "trial" in water-tight compartments, as the very definition of "inquiry" demonstrates. "Investigation" is for the purpose of collecting evidence by a police officer, and otherwise by any person authorised by a Magistrate in this behalf, and also pertains to a stage before the trial commences. Investigation which ultimately leads to a police report under the CrPC is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in "complaint"cases.

In paragraph 39 of ***Hardeep Singh v. State of Panjab & ors., (2014) 3 SCC 92,*** referred to the "inquiry"stage of a criminal case as follows:

> "39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial."

A clear distinction between "inquiry" and "trial" was thereafter set out in paragraph 54 as follows:

> "54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting

> agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."

With the introduction of Section 173(8) in the CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173.

It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise-Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the CrPC would, as per the definition of "investigation"under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.

Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference – that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156 (3) states that a Magistrate empowered under Section 190 may order "such an investigation",such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h).

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**135. CRIMINAL PROCEDURE CODE, 1973 – Sections 125 (1), 125 (5), 127 (2) and 362**

**Revival of claim – In the case of non-compliance of the settlement by the husband in a maintenance case, wife's claim of maintenance can be revived by the Court and settlement order may be set aside and this does not amount to alteration of judgment/order.**

**दण्ड प्रक्रिया संहिता, 1973 – धाराएं 125 (1), 125 (5), 127 (2) एवं 362**

दावे का पुनःप्रवर्तन – भरण पोषण के मामले में पति द्वारा व्यवस्थापन का अनुपालन न करने की दशा में पत्नी के भरण पोषण के दावे का न्यायालय द्वारा पुनःप्रवर्तन किया जा सकता है तथा व्यवस्थापन का आदेश अपास्त किया जा सकता है और ऐसा करना निर्णय/आदेश में परिवर्तन करने की कोटि में नहीं आता है।

**Sanjeev Kapoor v. Chandana Kapoor and ors.**

**Judgment dated 19.02.2020 passed by the Supreme Court in Criminal Appeal No. 286 of 2020, reported in AIR 2020 SC 1064**

**Relevant extracts from the judgment:**

Section 127 Cr.P.C. discloses the legislative intendment where the Magistrate is empowered to alter an order passed under Section 125 Cr.P.C. Sub-Section (2) of Section 127 Cr.P.C. also empowers the Magistrate to cancel or vary an order under Section 125. The Legislative Scheme as delineated by Sections 125 and 127 Cr.P.C. as noted above clearly enumerated the circumstances and incidents provided in the Code of Criminal Procedure where Court passing a judgment or final order disposing the case can alter or review the same. The embargo as contained in section 362 is, thus, clearly relaxed in proceeding under section 125 Cr.P.C. as indicated above.

We, thus, are of the considered opinion that the order passed in present case by Family Court reviving the maintenance application of the wife under Section 125 Cr.P.C. by setting aside order dated 06.05.2017 passed on settlement is not hit by the embargo contained in Section 362 Cr.P.C. The submission of learned senior counsel for the appellant that Section 362 Cr.P.C. prohibit the Magistrate to pass the order dated 05.01.2019 cannot be accepted.

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**136. CRIMINAL PROCEDURE CODE, 1973 – Section 154**
**EVIDENCE ACT, 1872 – Sections 9 and 45**
**INDIAN PENAL CODE, 1860 – Sections 302 and 394**
**APPRECIATION OF EVIDENCE:**

**(i) Cause of death – Determination of – Opinion of medical expert – Gnawed bones were recovered at the instance of accused – Medical expert unable to assess cause of death – Prosecution story that death was caused by sharp weapon and gunshot – Post mortem report reveals a severe injury on skull caused by**

blunt object – Held, injury caused by sharp weapon is not established.

**(ii)** **FIR – Delay in lodging – Effect of – Factum of death of deceased was known to the informants – Yet, only missing person report was lodged by brother of deceased – FIR was registered three days thereafter, but not u/s 302 IPC – Held, whole prosecution story becomes doubtful.**

**(iii)** **Stolen property – Loot of tractor belonging to deceased was attributed as motive of crime by prosecution – Tractor was recovered and handed over to brother of deceased by police – Neither engine number nor chassis number was produced in Court – Tractor was registered in name of another person who allegedly sold it to deceased – No transfer of ownership was made – Held, loot of tractor by accused becomes doubtful.**

दण्ड प्रक्रिया संहिता, 1973 – धारा 154

साक्ष्य अधिनियम, 1872 – धाराएं 9 एवं 45

भारतीय दण्ड संहिता, 1860 – धाराएं 302 एवं 394

साक्ष्य का मूल्यांकनः

(i) मृत्यु का कारण – निर्धारण – चिकित्सीय विशेषज्ञ का अभिमत – अभियुक्त के प्रकटन पर जानवरों द्वारा खाई गई हड्डियां बरामद की गई – मृत्यु के कारण का आकलन करने में चिकित्सीय विशेषज्ञ असमर्थ रहे – अभियोजन कथानक कि मृत्यु धारदार हथियार और बंदूक की गोली से कारित हुई थी – शव परीक्षण प्रतिवेदन में कपाल में भोथरी वस्तु से गंभीर चोट का प्रकटन – अभिनिर्धारित, धारदार हथियार से चोट आना स्थापित नहीं है।

(ii) प्रथम सूचना रिपोर्ट – लेख कराने में विलंब – प्रभाव – मृतक की मृत्यु का तथ्य सूचनाकर्ताओं को पता था – इसके बावजूद मृतक के भाई द्वारा मात्र गुमशुदा व्यक्ति की रिपोर्ट दर्ज कराई गई – इसके तीन दिन बाद प्रथम सूचना रिपोर्ट दर्ज की गई, परन्तु भा.द.सं. की धारा 302 के अंतर्गत नहीं – अभिनिर्धारित, पूरा अभियोजन कथानक संदिग्ध हो जाता है।

(iii) चुराई हुई संपत्ति – अभियोजन द्वारा मृतक के ट्रैक्टर की लूट को अपराध के कारक के रूप में प्रस्तुत किया गया – ट्रैक्टर बरामद किया गया और पुलिस द्वारा मृतक के भाई को सौंप दिया गया – न्यायालय में न तो इंजन नंबर और न ही चेसिस नंबर पेश किया गया – ट्रैक्टर किसी अन्य व्यक्ति के नाम पर पंजीकृत था जिसने कथित रूप से इसे मृतक को विक्रय किया था – स्वामित्व का कोई हस्तांतरण नहीं किया गया था – अभिनिर्धारित, अभियुक्त द्वारा ट्रैक्टर की लूट संदिग्ध हो जाती है।

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

**Judgment dated 24.7.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 573 of 2000, reported in 2020 CriLJ 462 (DB)**

**Relevant extracts from the judgment:**

In Ex.P/26 itself, it is mentioned that almost all the bones were gnawed i.e. they were accessible to animals. As per Collins Advanced Learner's English Dictionary, New Edition, meaning of word "gnaw" is "if people or animals bite it repeatedly". In view of such meaning ascribed to the word 'gnaw', and that there is a finding that almost all the bones were gnawed, recovery of bones from a particular place becomes suspect. In this very report, it is mentioned that bones belong to human beings and age and sex cannot be determined. Thereafter, there are reports about material 'D' and material 'E' which leads to a doubt as to whether there were bodies of more than two persons, two persons or less number of persons.

Another factor which has not been explained is that death has been shown to be caused by an injury of axe on the head and gunshot, but medical report Ex.P/26 relating to Guddu i.e. material E makes a mention of mark of injury on the left temporal bone about 1" above the external acoustic meatus by the blunt weapon, but it clearly makes a mention that cause of death and the methodology cannot be assessed. No injury has been shown on the skull to corroborate *Naksha Panchayatnama*.

Thus, it is apparent from report Ex.P/26 that cause of death could not be ascertained by Dr. Khare (PW-13), and therefore, finding recorded by learned Additional Sessions Judge in para 25 that injuries caused by sharp weapon is conclusively proved from Ex.P/26 is contrary to the facts on record and the ultimate finding as to cause of death recorded by Dr. Khare. In fact, there is mention of injury to the right and left halves of mandible by sharp weapon, but it has not been mentioned that how such finding has been recorded, specifically when the lower part of the mandible was absent.

x x x

Another link which has not been carefully examined by the learned Additional Sessions Judge is the evidence of Laxmibai (PW-3) who has admitted in para 12 of her cross-examination that the day Agra police had visited, on the same day skeletons of her husband and Guddu along with clothes were recovered by them from Kanipura close to Gohad. This admission of Laxmibai makes the whole prosecution story and recovery on 22.10.87 vide Ex.P/6, Ex.P/7, Ex.P/8, Ex.P/9, Ex.P/10 and Naksha Pachayatnama Ex.P/5 and Ex.P/11 doubtful as none of them have been prepared by Agra police but have been prepared by Mahoganj police leaving a void in the chain of circumstances. Another missing link in the chain of circumstances is lodging of missing person report by Ramesh (PW-2) after admitting this fact that Agra police had visited him and his sister-in-law Laxmibai on 13.10.87 along with Indel and informed him about confession of Indel that he has killed his brother and driver and thrown the remnant in a canal at Dang Birkhari, yet missing person report was lodged and not a report of murder in the hands of Indel. Yet another missing link is handing over of the tractor in Supurdgi (custody) to Ramesh (PW-2) despite the fact that he was not the owner of said tractor. Another lacuna is that information of incident was recorded on 22.10.87 vide Ex.P/19, whereas FIR (Ex.P/18) was recorded on 16.10.87 under Sections 394, 392, 120-B of IPC while both Ramesh (PW-2) and Laxmibai (PW-3) have admitted of having knowledge of death of Jagdish and Guddu on 13.10.87 itself when Agra police had visited them.

x x x

Another missing link is that prosecution has neither produced the engine number or chasis number of the tractor which was allegedly in possession of Jagdish, nor bothered to corroborate such details of the tractor found to be in possession of Indel. Prosecution has examined one Ramswaroop son of Nakturam as PW-6. He has deposed that he had sold his HMT tractor bearing No.4653 to Jagdish of Girwai Naka for a sum of Rs.45,000/- about 7 to 8 years prior to his date of deposition i.e. 17.06.1992. He has admitted that Rs.400/- were still outstanding towards Jagdish and tractor was not transferred in the name of Jagdish and was still registered in the name of Ramswaroop. He has also admitted that he had not given any transfer paper to Jagdish. In cross examination, this witness has admitted that police had not taken any statement from him after death of Jagdish in relation to tractor. He also admits that he had not made any documentation in regard to sell of Harrow Thresher and Trolley. This statement of Ramswaroop makes the prosecution more vulnerable, specially when as per the settled law as per the provisions contained in Chapter XXIV of Cr.P.C. in regard to disposal of property, it is the criminal Court alone which can make an order during any enquiry or trial handing over the proper custody of the property pending conclusion of enquiry or trial. But there is no such order of handing over of the custody by the concerned Magistrate on record. Besides this, there is an admission of Ramesh (PW-2) of disposal of such property. In fact, such property could have been handed over only to registered owner of such property and not to Ramesh, and therefore, whole story of Indel taking such tractor along with cultivator on hire becomes doubtful.

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**137. CRIMINAL PROCEDURE CODE, 1973 – Section 161**
**EVIDENCE ACT, 1872 – Sections 11, 32, 114 and 154**
**INDIAN PENAL CODE, 1860 – Sections 302 and 304 Part II**

**(i) Hostile witness – Evidentiary value of – Held, evidence of a hostile witness must also be tested on the touchstone of normal human behaviour – Injured witness was real brother of deceased – He admitted his signature on *Dehati Nalishi* accusing**

**accused – He turned hostile in Court and stated that upon reaching hospital, he did not inquire about the reason of the incident and death of his brother – He further stated that he had not seen his brother carefully and cannot say whether his brother sustained injuries – Such conduct amounts of unnatural human behaviour and he is trying to conceal the material truth from Court – *Dehati Nalishi* and FIR proved by scribes were relied upon.**

**(ii) Recording of statement of witnesses by police; delay in – Effect – If the evidence led by prosecution is otherwise credible and cogent, belated recording of statements u/s 161 Cr.P.C. loses its significance.**

**(iii) Dying declaration – Oral – Credibility of – State of fitness of deceased at the time of making statement – Whether certificate of medical examiner is always necessary? Held, No – Incident took place at 02:30 PM – As per parents of deceased, he narrated about the incident and informed names of accused to them – Medical expert received application for recording dying declaration of deceased at 03:50 PM and found him unfit to speak – Held, it cannot be said that deceased was not in a fit state of mind before 03:50 PM – Oral dying declaration given by deceased to his parents much prior to his examination by medical expert relied upon.**

**(iv) Plea of *alibi* – Evidence required to prove – Accused is required to prove with absolute certainty that he was far away from the place of occurrence and it is extremely improbable that he would have participated in the crime.**

**(v) Murder and culpable homicide not amounting to murder – Injuries were outcome of hard and blunt object – No injuries on vital part of the body – Cause of death was multiple injuries, haemorrhage and excessive bleeding – Held, simple injuries caused by several persons by inflicting blows of hard and blunt object will not bring the assault within ambit of murder.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 161**

**साक्ष्य अधिनियम, 1872 – धारा 11, 32, 114 एवं 154**

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

(i) पक्षद्रोही साक्षी – साक्ष्यिक मूल्य – अभिनिर्धारित, एक पक्षद्रोही साक्षी की साक्ष्य को भी सामान्य मानव व्यवहार की कसौटी पर परखा जाना चाहिए – घायल साक्षी मृतक का सगा भाई था – उसने अभियुक्त को आक्षेपित करने वाली *देहाती नालिशी* पर अपने हस्ताक्षर स्वीकार किए – वह न्यायालय में पक्षद्रोही हो गया और कहा कि अस्पताल पहुंचने पर उसने घटना के कारण और अपने भाई की

मृत्यु के संबंध में पूछताछ नहीं की थी – उसने आगे कहा कि उसने अपने भाई को ध्यान से नहीं देखा था और यह नहीं कह सकता है कि क्या उसके भाई को चोटें आई थीं – ऐसा आचरण अप्राकृतिक मानव व्यवहार है और साक्षी न्यायालय से तात्विक सत्य को छिपाने की कोशिश कर रहा है – *देहाती नालिशी* और प्रथम सूचना रिपोर्ट लेखक द्वारा साबित करने पर उन पर विश्वास किया गया।

(ii) पुलिस द्वारा साक्षियों के बयान लेख करने में विलंब – प्रभाव – यदि अभियोजन द्वारा प्रस्तुत साक्ष्य अन्यथा विश्वसनीय और स्पष्ट है, तो द.प्र.सं. की धारा 161 के अधीन बयान लेख करने में हुआ विलंब अपना महत्व खो देता है।

(iii) मौखिक मृत्युकालिक कथन – विश्वसनीयता – कथन लेख करते समय मृतक की सक्षमता की स्थिति – क्या चिकित्सीय परीक्षक का प्रमाण–पत्र सदैव आवश्यक है? – अभिनिर्धारित, नहीं – घटना दोपहर 02:30 बजे हुई – मृतक के माता–पिता के अनुसार मृतक ने उन्हें घटना के बारे में और अभियुक्तगण के नाम बताए थे – चिकित्सीय विशेषज्ञ ने मृतक के मृत्युकालिक कथन लेख करने का आवेदन दोपहर 03:50 बजे प्राप्त किया और उसे कथन देने में अक्षम पाया – अभिनिर्धारित, यह नहीं कहा जा सकता है कि मृतक दोपहर 03:50 बजे से पहले मानसिक रूप से सक्षम नहीं था – चिकित्सीय विशेषज्ञ द्वारा उसके परिक्षण के बहुत पहले अपने माता–पिता को मृतक द्वारा दिए गए मौखिक मृत्युकालिक कथन पर विश्वास किया गया।

(iv) अन्यत्र उपस्थित का अभिवाक् – साबित करने के लिए आवश्यक साक्ष्य – अभियुक्त को पूर्ण निश्चितता के साथ यह साबित करना आवश्यक है कि वह घटनास्थल से बहुत दूर था और यह अत्यंत असंभाव्य है कि उसने अपराध में भाग लिया होगा।

(v) हत्या और आपराधिक मानव वध जो हत्या नहीं है – चोटें कठोर और भोथरी वस्तु का परिणाम थीं – शरीर के नाजुक भाग पर कोई चोट नहीं थी – मृत्यु का कारण अनेक चोटें, हेमरेज और अत्यधिक रक्तस्राव था – अभिनिर्धारित, कई व्यक्तियों द्वारा कठोर और भोथरी वस्तु से कारित साधारण चोटें हमले को हत्या की परिधि में नहीं लाएंगी।

## Ramesh Kachhi v. State of M.P.

**Judgment dated 12.09.2019 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 4833 of 2018, reported in 2020 CriLJ 333 (DB)**

**Relevant extracts from the judgment:**

The evidence of Akash (PW/3) may be viewed from another angle. If a person comes to know that his real brother is hospitalised because of an assault on him and is in critical condition, upon reaching the hospital, his first anxiety would be to know regarding health condition of his brother and the reason behind his hospitalization. In the instant case, the statement of Akash (PW/3) that upon reaching the hospital, he did not inquire about the reason behind the incident and death of his brother is completely amounts to an unnatural human behaviour. He further narrated that he had not seen his brother carefully in the hospital and therefore is not in a position to state whether there was any bleeding in his head and whether he sustained injuries. In ***Rathinam v. State of Tamil Nadu, (2011) 11 SCC 140,*** it was ruled that the best check on the veracity of a witness is the test of normal human behaviour. If the behaviour of a witness is unnatural and grossly against normal human conduct that itself is a strong circumstance in doubting the story projected by him. Such statements are held to be untrustworthy if measured by applying any yardstick. Thus, we are constrained to hold that Akash has tried to conceal the material truth from the court in order to shield/protect the appellants for the reasons best known to him.

In view of foregoing analysis, we are unable to hold that court below has committed any error of law in appreciating and evaluating the evidence of the hostile witness. J.N. Gyarasia (PW/4) proved the *dehati nalishi* Exhibit P/3 and the FIR Exhibit P/12. Similarly, PW/11 D.V.S. Nagar who recorded *dehati nalishi* satisfactorily proved it. In no uncertain terms, he deposed that the *dehati nalishi* was recorded at the instance of complainant Akash Patel. His statement and also the statement of PW/4 could not be demolished. We concur the finding of the court below in the manner the statement of hostile witness PW/3 was analyzed. The judgments cited by the learned senior counsel for appellants are of no assistance in the factual matrix of this case because prosecution has established that *dehati nalishi* contains PW/3's signatures and court below rightly opined that in the manner he deposed in the court while turning hostile, his statement is unacceptable and statement of PW/4 and PW/11 inspires confidence in the light of principle of law laid down in ***Mahesh v. State of Maharashtra, (2008) 13 SCC 271***.

x x x

The appellants contended that statements of parents of deceased Arjun were recorded after ten days from the date of incident which makes the investigation totally unreliable. The trial founded upon such a polluted investigation and the judgment impugned needs interference. The effect of defective investigation was considered by Supreme Court in ***Karnel Singh v. State of M.P., (1995) 5 SCC 518*** and in ***Amar Singh v. Balvinder Singh, (2003) 2 SCC 518.*** It was ruled that because of negligence of prosecution alone the story of prosecution cannot be discarded otherwise faith and confidence of people would be shaken not only in the law enforcing agency but also in the administration of justice (see – ***Rambihari Yadav v. State of Bihar, (1998) 4 SCC 517***). The principle laid down in these cases is that if evidence led by prosecution is worthy of credence, the point that investigation was faulty or statements were belatedly recorded under Section 161, Cr.P.C. pales into insignificance (***Dhanaj Singh v. State of Punjab, (2004) 3 SCC 654***). In the instant case, the mother (PW/8) deposed in her statement (Para

18) that on the next date of incident, police came to her house and she informed the police that her son was assaulted by the accused persons and they are also under threat of being assaulted. She pleaded ignorance whether police had recorded her statement at that point of time or not.

In this case, for the reasons mentioned in separate paragraphs, we have recorded the findings that prosecution has satisfactorily established that appellants have assaulted Arjun because of which he died. In view of this satisfaction recorded by us, the interference on the ground that statements were belatedly recorded is unwarranted.

x x x

In para 30 of the impugned judgment, the court below has analyzed the statements of parents in the light of deposition of Dr. Sanjay Kumar Nigam (PW/7) wherein he stated that Arjun was not in a fit condition to speak. It was held that a holistic reading of statement of PW/7 shows that he received an application from police at 3:50 p.m. on 24.01.2017 containing a request to record the dying declaration. At 3:50 p.m., as per this witness, Arjun was not in a fit condition to give any declaration. The court below meticulously examined the factual matrix and opined that the District Hospital, Narsinghpur informed police chowki, District Hospital, Narsinghpur at 2:30 p.m. that Arjun has been hospitalized and its a medico legal case. The Court below on the strength of statement of Shanti Bai (PW/10) and the document Exhibit P/18 opined that Shanti Bai came with Arjun to the hospital. The finding given in para 30 is that as per *dehati nalishi* incident had taken place at around 2:30 p.m. and after 1 hour 20 minutes, application was sent to the doctor for recording the dying declaration. There is no evidence of doctor to show that before 3:50 p.m., Arjun was not in a fit state of mind. We do not find any infirmity in this conclusion drawn by the court below. Prosecution has satisfactorily established that upon receiving information of assault on her son, Shanti Bai took her injured son to the hospital. As noticed above, both the parents categorically deposed that their son Arjun was in a fit state of mind at the time of giving declaration and their statements could sustain the test of cross-examination, hence we are of the view that statement of doctor which reflects condition of Arjun at 3:50 p.m. will not cause any dent to the statements of parents. Putting it differently, the statement of doctor (PW/7) reflects the condition of Arjun at 3:50 p.m. and on the basis of this statement, it cannot be presumed that when Arjun gave declaration to his parents which is much prior to 3:50 p.m., he was not in a fit state of mind. As per statement of doctor (PW/7), there was no injury on the vital parts of body of Arjun. For this reason also, the prosecution version cannot be doubted that Arjun was in a fit state of mind when brought to the hospital and when he gave declaration to PW/8 and PW/10. We, accordingly, countenance the finding of court below in this regard.

x x x

The Latin word *alibi* means "elsewhere". In order to establish that appellant was far away from place of occurrence and it is extremely improbable that he would have participated in the crime, he has to establish it with absolute certainty by excluding the possibility of his presence at the place of occurrence. If evidence adduced by accused is of such a quality and is of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused undoubtedly is entitled to the benefit of doubt. [***Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283*** and ***Vijay Pal v. State (Govt. of NCT of Delhi), (2015) 4 SCC 749***]

In the instant case, the court below has rightly held that no minutes, register or documentary evidence is produced by defence to establish that this appellant was indeed present in the said meeting. The meeting as per DW/1 was called by Chairman of Municipal Council and attended by representative of Member of Parliament. Neither said Chairman nor the representative was called in the witness box to support this statement. The court below rightly applied Explanation (a) of Section 11 because Bhola Thakur (DW/1) admitted that travel time between Municipal Council and place of incidence is 5-10 minutes.

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**138. CRIMINAL PROCEDURE CODE, 1973 – Section 173**

**First Information Report – First information reports relating to common allegations may be clubbed and accused may be proceeded at one place.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 173**

**प्रथम सूचना रिपोर्ट – समान अभिकथनों से संबंधित कई प्रथम सूचना रिपोर्ट संयुक्त की जा सकती हैं एवं अभियुक्त पर एक ही स्थान पर कार्यवाही की जा सकती है।**

**Satinder Singh Bhasin v. Government of NCT of Delhi & ors.**

**Order dated 04.02.2019 passed by the Supreme Court in Writ Petition (Criminal) No. 242 of 2019, reported in 2019 (4) Crimes 213 (SC)**

**Relevant extracts from the order:**

Be it noted that we are inclined to stay further proceedings only arising from the FIRs registered at New Delhi because the substratum of the allegations in the FIRs filed at Delhi are similar and, more so, as aforementioned, 72 complainants are common at both the places. We may, however, permit the remaining informants/complainants in FIRs registered at New Delhi to register their complaint with the Police Station Kasna, Gautam Budh Nagar, Greater Noida, Uttar Pradesh if so advised, which can also be investigated by the SIT constituted by the State of Uttar Pradesh.

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**139. CRIMINAL PROCEDURE CODE, 1973 – Section 227**

**Discharge of accused – Parameters – If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, Trial Judge would be empowered to discharge accused – Trial Judge is not a mere Post Office to frame charge at instance of prosecution – Judge has merely to sift evidence in order to find out whether or not there is sufficient ground for proceeding – Evidence would consist of statements recorded by Police or documents produced before Court – It is open to accused to explain away materials giving rise to grave suspicion – Defence of accused is not to be looked into at the stage when accused seeks to be discharged u/s 227 of Cr.P.C. – Court has to consider broad probabilities, total effect of evidence and documents produced before court, any basic infirmities appearing in case and so on – This, however, would not entitle court to make a roving inquiry into pros and cons – Code does not give any right to accused to produce any document at the stage of framing of charge – At the stage of framing of charge, submission of accused is to be confined to material produced by Police.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 227**

अभियुक्त का उन्मोचन – मापदण्ड – यदि दो विचार संभव है और उनमें से एक गंभीर संदेह से विभेदित मात्र संदेह उत्पन्न करता है, विचारण करने वाला न्यायाधीश अभियुक्त को उन्मोचित करने के लिए सशक्त होगा – अभियोजन की प्रेरणा पर आरोप विरचित करने के लिये विचारण करने वाला न्यायाधीश मात्र डाक घर नहीं है – कार्यवाही के लिए पर्याप्त आधार है या नहीं, मात्र यह पता लगाने के लिये न्यायाधीश साक्ष्य की छान–बीन करता है – न्यायालय के समक्ष प्रस्तुत किये गये दस्तावेज या पुलिस द्वारा लिखित अभिकथन साक्ष्य में सम्मिलित होंगे – गंभीर संदेह उत्पन्न करने वाली सामग्रियों को स्पष्टीकृत करने के लिए अभियुक्त स्वतंत्र है – द.प्र.सं. की धारा 227 के प्रक्रम पर जब अभियुक्त उन्मोचन चाहता है तब अभियुक्त की प्रतिरक्षा नहीं देखी जानी है – न्यायालय के समक्ष प्रस्तुत दस्तावेजों एवं साक्ष्य का कुल प्रभाव, विस्तृत संभावनाएं, मामले में प्रकट होने वाली कोई आधारभूत कमियाँ और अन्य का न्यायालय द्वारा विचार किया जाना है – हालांकि यह न्यायालय को पक्ष और विपक्ष के संबंध में गहन जांच करने हेतु समर्थ नहीं बनाता है – आरोप विरचित करने के प्रक्रम पर अभियुक्त को कोई दस्तावेज प्रस्तुत करने का अधिकार संहिता प्रदान नहीं करती है – आरोप विरचना के प्रक्रम पर अभियुक्त का निवेदन पुलिस द्वारा प्रस्तुत सामग्री तक परिसीमित होता है।

## M.E. Shivalingamurthy v. Central Bureau of Investigation Bengaluru

**Judgment dated 07.01.2020, passed by the Supreme Court of India in Criminal Appeal No. 957 of 2017, reported in 2020 (1) Crimes 125 (SC)**

**Relevant extracts from the judgment:**

Legal principles applicable in regard is an application seeking discharge & this is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., ***P. Vijayan v. State of Kerala and another, (2010) 2 SCC 398*** and discern the following principles:

i. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

ii. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

iii. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

iv. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

v. It is open to the accused to explain away the materials giving rise to the grave suspicion.

vi. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

vii. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

viii. There must exist some material for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 of the CrPC (See ***State of J&K v. Sudershan Chakkar and another, AIR 1995 SC 1954***). The expression, "the record of the case", used in Section 227 of the CrPC is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (See & ***State of Orissa v. Debendra Nath Padhi, AIR 2005 SC 359***).

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**140. CRIMINAL PROCEDURE CODE, 1973 – Sections 227 and 397**
**INDIAN PENAL CODE, 1860 – Section 306**
**SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3(2)(v)**
**Revision – Order of discharge while exercising revisional jurisdiction – At the stage of framing of charge, Court is merely required to form an opinion whether there is strong suspicion that the accused has committed an offence, which if put on trial, could prove his guilt – At this stage, final test of guilt is not to be applied – Deceased had filed several complaints against the accused, the last one just few days before suicide – There is allegation that accused got a loan fraudulently in the name of deceased, got her terminated from employment and evicted from rented house – There is dying declaration on record – Held, order of discharge not proper.**

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 227 एवं 397
भारतीय दण्ड संहिता, 1860 – धारा 306
अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3(2)(v)

पुनरीक्षण – पुनरीक्षण क्षेत्राधिकार का प्रयोग करते हुए उन्मोचन का आदेश – आरोप विरचना के प्रक्रम पर न्यायालय को मात्र यह समाधान करना होता है कि क्या अभियुक्त के द्वारा अपराध किए जाने का प्रबल संदेह है जिसका विचारण किया गया तो उसकी दोषिता सिद्ध हो सकती है – इस स्तर पर अंतिम दोषसिद्धि की संभावना की जांच नहीं की जाती है – मृतक ने अभियुक्त के विरुद्ध कई शिकायतें दायर की थीं, अंतिम आत्महत्या से कुछ ही दिन पहले की थी – आक्षेप यह था कि अभियुक्त ने कपटपूर्वक मृतक के नाम पर ऋण लिया था, उसे नौकरी से निकलवा दिया था तथा किराए के घर से निष्कासित करवा दिया था – अभिलेख पर मृत्युकालिक कथन भी उपलब्ध है – अभिनिर्धारित, उन्मोचन का आदेश उचित नहीं है।

**State of Madhya Pradesh v. Deepak**
**Judgment dated 13.03.2019 passed by the Supreme Court in Criminal Appeal No. 485 of 2019, reported in 2020 CriLJ 638**

**Relevant extracts from the judgment:**

In ***State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198***, a two-judge bench of this Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge. Justice Ashok Bhushan held thus:

> "The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

In the present case, there is sufficient material on record to uphold the order framing charges of the Trial Court. The discharge of the accused was not justified. The High Court has evidently ignored what has emerged during the course of the investigation. The material indicates that several complaints were filed by the deceased. The last of them was filed a few days before the suicide. It is alleged that the respondent had taken a loan of ₹ 5 lakh through fraudulent means in the name of the deceased and an altercation took place between him and the deceased in that regard. Moreover, the respondent is alleged to have got the deceased evicted from a rented house as well as terminated from her employment at Central Bank. There is a dying declaration.

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***141.CRIMINAL PROCEDURE CODE, 1973 – Sections 273, 299 and 317**

**Recording of evidence in absence of accused – Validity of – There are only two exceptions when evidence can be recorded in absence of accused – Circumstances provided in Sections 299 and 317 Cr.P.C. – Any violation of this rule prejudices the right of fair trial of accused making such evidence – a nullity – Instantly, several prosecution witnesses were examined in absence of accused without proceeding under Sections 299 and 317 Cr.P.C. – Case remanded for fresh examination of witnesses who were already examined in absence of accused as per the provisions of Cr.P.C. (*Atma Ram & ors. v. State of Rajasthan, AIR 2019 SC 1961* followed).**

**दण्ड प्रक्रिया संहिता, 1973 – धाराएं 273, 299 एवं 317**

अभियुक्त की अनुपस्थिति में साक्ष्य लेखबद्ध किया जाना – वैधता – इसके मात्र दो अपवाद हैं जब अभियुक्त की अनुपस्थिति में साक्ष्य लेखबद्ध की जा सकती है – धारा

299 और 317 द.प्र.सं. में उल्लेखित परिस्थितियाँ – इस नियम का कोई भी उल्लंघन अभियुक्त के ऋजु विचारण के अधिकार को प्रतिकूल रूप से प्रभावित कर ऐसी साक्ष्य को शून्यवत बना देता है – इस मामले में, कई अभियोजन साक्षियों की परीक्षा अभियुक्त की अनुपस्थिति में द.प्र.सं. की धारा 299 और 317 के अधीन कार्यवाही किए बिना की गई थी – अतः मामला ऐसे साक्षियों की द.प्र.सं. के प्रावधानों के अनुसार नए सिरे से परीक्षा करने के लिए प्रतिप्रेषित किया गया। (*आत्मा राम व अन्य वि. राजस्थान राज्य, एआईआर 2019 एससी 1961* अनुसरित)।

**State of M.P. v. Yogeshnath alias Jogeshnath**
**Order dated 06.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Reference Case No. 9 of 2019, reported in 2020 CriLJ 721 (DB)**

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**142. CRIMINAL PROCEDURE CODE, 1973 – Section 319**
**Summoning of accused – Degree of proof – Exercise of power u/s 319 of the Code – To be more than *prima facie* but not of satisfaction to the extent that the evidence, if goes uncontroverted, would lead to conviction of accused.**

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

अभियुक्त को समन – प्रमाण की मात्रा –संहिता की धारा 319 के अंतर्गत शक्ति का प्रयोग – यह आरोप विरचित किए जाने के समय प्रथम दृष्टया मामले से अधिक, परंतु इस सीमा की पर्याप्तता तक नहीं होगा कि यदि साक्ष्य अपरिवर्तित रहे तो अभियुक्त को दोषसिद्ध किया जा सकेगा।

**Sugreev Kumar v. State of Punjab and ors.**
**Judgment dated 15.03.2019 passed by the Supreme Court in Criminal Appeal No. 509 of 2019, reported in 2019 (4) Crimes 370 (SC)**

**Relevant extracts from the judgment:**

The provisions contained in Section 319 CrPC sanction the summoning of any person on the basis of any relevant evidence as available on record. However, it being a discretionary power and an extraordinary one, is to be exercised sparingly and only when cogent evidence is available. The *prime facie* opinion which is to be formed for exercise of this power requires stronger evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a *prime facie* case as examined at the time of framing charge but not of satisfaction to the extent that the evidence, if goes uncontroverted, would lead to the conviction of the accused.

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**143. CRIMINAL PROCEDURE CODE, 1973 – Sections 437, 438 and 439**
**Bail – Conditions that may be imposed – Whether a condition of cash deposit in PM CARES Fund or such similar fund while allowing bail application can be imposed by Courts? Held, No – Any such condition would be unjust, irregular and improper.**

**दण्ड प्रक्रिया संहिता, 1973 – धाराएं 437, 438 एवं 439**

जमानत – अधिरोपित की जाने योग्य शर्तें – क्या न्यायालय द्वारा जमानत आवेदन स्वीकार करते हुए पीएम केयर्स फंड अथवा ऐसे समान फंड में नगद राशि जमा करने की शर्त अधिरोपित की जा सकती हैं? – अभिनिर्धारित, नहीं – ऐसी कोई भी शर्त अन्यायपूर्ण, अनियमित और अनुचित होगी।

**Fahad Ahmed and ors. v. State of Madhya Pradesh**
**Judgment dated 12.05.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 13259 of 2020, unreported**

**Relevant extracts from the judgment:**

Learned counsel for the applicants by taking this court to the judgment of Supreme Court reported in ***Moti Ram and ors. v. State of M.P., AIR 1978 SC 1594*** and recent judgment of Kerala High Court in ***Chinna Rao Swayamvarappu v. State of Kerala and ors., Cri. M.C. No. TMP 5/2020*** urged that condition No.1 of bail order dated 30.04.2020 directing the applicants to deposit ₹ 25,000/- each in P.M. Care Fund runs contrary to the order of Supreme Court and Kerala High Court. In absence of any enabling provision, the court below was not justified in directing such deposit before the P.M. Care Fund.

It is apposite to mention the relevant portion of the judgment of Kerala High Court in ***Chinna Rao Swayamvarappu*** (supra) which reads as under :-

> "The learned Sessions Judge while granting bail has directed the petitioner to deposit an amount of ₹ 25,000/- towards the Corona Relief Fund.
>
> This Court by its order in Crl M.C 3830/2012, relying on the decision of the Hon'ble Supreme Court in ***Moti Ram*** (supra) has held that the imposition of cash security or deposit of any amount for grant of bail is unjust, irregular and improper.
>
> In view of the above categoric declaration of law, I find that Condition No.2 imposed by the learned Sessions Judge, that the petitioner should deposit an amount of ₹ 25,000/- towards the Corona Relief Fund is improper and unjust. Hence, I quash the said condition. Nevertheless, the petitioner shall comply with all the other conditions contained in the impugned order."

I am in respectful agreement with the view taken by the Kerala High Court. Considering the aforesaid, the impugned order dated 30.4.2020, to the extent of condition No.1, is hereby set aside.

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**144. CRIMINAL PROCEDURE CODE, 1973 – Section 438**
**SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 18A**
**Anticipatory bail – Provisions of Section 438 of the Code shall not apply to the cases under the Act of 1989 – But if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18A (i) shall not apply.**

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

**अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 18क**

अग्रिम जमानत – संहिता की धारा 438 के प्रावधान 1989 के अधिनियम के अतंर्गत आने वाले मामलों पर लागू नहीं होंगे – परन्तु यदि शिकायत से प्रथम दृष्टया 1989 के अधिनियम के प्रावधानों की प्रयोज्यता हेतु मामला नहीं बनता है, तब धारा 18 एवं 18क (i) द्वारा लगाये गये अवरोध लागू नहीं होंगे।

**Prathvi Raj Chauhan v. Union of India and ors.**
**Judgment dated 10.02.2020 passed by the Supreme Court in Writ Petition (C) No. 1015 of 2018, reported in AIR 2020 SC 1036 (Three Judge Bench)**

**Relevant extracts from the judgment:**

Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a *prima facie* case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A (i) shall not apply. We have clarified this aspect while deciding the review petitions.

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**145. CRIMINAL PROCEDURE CODE, 1973 – Section 451**
**FOREST ACT, 1927 – Sections 52, 52-A, 52-B, 52-C and 53**
**Interim custody of vehicle – Tractor and trolley carrying sand illegally excavated from a restricted area in national sanctuary seized – Intimation of the seizure was given to the Magistrate u/s 52 of the Indian Forest Act, 1927, vide Madhya Pradesh Amendment Act, 1983 specific provision has been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and article used in the commission of offences – Once the authorised officer initiated**

**confiscation proceedings, the jurisdiction u/s 451 of the Cr.P.C. not available to the Magistrate.**

**दण्ड प्रक्रिया संहिता, 1973 – धारा 451**

**वन अधिनियम, 1927 – धाराएं 52, 52–क, 52–ख, 52–ग एवं 53**

वाहन की अंतरिम सुपुर्दगी – राष्ट्रीय अभ्यारण के प्रतिबंधित क्षेत्र में से अवैधानिक तरीके से रेत का उत्खनन कर ले जा रही ट्रैक्टर एवं ट्रॉली को जप्त किया गया – जप्ती की सूचना भारतीय वन अधिनियम, 1927 की धारा 52 के तहत मजिस्ट्रेट को दी गई – मध्यप्रदेश संशोधन अधिनियम, 1983 द्वारा वन–उत्पाद एवं उपकरण, नौका, वाहन तथा अन्य वस्तुएं जिनका अपराध कारित करने में प्रयोग हुआ है कि जप्ती एवं अधिहरण के संबंध में विशेष उपबंध किए गए है – एक बार जब प्राधिकृत अधिकारी द्वारा अधिहरण की कार्यवाही आरंभ कर ली गई हो द.प्र.सं. की धारा 451 का क्षेत्राधिकार मजिस्ट्रेट के लिए उपलब्ध नहीं है।

**State of Madhya Pradesh and ors. v. Uday Singh and ors.**
**Judgment dated 26.03.2019 passed by the Supreme Court in Criminal Appeal No. 524 of 2019, reported in 2019 (4) Crimes 420 (SC)**

**Relevant extracts from the judgment:**

Our analysis of the amendments brought by MP Act 25 of 1983 to the Indian Forest Act, 1927 leads to the conclusion that specific provisions have been made for the seizure and confiscation of forest produce and of tools, boats, vehicles and articles used in the commission of offences. Upon a seizure under Section 52(1), the officer effecting the seizure has to either produce the property before the Authorised Officer or to make a report of the seizure under sub-section (2) of Section 52. Upon being satisfied that a forest offence has been committed, the Authorised Officer is empowered, for reasons to be recorded, to confiscate the forest produce together with the tools, vehicles, boats and articles used in its commission. Before confiscating any property under sub-section (3), the Authorised Officer is required to send an intimation of the initiation of the proceedings for the confiscation of the property to the Magistrate having jurisdiction to try the offence. Where it is intended to immediately launch a criminal proceeding, a report of the seizure is made to the Magistrate having jurisdiction to try the offence. The order of confiscation under Section 52(3) is subject to an appeal under Section 52-A and a revision under Section 52-B. Sub-section (5) of Section 52-B imparts finality to the order of the Court of Sessions in revision notwithstanding anything contained to the contrary in the Cr.P.C. and provides that it shall not be called into question before any court. Section 52-C stipulates that on the receipt of an intimation by the Magistrate under sub-section (4) of Section 52, no court, tribunal or authority, other than an Authorised Officer, an Appellate Authority or Court of Sessions (under Sections 52, 52-A and 52-B) shall have jurisdiction to pass orders with regard to possession, delivery, disposal or distribution of the property in regard to which confiscation proceedings have been initiated. Sub-section (1) of Section 52-C has a non obstante provision which operates notwithstanding anything to the contrary contained in the Indian Forest Act, 1927 or in any other law for the time being in force. The only saving is in respect of an officer duly empowered by the State Government for directing the immediate release of a property seized under Section 52, as provided in Section 61. Hence, upon the receipt of an intimation by the Magistrate of the initiation of confiscation proceedings under sub-section (4) (a) of Section 52, the bar of jurisdiction under sub-section (1) of Section 52-C is clearly attracted. The scheme contained in the amendments enacted to the Indian Forest Act, 1927 in relation to the State of Madhya Pradesh, makes it abundantly clear that the direction which was issued by the High Court in the present case, in a petition under Section 482 of the CrPC, to the Magistrate to direct the interim release of the vehicle, which had been seized, was contrary to law. The jurisdiction under Section 451 of the CrPC was not available to the Magistrate, once the Authorised Officer initiated confiscation proceedings.

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**146. EVIDENCE ACT, 1872 – Sections 3 and 32**

**(i) Dying declaration – Principles reiterated.**

**(ii) Dying declaration – Irrespective of extent and gravity of burn injuries, doctor certified victim to be in fit state – Such dying declaration cannot be discarded.**

**(iii) Non-recording of dying declaration by Magistrate; effect of a particular statement, when being offered as dying declaration and satisfies all the requirements of judicial scrutiny, cannot be discarded merely because it has not been recorded by a Magistrate or that the Police Officer did not obtain attestation by any person present at the time of making of the statement.**

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

**(i)** मृत्युकालिक कथन – सिद्धान्त दोहराए गए।

**(ii)** मृत्युकालिक कथन – जलने के घाव की सीमा तथा गंभीरता पर विचार किए बिना चिकित्सक द्वारा आहत का उचित दशा में होना प्रमाणित किया गया। ऐसा मृत्युकालिक कथन नामंजूर नहीं किया जा सकता है।

**(iii)** मजिस्ट्रेट के द्वारा मृत्युकालिक कथन अभिलिखित न किए जाने का प्रमाण – जब कोई विनिर्दिष्ट कथन मृत्युकालिक कथन के रूप में दिया जाता है और वह न्यायिक समीक्षा की समस्त आवश्यकताओं की पूर्ति करता है तब केवल इस कारण उसे नामंजूर नहीं किया जा सकता कि ऐसा कथन मजिस्ट्रेट द्वारा अभिलिखित नहीं किया गया है अथवा पुलिस अधिकारी द्वारा कथन किए जाते समय उपस्थित किसी व्यक्ति का अनुप्रमाणन प्राप्त नहीं किया है।

**Purshottam Chopra and anr. v. State (Govt. of NCT Delhi)**
**Judgment dated 07.01.2020 passed by the Supreme Court in Criminal Appeal No.194 of 2012, reported in AIR 2020 SC 476**

**Relevant extracts from the judgment:**

For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

(i) A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the Court.

(ii) The Court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

(iii) Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

(iv) When the eye-witnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

(v) The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

(vi) Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

(vii) As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

(viii) If after careful scrutiny, the Court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

It has been contended that the statement Ex. PW-16/B cannot be accepted for the same having not been recorded by or in the presence of Magistrate nor any attestation having been obtained. Chapter 13-A of Delhi High Court Rules has also been referred. In our view, the said rules as regards the expected manner of recording of dying declaration, by their very nature, could only be considered directly and it cannot be laid down that want of compliance of any of the expectation therein would result in discarding of a recorded dying declaration. The expectations in the said rules that the dying declaration be recorded by a Judicial Magistrate; the fitness of the declarant be examined; the statement be in the form of simple narrative; signature or thumb impression of the declarant be obtained etc. are all, obviously, intended to ensure that the dying declaration is recorded in the manner that its credence does not remain questionable. However, a particular statement, when being offered as dying declaration and satisfies all the requirements of judicial scrutiny, cannot be discarded merely because it has not been recorded by a Magistrate or that the police officer did not obtain attestation by any person present at the time of making of the statement. Even in this regard, the witness PW-19 Inspector Om Prakash has pointed out that when asked to attest the statement of Sher Singh as recorded by SI Rajesh Kumar, the doctor pointed out that the facts had already been mentioned in the MLC and there was no need to attest the statement. Taking an overall view of the matter, we find no reason that the statement Ex. PW-16/B be discarded only for want of its recording by a Magistrate or for want of attestation.

Another emphasis laid on behalf of the appellants is on the fact that the victim Sher Singh had suffered 100% burns and he was already in critical condition and further to that, his condition was regularly deteriorating. It is, therefore, contended that in such a critical and deteriorating condition, he could not have made proper, coherent and intelligible statement. The submissions do not make out a case for interference. As laid down in ***Vijay Pal v. State (NCT of Delhi), (2015) 4 SCC 749*** and reiterated in ***Bhagwan v. State of Maharshtra, (2019) 8 SCC 95,*** the extent of burn injuries – going beyond 92% and even to 100% – would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect [As had been in ***Dalip Singh and ors. v. State of Punjab, AIR 1979 SC 1173***] for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration.

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**147. EVIDENCE ACT, 1872 – Sections 6 and 24 to 27**
**INDIAN PENAL CODE, 1860 – Sections 201 and 302 r/w/s 34**

**(i) Death sentence – Aggravating and mitigating circumstances – There cannot be any hard and fast rule for balancing the aggravating and mitigating circumstances – Each case has to be decided on its own merits – In "rarest of rare case", capital punishment is to be imposed – To come to conclusion in each case, aggravating and mitigating circumstances have to be considered – Further, factors like age of the accused, possibility of reformation, gravity of the offence, etc. are also to be kept in mind.**

**(ii) Death sentence – Aggravating factor – Previous conviction for similar offence can be considered as aggravating factor – Such conviction for similar offence can be considered as aggravating factor.**

**(iii) Extra-judicial confession – Accused have confessed before independent witnesses – There was nothing on record to show that such confession was caused by inducement, threat or promise – Extra-judicial confession is a weak piece of evidence, but at the same time, if the same is corroborated by other evidence on record, it can be accepted.**

**साक्ष्य अधिनियम, 1872 – धाराएं 6 एवं 24 से 27**
**भारतीय दण्ड संहिता, 1860 – धाराएं 201 एवं 302 सहपठित धारा 34**

(i) मृत्युदण्ड – गुरूतरकारी तथा लघुतरकारी परिस्थितियाँ – गुरूतरकारी तथा लघुतरकारी परिस्थितियों के संतुलन के लिए कोई कठोर नियम नहीं है – प्रत्येक मामला उसके गुणदोष पर निराकृत किया जाना चाहिए – विरल से विरलतम मामलों में मृत्युदण्ड दिया जाना चाहिए – प्रत्येक प्रकरण में अंतिम निष्कर्ष पर पहुंचने के लिए गुरूतरकारी तथा लघुतरकारी परिस्थितियों को विचार में लिया जाना चाहिए – आगे और कि अभियुक्त की आयु, सुधार की संभावना, अपराध की गंभीरता आदि घटकों को भी ध्यान में रखना चाहिए।

(ii) मृत्युदण्ड – गुरूतरकारी परिस्थितियां – समान अपराध के लिए पूर्व दोषसिद्धि एक गुरूतरकारी परिस्थिति के रूप में ली जा सकती है।

(iii) न्यायिकेत्तर संस्वीकृतियां – अभियुक्त ने स्वतंत्र गवाहों के समक्ष संस्वीकृति की – ऐसा कुछ भी अभिलेख पर नहीं था कि उक्त संस्वीकृति किसी प्रलोभन, धमकी अथवा वचन द्वारा कारित थी – न्यायिकेत्तर संस्वीकृति एक कमजोर प्रकृति की

साक्ष्य है किन्तु उसी समय यदि वह अभिलेख पर अन्य साक्ष्य द्वारा सम्पोषित हो तो स्वीकार की जा सकती है।

### Ishwarilal Yadav and anr. v. State of Chhatisgarh

**Judgment dated 03.10.2019 passed by the Supreme Court in Criminal Appeal No. 1416 of 2017, reported in (2019) 10 SCC 423 (Three-Judge Bench)**

**Relevant extracts from the judgment:**

The deceased, a small two year old boy, by name, Chirag Rajput was the son of Poshan Singh (PW-3) and Savitri Bai (PW-5). PW-5 works as a domestic help whereas Poshan Singh (PW-3) was working in Bhilai. Smt. Vandana Rajput (PW-21) is the sister of Savitri Bai (PW-5) and was at home along with the minor child – Chirag – on fateful day, i.e., 23.11.2010. When Vandana Rajput (PW-21) and deceased boy Chirag Rajput were at home on 23.11.2010, Chirag went outside the house to play while she was inside. After sometime when she went out, she could not find Chirag and Chirag was missing. She immediately rang her sister and brother-in-law, i.e., PW-5 and 3 respectively who came back to their house.

It is the case of the prosecution that the two main accused, Smt. Kiran Bai and her husband Ishwari Lal Yadav believed in tantrism. Smt. Kiran Bai wanted to attain siddhi. She was also proclaimed as 'gurumata'. To propitiate the God, she asked her husband and disciples who are the other co-accused along with them, to get a small child for human sacrifice. The main accused were neighbours to PW-3 and 5. It is alleged that for the purpose of sacrifice to God, the child Chirag was kidnapped and murdered in a gruesome manner, inside the house of main accused Kiran Bai and Ishwari Lal Yadav. Thereafter he was buried in the precincts of the house. To avoid sound of cries, music system was played loudly.

After the information from Vandana Rajput (PW-21) to her sister Savitri Bai (PW-5) and brother-in-law Poshan Singh (PW-3), all started searching for Chirag. When the parents of the child, family members and other people of the neighborhood were searching for missing boy, they became suspicious from the loud music, emanating from the house of two main accused. Thereupon, some people have entered the house of Kiran Bai and Ishwari Lal Yadav and found five mounds of freshly dug earth. It is alleged that there was also a leaf bowl (Dona), one small bowl (Katori), one small round metal pot (Lota), a trident (Trishul), idols and pictures of Gods and other items of puja were lying there. There was blood on some of these items. It is alleged that when the crowd asked the accused what had happened, Smt. Kiran Bai and Ishwari Lal Yadav confessed that they had sacrificed Chirag with the help of other co-accused and begged for mercy. Immediately thereafter, the crowd started digging the freshly dug earth and body of Chirag was taken out. Thereafter police came to the site and report was lodged. The body of Chirag was sent for post-mortem. All the accused were questioned on which they made some disclosure statements.

On the basis of such disclosure statements, recoveries of certain incriminating articles were made. After completing the investigation, the police filed final report under Section 173 Cr.P.C. against all the appellants and one other accused by name Krishna Tambi. However, as he was absconding, his trial was separated. All the accused have denied the guilt and claimed trial. They were tried for the offences as referred above before the learned Sessions Judge, Durg and they were convicted and sentenced vide judgment dated 27.03.2014. All the appellants were imposed with the penalty of death. Reference was made to the High Court under Section 366 of the Cr.P.C.

x x x

From the above evidence on record, it is clear that the parents of the deceased boy along with others were searching for the boy, on hearing the loud music from the house of Ishwari Lal Yadav and Kiran Bai, they got suspicious and entered the house. It is consistently, deposed by the independent witnesses mentioned above, that when they entered the house of the main accused, namely, Ishwari Lal Yadav and Kiran Bai, they have confessed that they have committed murder of the deceased child for the purpose of sacrifice. There is nothing on record to show that such confessions are caused by inducement, threat or promise. When such confessions are corroborated by other evidence on record, the trial court as well as the High Court, rightly relied on such confessions. From the evidence, it is proved that the place where the body of deceased Chirag was traced belongs to Ishwari Lal Yadav and Kiran Bai and in absence of any explanation from their side, there is no error committed by the trial court in accepting such evidence on record. It is true that the extra judicial confession is a weak piece of evidence, but at the same time if the same is corroborated by other evidence on record, same can be accepted.

x x x

Vide impugned judgment, the High Court has confirmed the death sentence imposed on appellants Ishwari Lal Yadav and Kiran Bai. Learned counsel for the appellants relied on the judgment in the case of ***Ronny v. State of Maharashtra, (1998) 3 SCC 625,*** wherein this Court has held, in a case of multiple accused, where the culpability of each accused is not clear to examine whose case falls within the "rarest of rare cases", it would serve the ends of justice, if the capital punishment is commuted into life imprisonment. On the other hand, learned counsel appearing for the State of Chhattisgarh has submitted that the High Court has considered the aggravating and mitigating circumstances and confirmed the death sentence so far as main accused, namely, Ishwari Lal Yadav and Kiran Bai are concerned and there are no grounds to modify the same. Learned counsel for the State also relied on judgment of this Court in the case of ***Sushil Murmu v. State of Jharkhand, (2004) 2 SCC 338***. In the above said case in similar set of facts where killing of a nine year old boy as a sacrifice to the deity was dealt with, this Court has upheld the death sentence imposed on the appellant therein.

It is clearly well settled that normal punishment for the offence under Section 302 IPC is life imprisonment but in a case where incident is of "rarest of rare cases" death sentence is to be imposed. It is equally well settled that only special facts and circumstances will warrant passing of death sentence and a just balance has to be struck between aggravating and mitigating circumstances, before the option is exercised. While referring to the earlier cases in the case of ***Bachan Singh v. State of Punjab, (1980) 2 SCC 684*** and ***Machhi Singh v. State of Punjab, (1983) 3 SCC 470*** further guidelines are summarised in the judgment in the case of ***Sushil Murmu*** (supra). Paragraphs 15 and 16 of the judgment read as under :

> "15. The following guidelines which emerge from ***Bachan Singh*** (supra) case will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: (***Machhi Singh*** case, para 38)
>
> (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
>
> (ii) Before opting for the death penalty the circumstances of the "offender" also require to be taken into consideration along with the circumstances of the "crime".
>
> (iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.
>
> 16. In rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the Judicial Power Centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness e.g. murder by a hired assassin for money or reward or a cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of "bride-burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of the murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-à-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community."

It is clear from the judgment in ***Sushil Murmu*** (supra) that this Court has laid down the guidelines, which are to be considered, in a given case whether capital punishment should be imposed or not. There cannot be any hard and fast rule for balancing the aggravating and mitigating circumstances. Each case has to be decided on its own merits. In a "rarest of rare case" capital punishment is to be imposed. To come to conclusion in each case aggravating and mitigating circumstances are to be considered. Further factors like, age of the accused, possibility of reformation, gravity of the offence etc. are also to be kept in mind.

In this case it clear from the evidence on record, the main accused, namely, Ishwari Lal Yadav and Kiran Bai have committed the murder of the two year old child Chirag as a sacrifice to the God. It is to be noticed, they were having three minor children at that time. Inspite of the same, they committed the murder of the deceased, a child of two years of age brutally. The head of the helpless child was severed, his tongue and cheeks were also cut. Having regard to age of the accused, they were not possessed of the basic humanness, they completely lacked the psyche or mindset which can be amenable for any reformation. It is a planned murder committed by the aforesaid two appellants. The appellants herein who are the main accused, namely, Ishwari Lal Yadav and Kiran Bai were also convicted on an earlier occasion for the offence under Section 302/34 and Section 201 of IPC in Sessions Trial No.98/2011 by the learned Sessions Judge, Durg, for similar murder of a 6 year old girl for which they were convicted and sentenced to death, but such sentence was modified on appeal in (***State of Chhatisgarh v. Ishwari Lal Yadav, 2016 SCC online Chh 1539***) by the High Court of Chhattisgarh at Bilaspur and they were sentenced to undergo life imprisonment without any remission or parole. On appeal to this Court, the order of the High Court was confirmed. Such conviction for similar offence can be considered as aggravating factor. By following the guidelines as mentioned in the case of ***Sushil Murmu*** (supra) we are of the view that this is a case of "rarest of rare cases" where death sentence imposed by the trial court is rightly confirmed by the High Court. As the case is proved beyond any reasonable doubt so far as the main accused are concerned, the judgment relied on by the learned counsel for the appellants in the case of ***Ronny*** (supra) also is not helpful to them.

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**148. EVIDENCE ACT, 1872 – Section 8**
**INDIAN PENAL CODE, 1860 – Sections 302, 363, 376 and 377**

**(i) Motive – Motive is not an exact requirement under the Penal Code though it may be helpful in proving the case of prosecution in a case of circumstantial evidence – Lack of motive would not be fatal to the case of the prosecution as sometimes human beings act irrationally and on the spur of the moment.**

**(ii) Rape and murder – Sentence – The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment related with the gravity of offence – Where the Court is satisfied that there is no possibility of reforming the offender, the punishment imposed must be befitting to the nature of the crime.**

**साक्ष्य अधिनियम, 1872 – धारा 8**
**भारतीय दण्ड संहिता, 1860 – धाराएं 302, 363, 376 एवं 377**

**(i)** हेतुक – दण्ड संहिता के अधीन हेतुक निश्चित आवश्यकता नहीं है, हालांकि यह परिस्थितिजन्य साक्ष्य के किसी मामले में अभियोजन मामले को सिद्ध करने में सहायक हो सकता है – हेतुक का अभाव अभियोजन मामले को घातक नहीं बनाएगा क्योंकि कभी–कभी मनुष्य अविवेकपूर्ण ढंग से एवं क्षणिक उत्तेजना के कारण कृत्य करता है।

(ii) बलात्संग एवं हत्या – दण्डादेश – समाज न्यायालयों से समानुपात का सिद्धांत लागू करने एवं अपराध की गंभीरता के अनुरूप उचित व निवारक दण्ड अधिरोपित करने की विधिसम्मत अपेक्षा करता है – जहां न्यायालय संतुष्ट है कि अपराधी में सुधार की कोई संभावना नहीं है, वहां सजा निश्चित रूप से अपराध की प्रकृति के अनुरूप ही होना चाहिए।

## Ravi v. State of Maharashtra

**Judgment dated 03.10.2019 passed by the Supreme Court in Criminal Appeal No. 1488 of 2018, reported in (2019) 9 SCC 622 (Three-Judge Bench)**

**Relevant extracts from the judgment:**

On the question of sentence, learned counsel for the appellant vehemently urged that the Courts below have been largely influenced by the 'nature' and 'brutality' of the crime while awarding the extreme sentence of death penalty. She referred to a list of as many as 35 decisions rendered by this Court in the cases of rape and murder of a child-victim in which the death sentences were commuted to life imprisonment. It was urged that brutality of the crime alone is not sufficient to impose the sentence of death; it is imperative on the State to establish that the convict is beyond reform and to this end it is relevant to see whether this is the first conviction or there has been previous crimes. The socio-economic conditions of the convict and the state of mind must be assessed by the Court before awarding such a penalty; the death penalty must not be awarded in a case of circumstantial evidence as any chink in the culpability calculus would interdict the extreme penalty. Learned Counsel heavily relied upon ***Kalu Khan v. State of Rajasthan, (2015) 16 SCC 492*** in which a three-Judge Bench of this Court commuted the death sentence in murder, abduction and rape, holding that the life imprisonment would serve the object of reformation, retribution and prevention and that giving and taking life is divine, which cannot be done by Courts unless alternatives are foreclosed. Another three-Judge Bench decision in ***Sunil v. State of Madhya Pradesh, (2017) 4 SCC 393*** where a 25-year old was held guilty of murder and rape of a 4-year old child, but not sent to gallows on the parameters that he could be reformed and rehabilitated, has been pressed into aid. She, in specific, cited several three-Judge Bench judgments where the young age of the accused was taken as a mitigating circumstance and in the absence of previous criminal history, the conduct of the accused while in custody and keeping in view the socio-economic strata to which he belonged, the possibility of reform was not ruled out and death penalty was commuted.

It is noteworthy that the object and purpose of determining quantum of sentence has to be 'society centric' without being influenced by a 'judge's' own views, for society is the biggest stake holder in the administration of criminal justice system. A civic society has a 'fundamental' and 'human' right to live free from any kind of psycho fear, threat, danger or insecurity at the hands of antisocial elements. The society legitimately expects the Courts to apply doctrine of proportionality and impose suitable and deterrent punishment that commensurate(s) with the gravity of offence.

The sentencing policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. Where the Court is satisfied that there is no possibility of reforming the offender, the punishments before all things, must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent. There is no gainsaying that the punishment is a reflection of societal morals. The subsistence of capital punishment proves that there are certain acts which the society so essentially abhors that they justify the taking of most crucial of the rights – the right to life.

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

**(i) Execution of Will – Whether the scribe of the Will can be said to be an attesting witness? Held, No.**

**(ii) Execution of Will – Proof of Will when signature of testator is disputed – Law explained.**

**साक्ष्य अधिनियम, 1872 – धारा 68**

(i) वसीयत का निष्पादन – क्या वसीयत का लेखक अनुप्रमाणक साक्षी कहा जा सकता है? अभिनिर्धारित, नहीं।

(ii) वसीयत का निष्पादन – जहां वसीयतकर्ता के हस्ताक्षर विवादित हो वहां वसीयत का साबित किया जाना – विधि की व्याख्या की गई।

**Rajaram through L.Rs. Smt. Bhagwati Bai and ors. v. Laxman and ors.**

**Judgment dated 18.07.2019 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Second Appeal No. 113 of 2002, reported in AIR 2020 MP 9**

**Short facts of the case:**

Whether the scribe of the will can be said to be an attesting witness or not? The scribe appends his signatures on the 'Will' as scribe. He is not a witness to the 'Will' but mere writer of the 'Will'. The element of the animus to attest is missing, i.e., intention to attest is missing. His signatures are only for the purpose of authenticating that he was a scribe of the 'Will'.

The testator of the will has died within a month of the execution of the will. None of the witnesses has stated that testator was medically and mentally fit at the time of execution of will. Defendants themselves stated that testator was not keeping well. Thumb impression of testator was disputed by either party.

It is held that where the signature/thumb impression of the testator of the will is not admitted then the will is required to be strictly proved in accordance with the provisions of Section 63(C) of the Indian Succession Act.

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**150. HINDU MARRIAGE ACT, 1955 – Section 7(2)**
**EVIDENCE ACT, 1872 – Section 114**
**SUCCESSION ACT, 1925 – Section 372**

**(i) Presumption of valid marriage – Marriage between two Hindus without performing of *"Saptapadi"* is not a valid marriage despite their long cohabitation.**

**(ii) Nomination – Mere nomination does not create any right in favour of a wife who was not legally wedded to deceased.**

**हिन्दू विवाह अधिनियम, 1955 – धारा 7(2)**

**साक्ष्य अधिनियम, 1872 – धारा 114**

**उत्तराधिकार अधिनियम, 1925 – धारा 372**

(i) वैध विवाह की उपधारणा – *'सप्तपदी'* सम्पन्न किये बिना दो हिन्दुओं के मध्य विवाह उनके मध्य दीर्घकालिक सहवास के बावजूद एक वैध विवाह नहीं है।

(ii) नामनिर्देशन – एक पत्नी जो कि मृतक से विधिक रूप से विवाहित नहीं थी, उसके पक्ष में मात्र नामनिर्देशन कोई अधिकार सृजित नहीं करता है।

**Rambeti v Diksha and ors.**

**Order dated 05.09.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Civil Revision No. 2 of 2013, reported in 2020 (1) MPLJ 114**

**Relevant extracts from the order:**

In the marriage agreement it is nowhere mentioned that the marriage has been performed by observing Saptpadi. It is well established principle of law that marriage is not a contract under the Hindu Law. Under these circumstances, where the applicant herself has led specific evidence that they were residing together in the light of the marriage agreement (Ex.D/7), then this Court is of the considered opinion that the marriage of the applicant with Late Gopal Kori was not performed in accordance with law and under these circumstances, mere long cohabitation between the parties would not give rise to a presumption that they are the husband and wife. Once this Court has come to a conclusion that the applicant has failed to prove that she was legally married to Late Gopal Kori, then whether the first husband of the applicant had already expired or not, would lose its importance. Under these circumstances, this Court is of the considered opinion that IA No.4150/2013, which has been filed under Order XLI Rule 27 CPC, cannot be allowed. Accordingly, it is rejected.

So far as the nomination of the applicant as a nominee in the service record is concerned, mere nomination as nominee would not give rise to any right in favour of the applicant. Nominee merely holds the money as a trustee entitled to distribute the amounts, to the heirs of the deceased.

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**151. HINDU SUCCESSION ACT, 1956 – Section 8**

**Succession after adoption – A son who was born before his father's adoption is entitled to inherit the property of his father which his father got from his adopted family.**

**हिन्दू उत्तराधिकार अधिनियम, 1956 – धारा 8**

**दत्तकग्रहण के पश्चात् उत्तराधिकार – पुत्र जिसका जन्म उसके पिता के दत्तकग्रहण के पूर्व हो चुका था, वह अपने पिता की उस संपत्ति को उत्तराधिकार में पाने का अधिकारी है जो उसके पिता ने दत्तक परिवार से प्राप्त की है।**

**Kalindi Damodar Garde (D) by LRs. v. Manohar Laxman Kulkarni and ors. Etc.**

**Judgment dated 07.02.2020 passed by the Supreme Court in Civil Appeal No. 6642 of 2010, reported in AIR 2020 SC 810**

**Relevant extracts from the judgment:**

In view of the provisions of the Hindu Succession Act, 1956 which do not make any distinction between the son born to a father prior or after adoption of his father and that there is no provision which bars the natural born son to inherit the property of his natural father, therefore, the High Court has rightly upheld the rights of the sons of Laxman. In fact, in the Full Bench judgment of Bombay High Court in ***Martand Jiwajee Patil & anr. v. Narayan Krishna Gumast-Patil & anr., AIR 1939 Bom 305***, it has been held that the natural father retains the right to give in adoption his son born before his own adoption. Therefore, if he has a right to give his son in adoption, such son has a right to inherit property by virtue of being an agnate. There was a full blood relationship between the three sons and the daughter who was born after adoption. All the children of Laxman are entitled to inherit the property of their natural father and mother in accordance with the provisions of the Act as succession has opened after the death of Laxman in 1987 and subsequently the mother in the year 1992.

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**152. INDIAN PENAL CODE, 1860 – Section 120-B**

**PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 12 and 13**

**CRIMINAL PROCEDURE CODE, 1973 – Section 239**

**Accused facing trial for commission of offences punishable u/s 120-B of IPC r/w/s 7, 12 and 13 of the Prevention of Corruption Act, 1988 – Accused filed an application u/s 239 CrPC for discharge, same was rejected – Issue urged by the accused can be decided properly during trial after evidence is adduced by the parties.**

भारतीय दण्ड संहिता, 1860 – धारा 120–ख
भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 12 एवं 13
दण्ड प्रक्रिया संहिता, 1973 – धारा 239

अभियुक्त भा.द.सं. की धारा 120–ख सहपठित अधिनियम की धारा 7, 12 एवं 13 के अंतर्गत विचारण का सामना कर रहा है – अभियुक्त द्वारा धारा 239 द.प्र.सं., 1973 के अधीन आवेदन प्रस्तुत किया गया, जिसे निरस्त किया गया – अभियुक्त द्वारा उठाये गये आधारों का निराकरण पक्षकारों द्वारा साक्ष्य प्रस्तुत करने के उपरांत उचित रूप से किया जा सकता है।

**Srilekha Sentilkumar v. Deputy Superintendent of Police, CBI, ACB, Chennai**

**Judgment dated 01.07.2019 passed by the Supreme Court in Criminal Appeal No.948 of 2019, reported in 2019 (4) Crimes 331 (SC)**

**Relevant extracts from the judgment:**

We are of the view that the issues urged by the appellant and the same having been refuted by the respondent are such that they can be decided more appropriately and properly during trial after evidence is adduced by the parties rather than at the time of deciding the application made under Section 239 of the Cr.P.C.

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**153. INDIAN PENAL CODE, 1860 – Sections 201, 302 r/w/s 34 and 364-A**
**CRIMINAL TRIAL:**
**Circumstantial evidence – Circumstances which do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved, nor are the circumstances sufficient and adequate to hold that the prosecution had established its case beyond reasonable doubt – Considering the totality of the circumstances, the prosecution has failed to establish the case against the appellant – Accused is entitled to benefit of doubt.**

भारतीय दण्ड संहिता, 1860 – धाराएं 201, 302 सहपठित धारा 34 एवं 364–क
आपराधिक विचारणः

परिस्थितिजन्य साक्ष्य – परिस्थितियाँ ऐसी नहीं जो श्रृंखला को इस तरह से परिपूर्ण करे जो युक्तियुक्त संदेह से परे हो या ऐसी प्रत्येक संभावित परिकल्पना को अपवर्जित करे, सिवाय जो साबित की गई हो, न ही परिस्थितियां संतोषजनक एवं पर्याप्त है जिससे यह अभिनिर्धारित किया जा सके कि अभियोजन ने उसका प्रकरण युक्तियुक्त संदेह से परे स्थापित किया है – संपूर्ण परिस्थितियों को विचार में लेने के उपरांत

अभियोजन अभियुक्त के विरुद्ध प्रकरण स्थापित करने में असफल रहा अतः अभियुक्त संदेह का लाभ प्राप्त करने का अधिकारी है।

## Baiju Kumar Soni & anr. v. State of Jharkhand

**Judgment dated 01.08.2019 passed by the Supreme Court in Criminal Appeal No. 42 of 2018, reported in 2019 (4) Crimes 455 (SC)**

**Relevant extracts from the judgment:**

In the light of settled principles [***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** and ***Nizam and anr. v. State of Rajasthan, (2016) 1 SCC 550***], from the facts and circumstances it is evident:

a) Though PW 7 stated that two calls were made from his STD Booth on 12.01.2006 at about 1327 Hours and 1338 Hours to specified mobile numbers, nothing has been brought on record that those two mobile numbers either belonged to PW 4 and PW 10 or were in any way under their control. In order to establish as a circumstance that on the relevant day threatening calls were received by the said PWs 4 and 10 from the appellants, the important fact which ought to have been established was that those two mobile numbers either belonged to or were under the control of said PWs 4 and 10. Even if we accept the theory that said PW 7 had identified the appellants to be the ones who had made two calls, that does not lead us to infer that the calls must have been made to PWs 4 and 10. This circumstance has not been fully established which could be read against the appellants.

b) Though drawing book had been received from the house of appellant no.1 and it was the case of the prosecution that the threatening letter (Exhibit-II) was written on a piece of paper from said drawing book, no attempts were made either to have any forensic analysis or examine handwriting expert to establish that the writing in the threatening letter was either of the appellants or could be associated with them.

Circumstance No. 4 as stated above suggests that the dead body of the deceased was carried by the accused in a rexin bag on the day after the girl went missing. The dead body was found ten days later on 18.01.2006. The post mortem, conducted thereafter, indicated time of death to be between 3 to 7 days. Even if the outer margin is considered to be the limit, the circumstance by itself does not fit in, assuming it to be completely against the appellants.

We are then left with circumstances at Serial Nos. 2, 5 and 6. These circumstances do not form a chain so complete as not to leave any reasonable doubt or exclude every possible hypothesis except the one to be proved, nor are the circumstances sufficient and adequate to hold that the prosecution had established its case beyond any reasonable doubt.

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**154. INDIAN PENAL CODE, 1860 – Section 302**
**EVIDENCE ACT, 1872 – Section 106**
**APPRECIATION OF EVIDENCE:**
**Circumstantial evidence – Offence committed in secrecy inside house, appreciation of – Initial burden is on prosecution to establish the case is of lighter degree than other cases of circumstantial evidence – There is a corresponding burden on the inmates of the house to explain as to how the crime was committed in view of Section 106.**

**भारतीय दण्ड संहिता, 1860 – धारा 302**
**साक्ष्य अधिनियम, 1872 – धारा 106**
**साक्ष्य का मूल्यांकनः**

परिस्थितिजन्य साक्ष्य – घर के अंदर एकांत में अपराध कारित किया गया – मूल्यांकन – यह स्थापित करने का प्रारंभिक भार अभियोजन पर है कि मामला परिस्थितिजन्य साक्ष्य पर आधारित अन्य मामलों की तुलना में लघुतर डिग्री का है – धारा 106 के आलोक में यह स्पष्ट करने का समवर्ती भार कि अपराध कैसे कारित किया गया था, घर के सहवासियों पर है।

**Nawab v. State of Uttarakhand**
**Judgment dated 22.01.2020 passed by the Supreme Court in Criminal Appeal No. 884 of 2013, reported in (2020) 2 SCC 736**

**Relevant extracts from the judgment:**

The wife of the appellant met a homicidal death in her own house past mid night when the appellant was alone with her. His defence has completely been disbelieved with regard to the intruders and we find no reason not to uphold the same. The prosecution had therefore established a *prima facie* case and the onus shifted to the appellant under Section 106 of the Evidence Act, 1872 to explain the circumstances how his wife met a homicidal death. The appellant failed to furnish any plausible defence and on the contrary tried to lead false evidence which is an additional aggravating factor against him.

In ***Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681,*** it was observed as follows:

> "If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see

that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him….

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

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**155. INDIAN PENAL CODE, 1860 – Section 302 r/w/s 34**
**JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 – Section 15 (1) (g)**
**Plea of juvenility – On the date of commission of offence, appellant not completed the age of 18 years – This fact was neither brought to the notice of Sessions Court nor the High Court but was brought for the first time before the Apex Court – Plea regarding juvenility can be raised even at the appellate stage. [*Raju v. The State of Haryana, 2019 (4) SCALE 398*, relied on]**

**भारतीय दण्ड संहिता, 1860 – धारा 302 सहपठित धारा 34**
**किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 – धारा 15 (1) (छ)**

अपराध कारित किए जाने की तिथि पर अपीलार्थी ने 18 वर्ष की आयु पूर्ण नहीं की थी – यद्यपि न तो यह तथ्य सत्र न्यायालय के और न ही उच्च न्यायालय के संज्ञान में

लाया गया परन्तु प्रथम बार उच्चतम न्यायालय के संज्ञान में लाया गया – किशोरवयता के संबंध में अभिवाक् अपील के स्तर पर भी उठाया जा सकता है। [*राजू विरुद्ध स्टेट ऑफ हरियाणा, 2019 (4) एस.सी.ए.एल.ई. 398,* अवलंबित]

**Ashok Kumar Mehra & anr. v. State of Punjab etc.**
**Judgment dated 15.04.2019 passed by the Supreme Court in Criminal Appeal No. 1466 of 2008, reported in 2019 (4) Crimes 332 (SC)**

**Relevant extracts from the judgment:**

It is, an admitted fact that appellant No. 2 was a juvenile (he was below the age of 18years, i.e., he was 17 years and 5 months) on the date of the commission of the offence (04.01.1998). In other words, appellant No. 2 had not completed the age of 18 years on the date of commission of the offence, i.e. on 04.01.1998.

Though this fact was neither brought to the notice of the Sessions Judge and nor the High Court and was brought to the notice of this Court for the first time by appellant No. 2 in this appeal, yet in the light of law laid down by this Court in several decisions referred to in Para 10 of the decision in ***Raju v. The State of Haryana, 2019 (4) SCALE 398,*** (Three-Judge Bench), appellant No. 2 is entitled to raise this plea even in this appeal.

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**156. INDIAN PENAL CODE, 1860 – Section 376 (1)**
**EVIDENCE ACT, 1872 – Section 3**
**Reliability of evidence – Convictions can be based solely on the evidence of the prosecutrix but such evidence must be reliable, trustworthy, unblemished and of sterling quality.**

**भारतीय दण्ड संहिता, 1860 – धारा 376 (1)**

**साक्ष्य अधिनियम, 1872 – धारा 3**

साक्ष्य की विश्वसनीयता – दोषसिद्धि एकमात्र अभियोक्त्री की साक्ष्य पर आधारित हो सकती है परंतु ऐसी साक्ष्य विश्वसनीय, भरोसेमंद, दोषरहित एवं उच्च गुणवत्ता की होनी चाहिए।

**Santosh Prasad alias Santosh Kumar v. State of Bihar**
**Judgment dated 14.02.2020 passed by the Supreme Court in Criminal Appeal No. 264 of 2020, reported in AIR 2020 SC 985**

**Relevant extracts from the judgment:**

As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile was recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5-prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix- PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.

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**157. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 – Section 2 (33)**
**INDIAN PENAL CODE, 1860 – Section 304**
**Heinous offence – Purpose of Act of 2015 is to ensure that children who come in conflict with law are to be dealt with separately and not like adults – Scheme of Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected – Treating children as adults is an exception to the rule – Even if a child commits a heinous crime, he can not automatically be tried as an adult – Meaning of words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition – Act does not deal with 4$^{th}$ category of offences *viz*. offence where maximum sentence is more than 7 years' imprisonment but no minimum**

**sentence or sentence less than 7 years' is provided shall be treated as 'serious offences' within meaning of the Act Parliament takes call on the matter – High Court directed to correct judgment and remove name of child in conflict with law.**

**किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 – धारा 2(33)**

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

जघन्य अपराध – 2015 के अधिनियम का उद्देश्य यह सुनिश्चित करना है कि बालक, जो विधि के उल्लंघन में आते है, उनके साथ भिन्न व्यवहार किया जाए और वयस्क की तरह नहीं – किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 की योजना यह है कि बालकों का संरक्षण किया जाना चाहिए – बालकों के साथ वयस्कों की तरह व्यवहार किया जाना नियम का एक अपवाद है – भले ही बालक एक जघन्य अपराध कारित करता है, वह स्वयमेव वयस्क की तरह विचारित नहीं किया जा सकता – 'जघन्य अपराध' शब्द का अर्थ परिभाषा से 'न्यूनतम' शब्द को हटाकर विस्तारित नहीं किया जा सकता – अधिनियम चौथी श्रेणी के अपराध के संबंध में उपबंध नहीं करता है अर्थात् अपराध जहां कि अधिकतम सजा 7 वर्ष से अधिक कारावास की है किंतु कोई न्यूनतम दण्डादेश नहीं है या 7 वर्ष से कम का न्यूनतम दण्डादेश उपबंधित किया गया है, वह अधिनियम के अर्थान्वयन के अंतर्गत गंभीर अपराध माना जाएगा और उसी प्रकार निराकृत किया जाएगा जब तक संसद द्वारा इस विषय पर चर्चा नहीं की जाती है – उच्च न्यायालय को निर्णय शुद्ध करने और विधि का उल्लंघन करने वाले बालक का नाम हटाने हेतु निर्देशित किया गया।

**Shilpa Mittal v. State of NCT of Delhi and anr.**
**Judgment dated 09.01.2020 passed by the Supreme Court in Criminal Appeal No. 34 of 2020, reported in 2020(1) Crimes 109 (SC)**

**Relevant extracts from the judgment:**

We must while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum'.

No doubt, as submitted by the learned state counsel for appellants there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4$^{th}$ category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

From the scheme of Sections 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words ‘heinous offence’ cannot be expanded by removing the word ‘minimum’ from the definition.

In view of the above discussion, we dispose of the appeal by answering the question set out in the first part of the judgment (“Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a ‘heinous offence’ within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015”) in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4$^{th}$ category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as ‘serious offences’ within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

In passing we may note that in the impugned judgment the name of the Child in Conflict with Law, has been disclosed. This is not in accordance with the provisions of Section 74 of the Act of 2015, and various judgments of the courts. We direct the High Court to correct the judgment and remove the name of the Child in Conflict with Law.

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***158.MOTOR VEHICLES ACT, 1988 – Section 2(30)**

**(i) Whether registered owner or financier has to be treated as "owner" – Guiding factor – Son of registered owner was driving the tractor at the time of accident, therefore, registered owner of the tractor was in possession of the vehicle at the time of accident – Registered owner of the vehicle is liable to pay compensation.**

**(ii) Calculation of income – Deduction – The amount deducted for contribution towards GPF and amount deducted for GPF advance cannot be said to be deductions for the purpose of calculating income of the deceased.**

**मोटरयान अधिनियम, 1988 – धारा 2(30)**

(i) पंजीकृत स्वामी अथवा फाइनेन्सर में से किसे स्वामी माना जाए – मार्गदर्शक सिद्धान्त – दुर्घटना के समय पंजीकृत स्वामी का पुत्र वाहन को चला रहा था इस प्रकार दुर्घटना के समय वाहन पंजीकृत स्वामी के आधिपत्य में था – प्रतिकर अदायगी हेतु वाहन का पंजीकृत स्वामी दायित्वधीन है।

(ii) आय की गणना – कटौती – भविष्य निधि तथा भविष्य निधि अग्रिम की राशि की कटौती को मृतक की आय की गणना के उद्देश्य से कटौती नहीं कहा जा सकता है।

**Mahindra and Mahindra Finance v. Rajkumari Bhadoria and ors.**
**Judgment dated 26.02.2019 passed by the High Court of Madhya Pradesh (Bench Gwalior) in Miscellaneous Appeal No.1097 of 2008, reported in AIR 2020 ACJ 728**

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**159. MOTOR VEHICLES ACT, 1988 – Section 147 (1)**

**Breach of policy – If a person sits besides the driver on a tractor and dies in accident after falling down from the tractor, it is basic breach of insurance policy, Insurance company is not liable to pay compensation to the claimants because tractor is not a passenger vehicle and nobody is permitted to sit on the mudguard of the tractor.**

**मोटरयान अधिनियम, 1988 – धारा 147 (1)**

संविदा का भंग – यदि एक व्यक्ति ट्रेक्टर के चालक के बगल में बैठता है एवं ट्रेक्टर से गिरने के कारण दुर्घटनाग्रस्त हो जाता है तब यह बीमा की संविदा का आधारभूत उल्लंघन है एवं बीमा कंपनी दावाकर्ता को प्रतिकर देने हेतु उत्तरदायी नहीं है क्योंकि ट्रेक्टर सवारी गाड़ी नहीं है एवं किसी को भी ट्रेक्टर के मडगार्ड पर बैठने हेतु अनुमत नहीं किया जा सकता है।

**National Insurance Co. Ltd. v. Ram Murti Bai and ors.**
**Judgment dated 06.03.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in Miscellaneous Appeal No. 588 of 2004, reported in 2020 ACJ 594**

**Relevant extracts from the order:**

The fact of the matter is that as per the narration in the FIR (Exhibit P-1), it is apparent that the deceased was sitting on the tractor. He had fallen down from the tractor and was crushed under the tyre of the tractor. Therefore, since deceased was a passenger on the tractor which is not permissible, ratio of law laid down in case of ***Halappa v. Malik Sab, 2018 ACJ 686 (SC)*** cannot be applied as in that case it has been held that where there is a dispute as to whether the injured/deceased was a gratuitous passenger on a tractor or was a third party on road or in a field, hurt by the tractor, treating him to be a gratuitous passenger over looking the cogent evidence on record, is not a good approach, and therefore, finding of the High Court was set aside and that of the Tribunal was restored. In the present case, facts are otherwise, therefore insurance company needs to be exonerated inasmuch there was a basic breach of insurance policy in making a person sit on the tractor besides the driver, though tractor is not a passenger vehicle and nobody is permitted to sit on the mudguard of the tractor. In the light of the aforesaid principles, this Court finds that the insurance company is not liable to pay the compensation to the claimants due to breach of the insurance policy. Hence, the appeal deserves to be and is hereby allowed. The impugned award is modified to the extent that insurance company shall stand exonerated from payment of claim amount, and liability to pay the claim amount will be that of owner and driver of the vehicle. It is further directed that in case insurance company has paid certain amount or deposited certain amount before the Claims Tribunal, then it will be entitled to recover the said amount from the owner and driver of the offending vehicle.

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**160. MOTOR VEHICLES ACT, 1988 – Section 147(1)(b)(i)**
**Pay and recover – Vehicle was used as passenger vehicle though same was insured for carrying goods – There is a fundamental breach of policy condition and insurance company is not liable to pay and recover from the owner/driver.**

**मोटरयान अधिनियम, 1988 – धारा 147(1)(ख)(i)**

भुगतान करो और वसूलो – वाहन का उपयोग सवारी गाड़ी के रूप में किया गया यद्यपि वह माल वाहक के तौर पर बीमित था – यहां बीमा पालिसी की शर्तों का आधारभूत उल्लंघन है और बीमा कम्पनी पहले भुगतान करने और स्वामी/चालक से वसूल करने हेतु दायित्वाधीन नहीं है।

**Manager, Cholamandalam MS General Ins. Co. Ltd. v. Ajay Choudhary and ors.**

**Judgment dated 29.08.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No.2698 of 2017, reported in 2020 ACJ 649**

**Relevant extracts from the judgment:**

The vehicle in question is insured for goods carriage. Policy type was package goods carrying vehicle. From the evidence, it is clear that about 27-28 passengers, who were going as a marriage party in the vehicle, met with the accident. As passengers were travelling in goods carriage vehicle, therefore, there is a fundamental breach of the policy condition and insurance company is not liable to pay the insurance amount and the Claims Tribuanl had committed an error in passing the award of pay and recover.

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**161. MOTOR VEHICLES ACT, 1988 – Section 149 (2)(a)(i)(c)**

**Permit – Liability of Insurance Company – Mere applying for renewal of permit does not mean that the permit has been granted.**

**मोटरयान अधिनियम, 1988 – धारा 149 (2)(क)(i)(ग)**

**अनुज्ञापत्र – बीमा कंपनी का दायित्व – अनुज्ञापत्र के नवीनीकरण हेतु आवेदन करने मात्र से यह नहीं माना जा सकता है कि अनुज्ञापत्र प्रदान किया जा चुका है।**

**Maharshi Vidya Mandir, Maihar v. Vijay Soni and ors.**

**Judgment dated 25.04.2019 passed by the High Court of Madhya Pradesh in Miscellaneous Appeal No. 4715 of 2011, reported in 2020 ACJ 607**

**Relevant extracts from the judgment:**

In the instant case, as noted above, the accident occurred on 03.03.2008 by mini bus No. MP 20-E/9306, which was insured from 23.09.2007 to 22.09.2008 with the Insurance Company. The appellant has applied for renewal of permit on 14.06.2007, however, merely, applying for renewal of permit does not mean that the permit has been granted. The minibus was granted permit for the period from 07.04.2009 to 30.06.2009. Shri Shivendra Singh (D.W.-3) from the RTO office has clearly stated that no permit for the period 03.03.2008 was granted to the owner-appellant. Thus, on the date of the accident, the bus was plying without permit. D.W.-1 Sachin Kumar Shukla, the Principal of the appellant/School has also admitted that he has not applied for any permit for the relevant period.

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**162. MOTOR VEHICLES ACT, 1988 – Section 163-A**

**Borrower of vehicle – Liability of Insurance Company – A borrower of vehicle cannot maintain a claim u/s 163-A of the Act against the owner and insurer of the borrowed vehicle and liability of the Insurance Company depends as per the terms and conditions of the contract of insurance.**

**मोटरयान अधिनियम, 1988 – धारा 163–क**

वाहन मांगकर ले जाने वाला व्यक्ति – बीमा कंपनी का दायित्व – वाहन के मूल स्वामी से अनुमति लेकर वाहन ले जाने वाला व्यक्ति वाहन के स्वामी एवं बीमाकर्ता के विरूद्ध अधिनियम की धारा 163–क के अंतर्गत दावा नहीं चला सकता एवं बीमा कंपनी का दायित्व बीमा हेतु की गई संविदा के निबंधन और शर्तों पर निर्भर करेगा।

**Ramkhiladi and anr. v. United India Insurance Co. Ltd. and anr.**
**Judgment dated 07.01.2020 passed by the Supreme Court in Civil Appeal No. 9393 of 2019, reported in 2020 ACJ 627**

**Relevant extracts from the judgment:**

It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be *qua* third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of ***Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553***, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

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**163. MOTOR VEHICLES ACT, 1988 – Section 166**

**(i) Compensation, assessment of – Future prospects should be awarded in case of self employed person also.**

**(ii) Interest – Interest at 9% per annum from the date of filing of the claim till the payment of the amount may be awarded.**

**मोटरयान अधिनियम, 1988 – धारा 166**

(i) प्रतिकर, निर्धारण – स्वनियोजित कर्मचारी के मामले में भी भविष्यवर्ती लाभ अधिनिर्णीत किया जाना चाहिए।

(ii) ब्याज – दावा दायर करने की तिथि से राशि के भुगतान तक 9 प्रतिशत प्रतिवर्ष की दर से ब्याज अधिनिर्णीत किया जा सकता है।

**Chameli Devi and ors. v. Jivrail Mian and ors.**

**Judgment dated 04.09.2019 passed by the Supreme Court in Civil Appeal No. 7004 of 2019, reported in 2019 ACJ 3011 (SC)**

**Relevant extracts from the judgment:**

Keeping in view the fact that the accident took place in 2001 and the deceased was a carpenter, it would not be unjustified to assess his income at Rs.200/- per day. It is true that carpenter may not get work every day, hence, we assess the income at ₹ 5000/- per month. Adding 40% for future prospects i.e. Signature Not Verified ₹ 2,000/-, the total income works out to ₹ 7,000/-. Deducting 1/5th for personal expenses, keeping in view a large number of dependents, the datum figure comes out to ₹ 5,600/- per month or ₹ 67,200/- per year. Applying multiplier of 16, the compensation works out to ₹ 10,75,200/-.₹ 70,000/- is added towards other non-conventional heads as laid down in ***National Insurance Co. Ltd. v. Pranay Sethi & ors., (2017) 16 SCC 680***. The total compensation comes out to ₹ 11,45,200/-.

In view of the above discussion, the amount awarded is enhanced to ₹ 13,46,000/- along with interest at 9% per annum from the date of filing of the claim till the payment of the amount. It is ordered accordingly. The amount already paid shall be adjusted and the balance amount be paid to the appellants or be deposited before the Motor Accident Claims Tribunal.

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**164. MOTOR VEHICLES ACT, 1988 – Section 166**

**(i) Just compensation – In assessment of compensation, the Court should have regard to the degree of deprivation and the loss caused by such deprivation – Such compensation is called "just compensation".**

**(ii) Quantum of compensation – The compensation for the personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured through his/her life.**

**(iii) Notional Income – Taking ₹ 15,000/- per year as notional income for a young child of 12 years is not a proper way of assessing**

**the future loss of income – In such case, the minimum wages payable to a workman per month should be taken into consideration for assessing future loss of income and in this income, future prospect should also be added.**

**(iv) Assessment of compensation – The claimant cannot come back to Court for enhancement of award at a later stage i.e. once the award has been passed by the Tribunal – So, in cases of 100% physical disability coupled with mental disability also, the Tribunal should take a liberal view of the matter while awarding compensation.**

**(v) Interest – If on account of negligence of claimant, the decision of the case is delayed, then the interest on the award may be awarded from a later date otherwise interest should be granted from the date of filing of the petition.**

मोटरयान अधिनियम, 1988 – धारा 166

(i) उचित प्रतिकर – प्रतिकर की गणना में न्यायालय को हानि की मात्रा और ऐसी हानि के कारण हुए नुकसान को ध्यान में रखना चाहिए – ऐसा प्रतिकर उचित प्रतिकर कहलाता है।

(ii) प्रतिकर की मात्रा – व्यक्तिगत क्षतियों हेतु प्रतिकर, क्षतिग्रस्त व्यक्ति द्वारा उसके जीवनकाल में इन क्षतियों के कारण होने वाली हानि की भरपाई हेतु पर्याप्त होना चाहिए।

(iii) काल्पनिक आय – एक बारह वर्षीय युवा की काल्पनिक आय को ₹15000 प्रतिवर्ष मानना भावी आय की क्षति की गणना का उचित तरीका नहीं है। इस तरह के प्रकरणों में भावी आय की क्षति की गणना करते समय एक कर्मकार को दी जाने वाली न्यूनतम मजदूरी को विचार में लिया जाना चाहिए और इस आय में भावी आय को भी जोड़ा जाना चाहिए।

(iv) प्रतिकर का निर्धारण – दावेदार पश्चातवर्ती समय में अर्थात् अधिकरण द्वारा एक बार प्रतिकर पारित कर दिये जाने के पश्चात् प्रतिकर में वृद्धि हेतु न्यायालय में वापिस नहीं आ सकता – अतः ऐसे मामले में जिसमें 100 प्रतिशत शारीरिक अक्षमता के साथ–साथ मानसिक अक्षमता भी हुई हो, प्रतिकर पारित करते समय अधिकरण को उदार दृष्टिकोण अपनाना चाहिए।

(v) ब्याज – यदि दावेदार की उपेक्षा के कारण प्रकरण के निर्णय में देरी होती है, तब प्रतिकर राशि का ब्याज बाद की तिथि से दिया जा सकता है अन्यथा ब्याज, याचिका दायर करने की तिथि से ही देय होना चाहिए।

**Kajal v. Jagdish Chand and ors.**

**Judgment dated 05.02.2020 passed by the Supreme Court in Civil Appeal No. 735 of 2020, reported in AIR 2020 SC 776**

**Relevant extracts from the judgment:**

It is impossible to equate human suffering and personal deprivation with money. However, this is what the Act enjoins upon the courts to do. The court has to make a judicious attempt to award damages, so as to compensate the claimant for the loss suffered by the victim. On the one hand, the compensation should not be assessed very conservatively, but on the other hand, compensation should also not be assessed in so liberal a fashion so as to make it a bounty to the claimant. The court while assessing the compensation should have regard to the degree of deprivation and the loss caused by such deprivation. Such compensation is what is termed as just compensation. The compensation or damages assessed for personal injuries should be substantial to compensate the injured for the deprivation suffered by the injured throughout his/her life. They should not be just token damages.

Both the courts below have held that since the girl was a young child of 12 years only notional income of ₹ 15,000/– per annum can be taken into consideration. We do not think this is a proper way of assessing the future loss of income. This young girl after studying could have worked and would have earned much more than ₹ 15,000/– per annum. Each case has to be decided on its own evidence but taking notional income to be ₹ 15,000/– per annum is not at all justified. The appellant has placed before us material to show that the minimum wages payable to a skilled workman is ₹ 4846/– per month. In our opinion this would be the minimum amount which she would have earned on becoming a major. Adding 40% for the future prospects, it works to be ₹ 6784.40/– per month, i.e., 81,412.80 per annum. Applying the multiplier of 18 it works out to ₹ 14,65,430.40, which is rounded off to ₹ 14,66,000/–

One factor which must be kept in mind while assessing the compensation in a case like the present one is that the claim can be awarded only once. The claimant cannot come back to court for enhancement of award at a later stage praying that something extra has been spent. Therefore, the courts or the tribunals assessing the compensation in a case of 100% disability, especially where there is mental disability also, should take a liberal view of the matter when awarding compensation. While awarding this amount we are not only taking the physical disability but also the mental disability and various other factors. This child will remain bed¬ridden for life. Her mental age will be that of a nine month old child. Effectively, while her body grows, she will remain a small baby. We are dealing with a girl who will physically become a woman but will mentally remain a 9 month old child. This girl will miss out playing with her friends. She cannot communicate; she cannot enjoy the pleasures of life; she cannot even be amused by watching cartoons or films; she will miss out the fun of childhood, the excitement of youth; the pleasures of a marital life; she cannot have children who she can love let alone grandchildren. She will have no pleasure. Her's is a vegetable existence. Therefore, we feel in the peculiar facts and circumstances of the case even after taking a very conservative view of the matter an amount payable for the pain and suffering of this child should be at least ₹ 15,00,000/–.

The High Court enhanced the amount of compensation by ₹ 14,70,000/– and awarded interest @ 7.5% per annum but directed that the interest of 7.5% shall be paid only from the date of filing of the appeal. This is also incorrect. We are constrained to observe that the High Court was not right in awarding interest on the enhanced amount only from the date of filing of the appeal. Section 171 of the Act reads as follows:

> "171. Award of interest where any claim is allowed.— Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

Normally interest should be granted from the date of filing of the petition and if in appeal enhancement is made the interest should again be from the date of filing of the petition. It is only if the appeal is filed after an inordinate delay by the claimants, or the decision of the case has been delayed on account of negligence of the claimant, in such exceptional cases the interest may be awarded from a later date. However, while doing so, the tribunals/High Courts must give reasons why interest is not being paid from the date of filing of the petition. Therefore, we direct that the entire amount of compensation including the amount enhanced by us shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment/deposit of the amount.

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**165. MOTOR VEHICLES ACT, 1988 – Section 166**

**(i) Multiplier – It has to be applied on the basis of the age of the deceased and not on the basis of the age of the parents, in the case of a bachelor.**

**(ii) Loss of consortium – On the death of a child, a sum of ₹ 40,000 has to be paid to each of the parents towards loss of consortium. [*Royal Sundaram General Ins. Co. Ltd. v. Mandala Yadagari Goud, 2019 ACJ 1644 (SC)* and *Magma General Insurance Co. Ltd. v. Nanu Ram, 2018 ACJ 2782 (SC)* followed].**

**मोटरयान अधिनियम, 1988 – धारा 166**

**(i) गुणांक – एक अविवाहित व्यक्ति के मामले में इसे मृतक की आयु के आधार पर लागू किया जाना चाहिए न उसके माता–पिता की आयु के आधार पर।**

**(ii) साहचर्य की हानि – किसी बच्चे की मृत्यु पर, ₹ 40,000 की कुल राशि माता–पिता में से प्रत्येक को साहचर्य की हानि स्वरूप भुगतान किया जाना चाहिए।**

*(रॉयल सुंदरम जनरल इंश्योरेंस कं. लि. वि. मंडाला यदागरी गौड, 2019 ए.सी.जे. 1644 (एस.सी)* एवं *मैग्मा जनरल इंश्योरेंस कं. लि. वि. नानूराम, 2018 ए.सी.जे. 2782 (एस.सी.)* अनुसरित)

**Joginder Singh and anr. v. ICICI Lombard General Ins. Co. Ltd.**
**Judgment dated 14.08.2019 passed by the Supreme Court in Civil Appeal No. 6291 of 2019, reported in 2019 ACJ 2783 (SC)**

**Relevant extracts from the judgment:**

We have perused the judgments of the Courts below, and find that the wrong multiplier has been applied to the facts of the present case.

The issue with respect to whether the multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the parents, is no longer *res integra*. This issue has been recently settled by a three Judge bench of this Court in ***Royal Sundaram Alliance Insurance Co. Ltd. v. Mandala Yadagari Goud & ors., (2019) 5 SCC 554*** wherein it has been held that the Multiplier has to be applied on the basis on the age of the deceased. The Court held that :

> "10. A reading of the judgment in ***Sube Singh & anr. v. Shaym Singh (Dead) & ors., (2018) 3 SCC 18*** shows that where a three Judge Bench has categorically taken the view that it is the age of the deceased and not the age of the parents that would be the factor for the purposes of taking the multiplier to be applied. This judgment undoubtedly relied upon the case of ***Munna Lal Jain & Anr. v. Vipin Kumar Sharma & ors., (2015) 6 SCC 347*** which is also a three Judge Bench judgment in this behalf. The relevant portion of the judgment has also been extracted. Once again the extracted portion in turn refers to the judgment of a three Judge Bench in ***Reshma Kumari and ors. v. Madan Mohan and anr., (2013) 9 SCC 65*** The relevant portion of ***Reshma Kumari*** (supra) in turn has referred to ***Sarla Verma & ors. v. Delhi Transport Corporation & anr., (2009)6 SCC 121*** case and given its imprimatur to the same. The loss of dependency is thus stated to be based on:
>
> (i) additions/deductions to be made for arriving at the income;
>
> (ii) the deductions to be made towards the personal living expenses of the deceased; and
>
> (iii) the multiplier to be applied with reference to the age of the deceased.

It is the third aspect which is of significance and ***Reshma Kumari*** (supra) categorically states that it does not want to revisit the law settled in ***Sarla Verma*** (supra) case in this behalf.

11. Not only this, the subsequent judgment of the Constitution bench in ***National Insurance Company Ltd. v. Pranay Sethi & ors., (2017) 16 SCC 680*** has also been referred to in ***Sube Singh*** (supra) for the purpose of calculation of the multiplier.

12. We are convinced that there is no need to once again take up this issue settled by the aforesaid judgments of three Judge Bench and also relying upon the Constitution Bench that it is the age of the deceased which has to be taken into account and not the age of the dependents."

In the present case, since the deceased was 20 years old, a multiplier of 18 ought to have been applied as per the decision of this Court in ***Sarla Verma*** (supra).

The Courts below have awarded a lump sum amount of ₹ 25,000/– towards loss of love and affection. This Court in ***Magma General Insurance Co. Ltd. v. Nanu Ram & ors., 2018 ACJ 2782 (SC) = (2018) 18 SCC 130*** has held that a sum of ₹ 40,000/– is to be paid to each of the parents towards loss of consortium on the death of a child. Therefore, the appellants are entitled to be awarded ₹ 40,000/– each towards loss of consortium.

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**166. MOTOR VEHICLES ACT, 1988 – Sections 183 and 184**
**INDIAN PENAL CODE, 1860 – Sections 279, 304–A, 337 and 338**
**Road traffic offences and punishments – Motor Vehicles Act and Indian Penal Code operates in entirely different spheres – The offences and their penal consequences provided under both the statutes are independent and distinct from each other and an offender can be tried and punished independently under both the statutes.**

**मोटरयान अधिनियम, 1988 – धाराएं 183 एवं 184**

**भारतीय दण्ड संहिता, 1860 – धाराएं 279, 304–क, 337 एवं 338**

**सड़क यातायात अपराध एवं दण्ड – मोटरयान अधिनियम एवं भारतीय दण्ड संहिता पूर्णतः अलग–अलग क्षेत्रों में प्रवर्तित हैं – दोनों विधियों के अंतर्गत उल्लेखित किये गये अपराध एवं उनके दंडात्मक परिणाम एक दूसरे से स्वतंत्र और भिन्न हैं एवं एक अपराधी दोनों विधियों के अंतर्गत स्वतंत्रतापूर्वक विचारित एवं दण्डित किया जा सकता है।**

**State of Arunachal Pradesh v. Ramachandra Rabidas alias Ratan Rabidas and anr.**
**Judgment dated 04.10.2019 passed by the Supreme Court in Criminal Appeal No. 905 of 2010, reported in (2019) 10 SCC 75**

**Relevant extracts from the judgment:**

In our view there is no conflict between the provisions of the IPC and the MV Act. Both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The penal consequences provided under both the statutes are also independent and distinct from each other. The ingredients of offences under both the statutes, as discussed earlier, are different, and an offender can be tried and punished independently under both statutes. The principle that the special law should prevail over the general law, has no application in cases of prosecution of offenders in road accidents under the IPC and M.V. Act.

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**167. NEGOTIABLE INSTRUMENT ACT, 1881 – Section 138**
**No prohibition u/s 138 on instituting criminal complaint based on second or successive statutory notice based on second or successive dishonor of the cheque on its presentation.**

**परक्राम्य लिखत अधिनियम, 1881 – धारा 138**

**चेक की प्रस्तुति पर इसके द्वितीय या पश्चातवर्ती अनादरण पर आधारित द्वितीय या पश्चातवर्ती वैधानिक सूचना पत्र के आधार पर धारा 138 के अंतर्गत आपराधिक परिवाद संस्थित करने में कोई प्रतिषेध नहीं है।**

**M/s Sicagen India Ltd. v. Mahindra Vadineni and ors.**
**Judgment dated 08.01.2019 passed by the Supreme Court in Criminal Appeal No. 26 of 2019, reported in 2019 (4) Crimes 360 (SC)**

**Relevant extracts from the judgment:**

Three-Judge Bench of this Court in ***MSR Leathers v. S. Palaniappan and anr, (2013) 1 SCC 177***, held that there is nothing in the provisions of Section 138 of the Act that forbids the holder of the Cheque to make successive presentation of the cheque and institute the criminal complaint based on the second or successive dishonour of the cheque on its presentation. In paragraphs 29 and 33 this Court held as under:

> 29. It is trite that the object underlying Section 138 of the Act is to promote and inculcate faith in the efficacy of banking system and its operations giving creditability to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people from dishonouring their commitments which are implicit when they pay their dues through cheques. The

provision was intended to punish those unscrupulous persons who issued cheques for discharging their liabilities without really intending to honour the promise that goes with the drawing up of such a negotiable instrument. It was intended to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case the cheque was dishonoured and to safeguard and prevent harassment of honest drawers. (See – ***Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd., (2006) 3 SCC 658; C. C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555*** and ***Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663***. Having said that, we must add that one of the salutary principles of interpretation of statues is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognized purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions. We may only refer to the decision of this Court in ***New India Sugar Mills Ltd. v. CST, AIR 1963 SC 1207*** where in this Court observed:

> "8. ... It is a recognized rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature. If an expression is susceptible of narrow or technical meaning, as well as a popular meaning the court would be justified in assuming that the legislature used the expression in the sense which would carryout its object and reject that which renders the exercise of its power invalid"

..............................................................

33. Applying the above rule of interpretation and the provisions of Section 138, we have no hesitation in holding that a prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based on the first default which was followed by statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawers to honour their commitments made in the course of their business or other affairs, there is no

> reason why a person who has issued a cheque which is dishonoured and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonoured for the second or successive time.

In the present case as pointed out earlier that cheques were presented twice and notices were issued on 31.08.2009 and 25.01.2010. Applying the ratio of ***MSR Leathers*** (supra) the complaint filed based on the second statutory notice is not barred and the High Court, in our view, ought not to have quashed the criminal complaint and the impugned judgment is liable to be set aside.

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**168. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139**
**Dishonour of cheque and presumption – After dishonour of cheque, the accused can rebut the presumption of existence of legally enforceable debt by preponderance of probabilities.**

**परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 139**

चेक का अनादरण और उपधारणा – चेक अनादृत होने के बाद अभियुक्त विधितः प्रवर्तनीय ऋण के अस्तित्व की उपधारणा का खण्डन संभावनाओं की प्रबलता द्वारा कर सकता है।

**ANSS Rajashekar v. Augustus Jeba Ananth**

**Judgment dated 18.01.2019 passed by the Supreme Court in Criminal Appeal No. 95 of 2019, reported in 2020 (1) MPLJ 300 (SC) (Three-Judge Bench)**

**Relevant extracts from the judgment:**

On a totality of the facts and circumstances and based on the evidence on the record, the first Appellate Court held that the presumption under Section 139 of the Act stood rebutted and that the defence stood probabalised. From the judgment of the High Court, the significant aspect of the case which stands out is that there has been no appreciation of the evidence or even a reference to the reasons furnished by the first Appellate Court. The High Court adverted to the judgment of this Court in ***Rangappa v. Sri Mohan, (2010) 11 SCC 441***. Having adverted to that decision, the High Court reversed the order of acquittal by holding that a mere denial of the transactions or an omnibus denial of the entire transaction could not be considered as a tenable defence. The judgment of the High Court is unsatisfactory and does not contain any reference to the evidence whatsoever. There was absolutely no valid basis to displace the findings of fact which were arrived at by the first appellate court, while acquitting the accused.

For the reasons indicated above, we are of the view that having regard to the law laid down by the three Judge Bench in ***Rangappa*** (supra) the appellant duly rebutted the presumption under section 139 of the Act. His defence that there was an absence of a legally enforceable debt was rendered probable on the basis of the material on record. Consequently, the order of acquittal passed by the first Appellate Court was justified.

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**169. NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138 and 139**
**Dishonour of cheque – Presumption – Section 139 of the Act is an example of reverse onus and after the admission of issuance of cheque by the accused and admission of his signature on the cheque, presumption of existence of legally enforceable debt/ liability arises in favour of the complainant and thereafter, the accused has to rebut such presumption by leading evidence.**

**परक्राम्य लिखत अधिनियम, 1881 – धाराएं 138 एवं 139**
चेक का अनादरण – उपधारणा – अधिनियम की धारा 139 विपरीत सबूत के भार का एक उदाहरण है और अभियुक्त द्वारा चेक जारी किए जाने और चेक पर उसके हस्ताक्षर होने की स्वीकृति के पश्चात् वैध रूप से प्रर्वतनीय उत्तरदायित्व/ऋण के विधिक रूप से परिवादी के पक्ष में प्रवर्तनीय होने की उपधारणा उत्पन्न होती है और उसके पश्चात् अभियुक्त को ऐसी उपधारणा का खंडन साक्ष्य प्रस्तुत करके करना चाहिए।

**APS Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers and ors.**
**Judgment dated 14.02.2020 passed by the Supreme Court in Criminal Appeal No. 271 of 2020, reported in AIR 2020 SC 945**

**Relevant extracts from the judgment:**

Considering the fact in the present case that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence.

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**170. REGISTRATION ACT, 1908 – Sections 17 (1) (b) and (2) (vi)**

**Registration of compromise decree – A compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration although any decree or order of a Court is exempted from registration by virtue of Section 17 (2) (vi).**

**रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 (1) (ख) एवं 2 (छः)**

राजीनामा डिक्री का रजिस्ट्रीकरण – एक राजीनामा डिक्री, जिसमें वाद या कार्यवाही की विषय वस्तु से भिन्न अचल सम्पत्ति शामिल है, को पंजीकरण की आवश्यकता होती है, भले ही न्यायालय की किसी डिक्री या आदेश को अधिनियम की धारा 17 (2) (vi) के आधार पर पंजीकरण से छूट प्रदान की गई है।

**Mohammade Yusuf and ors. v. Rajkumar and ors.**

**Judgment dated 05.02.2020 passed by the Supreme Court in Civil Appeal No. 800 of 2020, reported in AIR 2020 SC 796**

**Relevant extracts from the judgment:**

A compromise decree passed by a Court would ordinarily be covered by Section 17(1)(b) but sub-section(2) of Section 17 provides for an exception for any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by virtue of sub-section (2)(vi) of Section 17 any decree or order of a Court does not require registration. In sub-clause (vi) of sub-section (2), one category is excepted from sub-clause(vi), i.e., a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding. Thus, by conjointly reading Section 17(1)(b) and Section 17(2)(vi), it is clear that a compromise decree comprising immovable property other than which is the subject matter of the suit or proceeding requires registration, although any decree or order of a Court is exempted from registration by virtue of Section 17(2)(vi). A copy of the decree passed in Suit No.250-A of 1984 has been brought on record as Annexure P-2, which indicates that decree dated 04.10.1985 was passed by the Court for the property, which was subject matter of the suit. Thus, the exclusionary clause in Section 17(2)(vi) is not applicable and the compromise decree dated 04.10.1985 was not required to be registered on plain reading of Section 17(2)(vi). The High Court referred to judgment of this Court in ***Bhoop Singh v. Ram Singh Major and ors., (1995) 5 SCC 709,*** in which case, the provision of Section 17(2)(vi) of Registration Act came for consideration. This Court in the above case while considering clause (vi) laid down following in paragraphs 16, 17 and 18:-

> "16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in *praesenti* in immovable property of the value of 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.
>
> 17. It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of 100 or upwards in favour of other party for the first time, either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.
>
> 18. The legal position *qua* clause (vi) can, on the basis of the aforesaid discussion, be summarised as below:
>
> (1) Compromise decree if bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.
>
> (2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of ₹ 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, as was the position in the aforesaid Privy Council and this Court's cases, it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate, because of the amendment of this clause by Act 21 of 1929, which has its origin in the aforesaid decision of the Privy Council, according to which the original clause would have been attracted, even if it were to encompass property not litigated."

In facts of the present case, the decree dated 04.10.1985 was with regard to property, which was subject matter of the suit, hence not covered by exclusionary clause of Section 17(2)(vi) and present 16 case is covered by the main exception crafted in Section 17(2)(vi), i.e., "any decree or order of a Court". When registration of an instrument as required by Section 17(1)(b) is specifically excluded by Section 17(2)(vi) by providing that nothing in clause (b) and (c) of sub-section (1) applies to any decree or order of the Court, we are of the view that the compromise decree dated 04.10.1985 did not require registration and learned Civil Judge as well as the High Court erred in holding otherwise. We, thus, set aside the order of the Civil Judge dated 07.01.2015 as well as the judgment of the High Court dated 13.02.2017. The compromise decree dated 04.10.1985 is directed to be exhibited by the trial court. The appeal is allowed accordingly.

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**171. SERVICE LAW:**

**Service matter – Departmental enquiry – Effect of acquittal in criminal proceedings – Law explained.**

**सेवा विधिः**

**सेवा मामले – विभागीय जांच – आपराधिक कार्यवाहियों में दोषमुक्ति का प्रभाव – विधि की व्याख्या की गई।**

**Karnataka Power Transmission Corporation Limited Represented by Managing Director (Administration and HR) v. C. Nagaraju and anr.**

**Judgment dated 16.09.2019 passed by the Supreme Court in Civil Appeal No. 7279 of 2019, reported in (2019) 10 SCC 367**

**Relevant extracts from the judgment:**

Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives [***Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764***]. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different [***Rajasthan v. B.K. Meena, (2006) 6 SCC 417***].

The acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence.

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

**(i) Readiness and willingness – The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance – To adjudge this fact, the Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit alongwith other attending circumstances.**

**(ii) Pleading and proof – Mere plea of readiness to pay the consideration without any material to substantiate the plea cannot be accepted – Although it is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount.**

**विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 16 (ग)**

**(i)** तत्परता एवं इच्छुक होना – वादी की सतत् तत्परता एवं इच्छुक होना विनिर्दिष्ट अनुपालन का अनुतोष प्रदान कने की पुरोभाव्य शर्त है – इस तथ्य के विनिश्चय के लिए न्यायालय को अन्य उत्पन्न परिस्थितियों के साथ–साथ वाद संस्थित करने के पूर्व एवं पश्चात् के वादी के आचरण को भी विचार में लेना चाहिए।

(ii) अभिवचन एवं साबित किया जाना – प्रतिफल अदायगी के लिए तत्परता का अभिवचन मात्र इसे पुष्ट करने वाली किसी सामग्री के अभाव में स्वीकार नहीं किया जा सकता है – यद्यपि वादी के लिए तैयार राशि प्रस्तुत करना आवश्यक नहीं है परन्तु उसके भाग पर यह साबित किया जाना आज्ञापक है कि उसके पास प्रतिफल राशि उत्सर्जित करने के साधन है।

**C.S. Venkatesh v. A.S.C. Murthy (D) by LRs. and ors.**
**Judgment dated 07.02.2020 passed by the Supreme Court in Civil Appeal No. 8425 of 2009, reported in AIR 2020 SC 930**

**Relevant extracts from the judgment:**

The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of performance. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of contract, the court must take into consideration the conduct of the plaintiff prior, and subsequent to the filing of the suit alongwith other attending circumstances. The amount which he has to pay the defendant must be of necessity to be proved to be available. Right from the date of the execution of the contract till the date of decree, he must prove that he is ready and willing to perform his part of the contract. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready to perform his contract.

In the instant case, the plaintiff has alleged that he was ready to pay ₹ 35,000/- to the defendants and called upon them to execute the re- conveyance deed. However, in para 11 of the plaint it is pleaded that the plaintiff was running contract business wherein he suffered heavy loss and as such he gave up the business. It is also pleaded that at present the plaintiff has no business or profession and has no source of income. He has no property, either movable or immovable. Mere plea that he is ready to pay the consideration, without any material to substantiate this plea, cannot be accepted. It is not necessary for the plaintiff to produce ready money, but it is mandatory on his part to prove that he has the means to generate the consideration amount. Except the statement of PW-1, there is absolutely no evidence to show that the plaintiff has the means to make arrangements for payment of consideration under the reconveyance agreement.

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**173. SPECIFIC RELIEF ACT, 1963 – Section 34**
**CONTRACT ACT, 1872 – Section 10**

**(i) Suit based on violation of condition of tenancy – In absence of written agreement of tenancy, suit for declaration and permanent injunction based on violation of condition of tenancy is not maintainable.**

(ii) **Continuation of tenancy – Tenant cannot be compelled to continue with the tenancy in absence of any written contract.**

**विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 34**

**संविदा अधिनियम, 1872 – धारा 10**

(i) किरायेदारी की शर्तों के उल्लंघन पर आधारित वाद – किरायेदारी के लिखित अनुबंध के अभाव में किरायेदारी की शर्तों के उल्लंघन पर आधारित घोषणा एवं स्थायी व्यादेश का वाद पोषणीय नहीं है।

(ii) किरायेदारी की निरंतरता –किसी भी लिखित संविदा के अभाव में किरायेदार को किरायेदारी निरंतर रखने हेतु विवश नहीं किया जा सकता।

**Life Insurance Corporation of India v. Basantilal Baraia and ors.**
**Order/Judgment dated 11.07.2019 passed by the High Court of Madhya Pradesh (Gwalior Bench) in First Appeal No. 17 of 2002, reported in 2020 (1) MPLJ 373**

**Relevant extracts from the judgment:**

It is clear that there was no agreement in writing to the effect that the premises is let out at least for a period of 3 years with an assurance that the tenancy would continue at least for a period of 10 years with a stipulation that the rent would be enhanced by 15% after every 3 years. It has been admitted by Basantilal (PW-1) that after serving the notice of vacating the premises, the appellant had vacated the premises and when he went to the Manager of the appellant to demand the keys, the same were handed over to him. In absence of any contract, no tenant can be compelled to continue with the tenancy at the sweet will of the landlord.

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**174. TRANSFER OF PROPERTY ACT, 1882 – Sections 3 and 123**
**EVIDENCE ACT, 1872 – Section 68**
**Execution of gift deed; proof of – When the execution of gift deed is specifically denied then execution of such deed must be proved by calling atleast one attesting witness in the Court.**

**संपत्ति अंतरण अधिनियम, 1882 – धाराएं 3 एवं 123**

**साक्ष्य अधिनियम, 1872 – धारा 68**

दान विलेख का निष्पादन साबित किया जाना – जब दान विलेख के निष्पादन का विर्निदिष्ट रूप से प्रत्याख्यान किया गया हो तब ऐसे विलेख का निष्पादन न्यायालय में कम से कम एक अनुप्रमाणक साक्षी को बुलाकर साबित किया जाना चाहिए।

**Leeladevi and ors. v. Taradevi Farkya (deceased) through L.Rs. Satyanarayan and ors.**
**Judgment dated 26.03.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 648 of 2016, reported in 2020 (1) MPLJ 436**

**Relevant extracts from the judgment:**

In the present case, the plaintiff in whose favour a Will is there, has specifically denied the gift-deed in favour of defendant No.1, therefore, it was incumbent upon defendant No.1 to prove the gift-deed by calling at least one of the attesting witnesses in the Court. The Apex Court in the case of ***Rosammal Issetheen Ammal Fernandez v. Joosa Mariyan Fernandez, (2000) 7 SCC 189*** has held that if there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. Admittedly, none of the two attesting witnesses was examined, the gift-deed cannot be tendered in evidence. Para 11 of the aforesaid judgment is reproduced below:

> "11. Under the proviso to Section 68 the obligation to produce at least one attesting witness stands withdrawn if the execution of any such document not being a will which is registered, is not specifically denied. Therefore, everything hinges on the recording of this fact of such denial. If there is no specific denial, the proviso comes into play but if there is denial, the proviso will not apply. In the present case as we have held, there is clear denial of the execution of such document by the plaintiff, hence the High Court fell into error in applying the said proviso which on the facts of this case would not apply. In view of this the very execution of the gift deed, Exhibit B-1 is not proved. Admittedly in this case none of the two attesting witnesses has been produced. Once the gift deed cannot be tendered in evidence in view of the non-compliance of Section 68 of the Indian Evidence Act, we uphold that the plaintiff has successfully challenged its execution. The gift deed accordingly fails and the findings of the High Court contrary are set aside. In view of this no rights under this document accrue to the respondent concerned over Schedule A property which is covered by this gift deed."

In case of ***K. Laxmanan v. Thekkayil Padmini, (2009) 1 SCC 354*** the Apex Court has held that

> 30. The legality and the validity of the said deed of gift was under challenge in the trial for which the parties have led evidence and therefore in the present case the proviso to Section 68 of the Act does not become operative and functional. In such cases, the document has to be proved in terms of Section 68 of the Act. In this regard, we may appropriately refer to a decision of this Court in ***Rosammal Issetheenammal Fernandez*** (supra) wherein it was held as under:

"7. … In considering this question, whether there is any denial or not, it should not be casually considered as such finding has very important bearing on the admissibility of a document which has important bearing on the rights of both the parties. … It must also take into consideration the pleadings of the parties which has not been done in this case. Pleading is the first stage where a party takes up its stand in respect of facts which they plead.

x x x

31. The two attesting witnesses to the said deed of gift viz. Ext. B-2 are K.T. Vasu and Urulummal Ukkappan. K.T. Vasu admittedly had died whereas Urulummal Ukkappan was alive. Urulummal Ukkappan being alive, could have been examined in the present case to establish the legality of the deed of gift. But neither was he examined nor was any reason assigned by the appellant for not examining him.

32. Since both the attesting witnesses have not been examined, in terms of Section 69 of the Act it was incumbent upon the appellant to prove that the attestation of at least one attesting witness is in his handwriting and that the signature of the person executing the document is in the handwriting of that person. DW 3, who was an identifying witness also in Ext. B-2, specifically stated that he had not signed as an identifying witness in respect of Ext. B-2 and also that he did not know about the signature in Ext. B-2. Besides, considering the nature of the document which was a deed of gift and even assuming that no pleading is filed specifically denying the execution of the document by the executant and, therefore, there was no mandatory requirement and obligation to get an attesting witness examined but still the fact remains that the plaintiff never admitted the execution of the gift deed and, therefore, the same was required to be proved like any other document.

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**175. TRANSFER OF PROPERTY ACT, 1882 – Section 10**

**Restricted gift, validity – The donor cannot restrict the donee from transferring the gifted property – Such condition is totally void under Section 10 of the Act.**

**संपत्ति अंतरण अधिनियम, 1882 – धारा 10**

निर्बंधित दान, विधिमान्यता – दानकर्ता, दानग्रहिता को दान की गई संपत्ति के अन्तरण से निर्बंधित नहीं कर सकता – ऐसी शर्त अधिनियम की धारा 10 के अंतर्गत पूर्णतः शून्य है।

**Sridhar and anr. v. N. Revanna and ors.**
**Judgment dated 11.02.2020 passed by the Supreme Court in Civil Appeal No. 1209 of 2020, reported in AIR 2020 SC 824**

**Relevant extracts from the judgment:**

The question to be answered is as to whether defendant No.1 who was gifted the schedule property had no right to alienate the schedule property in any manner whatsoever. The reliance has been placed by the counsel of the respondents on Section 10 of the Transfer of Property Act which is to following effect:

> "10. *Condition restraining alienation.*— Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him:
>
> *Provided* that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein."

Section 10 expressly provides that where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void. According to Section 10 any condition restraining the transferee the right of alienation is void. A plain reading of Section 10 of Transfer of Property Act makes it clear that the condition in the gift deed dated 05.06.1957 that defendant No. 1 shall not alienate the property is a void condition.

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**176. TRANSFER OF PROPERTY ACT, 1882 – Sections 58 (d), 60 and 62**
**LIMITATION ACT, 1963 – Article 61 (a)**
**Redemption of usufructuary mortgage – Suit for redemption of usufructuary mortgage can be filed within 30 years from the day when mortgage amount is tendered to mortgagee by sending notice by mortgagor and date of mortgage deed is not material in such suits.**

**संपत्ति अंतरण अधिनियम, 1882 – धाराएं 58 (घ), 60 एवं 62**
**परिसीमा अधिनियम, 1963 – अनुच्छेद 61 (क)**
**भोगबंधक का मोचन – भोगबंधक के मोचन हेतु वाद उस दिन से 30 वर्षों के भीतर संस्थित किया जा सकता है जिस दिन बंधक राशि बंधककर्ता द्वारा सूचना भेजकर बंधकदार को निविदत्त की जाती है तथा इस प्रकार के वाद में बंधक विलेख की तिथि तात्विक नहीं है।**

### Harishchandra v. Vijaykumar and ors.

**Judgment dated 04.07.2019 passed by the High Court of Madhya Pradesh (Indore Bench) in Second Appeal No. 568 of 1998, reported in 2020 (1) MPLJ 393**

**Relevant extracts from the judgment:**

As per section 58(d) of the Transfer of Property Act, the mortgage deed Ex.P/5 is a usufructuary mortgage because mortgagor delivered the possession of the mortgaged property to the mortgagee and authorized him to retain possession until payment of mortgaged loan amount and to receive the rent and profit acquiring from the property in lieu of interest. Section 62 gives right of usufructuary to the mortgagor and as per sub-section (b) of section 62 the mortgagor is entitled to recover the possession when he pays or tenders to the mortgagee the mortgaged money or the balance or deposits it in the Court. Under Article 61(a) of the Limitation Act, 1963 the suit relating to immovable property by mortgagor to redeem or for recovery of possession of immovable property mortgaged is 30 years from the date when the right to redeem or to recover possession accrues. The plaintiff tendered repayment of money to the defendant on 04.09.1987 by sending a notice, therefore, the limitation of 30 years would start from the said date. A similar issue came up for consideration before the Full Bench of Punjab & Haryana High Court in the case of ***Ram Kishan & ors. v. Sheo Ram & ors., AIR 2008 Punjab and Haryana 77***. The Full Bench has answered the question by holding that in case of usufructuary mortgage where no time limit is fixed to seek redemption would not arise from the date of mortgage but arise on the date when the mortgagor pays or tenders to the mortgagee. Para-48 of the said judgment is reproduced below:

> 48. Therefore, we answer the questions framed to hold that in case of usufructuary mortgage, where no time limit is fixed to seek redemption, the right to seek redemption would not arise on the date of mortgage but will arise on the date when the mortgagor pays or tenders to the mortgagee or deposits in Court, the mortgage money or the balance thereof. Thus, it is held that once a mortgage always a mortgage and is always redeemable.

In view of the Full Bench judgment passed by the Apex Court in ***Singh Ram v. Sheo Ram and ors., (2014) 9 SCC 185,*** the question of law is answered in favour of the plaintiff. The limitation for filing the suit would start from 04.09.1987 i.e. the date on which the plaintiff tendered repayment of money to the defendant, therefore, the suit filed by the plaintiff is within limitation. Since the issues No.1 & 2 have already been answered in favour of plaintiff and the suit was dismissed only on the issue of limitation, hence the suit is liable to be decreed in favour of plaintiff in following terms:-

(i) the plaintiff is the owner of the suit house as described in para 1 of the plaint.

(ii) the plaintiff is entitled to redeem the suit house from defendant.

(iii) the defendant is directed to hand over the vacant possession of suit house to plaintiff within three months from payment of an amount of ₹ 1600/-.

(iv) If defendant does not accept the amount, the plaintiff is directed to deposit the amount of ₹ 1,600/- in executing Court and obtain the possession.

(v) Plaintiff and defendant shall bear their own cost.

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**177. TRANSFER OF PROPERTY ACT, 1882 – Section 60**

**Extinguishment of mortgage – The mortgage can be extinguished by the Act of parties also and in such a situation, for redemption, registration of acknowledgment of extinguishment is not necessary.**

**संपत्ति अंतरण अधिनियम, 1882 – धारा 60**

**बंधक का निर्वापन – बंधक पक्षकारों के कृत्य द्वारा भी निर्वापित किया जा सकता है और ऐसी स्थिति में मोचन के लिये, निर्वापन की पावती का पंजीकरण आवश्यक नहीं है।**

**Gowramma and anr. V. Kalingappa (D) represented by L.Rs. and ors.**

**Judgment dated 08.02.2019 passed by the Supreme Court in Civil Appeal No. 1574 of 2019, reported in 2019 (4) MPLJ 585 (SC)**

**Relevant extracts from the judgment:**

In view of the factual situation and considering the Proviso to Section 60 of the TP Act, the High Court has rightly observed and held that by the act of the parties, namely, by act of Sundarasetty receiving ₹ 3,000/– being the mortgage amount from Kalingappa and putting him in possession, the mortgage is extinguished. The submission on behalf of the Appellants – original Plaintiffs that the mortgage can be said to have been extinguished only in a case where there is a Shera (endorsement) written on the mortgage deed or an acknowledgment in writing that the mortgage is extinguished and got registered, there is no redemption in the mortgage in the eyes of law is concerned, the aforesaid has no substance, considering Proviso to Section 60 of the TP Act. Considering Section 60 of the TP Act, mortgagor has a right to redeem the mortgage as provided under first part of Section 60 of the TP Act, however, provided the right conferred in favour of mortgagor has not been extinguished by act of the parties or by decree of the Court, as per Proviso to Section 60 of the TP Act.

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# PART - II A

## GUIDELINES FOR SPECIAL COURTS TRYING CASES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Trial of cases under Prevention of Corruption Act, 1988 (hereafter referred as 'PC Act') results into a long drawn battle which usually take several years to culminate in trial court itself. Validity of Sanction Order and competency of sanctioning authority are defences which are often raised during trial. In many cases, trial court and even appellate courts reach to the conclusion that either sanction was not valid or sanctioning authority was not competent to issue sanction for prosecution resulting into discharge of accused.

Hon'ble Supreme Court in ***Nanjappa v. State of Karnataka, (2015) 14 SCC 186*** examined whether, the trial court had the power to discharge an accused after the entire trial was concluded on account of the sanction under section 19 of the PC Act, being defective and answered the question in affirmative.

If the prosecution can seek a fresh sanction and put the accused to trial again, after the accused is discharged at the end of the trial stretching over a decade, several questions are raised with regard to the loss of precious time of the trial court, the hardship placed upon the witnesses who would have to be called and examined all over again, the violation of the right to speedy trial of the accused and lastly, the financial loss.

These questions have been considered recently by a Division Bench of High Court of Madhya Pradesh, Principal Seat, Jabalpur in ***WP No. 19792 of 2019 Ravi Shankar Singh v. MPPKVVCL and others, order dated 08.05.2020.*** The Division Bench considered the scope and applicability of Sec. 311 CrPC for examining the sanctioning authority before the stage of framing of charge in such cases to ascertain whether the authority was competent to grant sanction or whether the same was granted without due application of mind to the record of the case. The Division Bench has laid down the guidelines to be followed by the trial court while trying a case under the PC Act.

The relevant portion of judgment is as follows :

"In our considered opinion, the advantage of recording the evidence of the Sanctioning Authority u/s 311 CrPC, before framing of charge, are as follows.

(a) The court saves precious time if the evidence of the Sanctioning Authority reveals that the Sanction is bad either on account of it being passed by an incompetent authority or passed without application of mind in which case, the accused can be discharged and the chargesheet returned to the investigating agency.

(b) The investigating agency has the opportunity of seeking fresh sanction and refiling the chargesheet before the Trial Court.

(c) The accused does not get the benefit of *autrefois* acquit/convict as charge has not been framed, and

(d) The accused cannot get the benefit of a seeking quashment of the case on the ground of delayed trial, which he may otherwise get if he is discharged by the Trial Court at the end of the trial after a protracted trial spanning over a decade.

In view of what we have discussed and held hereinabove; we propose to lay down the following guidelines to be followed by the learned trial court while trying a case under the Prevention of Corruption Act.

(a) The trial court shall examine the sanctioning authority exercising powers u/s 311 CrPC before framing charge, even if there is no challenge to the same by the accused, as the validity of the sanction order can go to the root of the case and can render the very act of taking cognizance itself *void ab initio*.

(b) If the trial court finds that the sanction passed is in consonance with the provisions of section 19 of the PC Act on both the parameters of competence of the sanctioning authority and application of mind on the part of the sanctioning authority, then the trial court shall proceed to the next stage and decide whether charges should be framed against the accused after hearing the prosecution and the defence.

(c) If, the trial court is of the opinion that the sanction order under section 19 of the PC Act is fundamentally defective on either of the parameters, it shall discharge the accused and return the chargesheet to the investigating agency, which shall be at liberty to file the chargesheet once again after seeking a fresh sanction under Section 19 of the PC Act.

(d) These directions are prospective in nature and shall not affect the proceedings in those cases where the charges have been framed and evidence has commenced before the trial court. It goes without saying that these directions shall have no effect on the inherent powers of the High Court under section 482 CrPC or its powers of revision under Section 397 read with 401 CrPC."

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# PART - III

## CIRCULARS/NOTIFICATIONS

### NOTIFICATION DATED 21.02.2020 REGARDING AMENDMENTS IN THE MADHYA PRADESH ARBITRATION RULES, 1997

No. D-1221.– Amendments in "The Madhya Pradesh Arbitration Rules, 1997" in the Madhya Pradesh Gazette.

In exercise of the powers conferred by section 82 of the Arbitration & Conciliation Act, 1996 (26 of 1996), the High Court of Madhya Pradesh, hereby, makes the following amendments in The Madhya Pradesh Arbitration Rules, 1997, namely:-

### AMENDMENT

1. For rule 3, the following rule shall be substituted, namely:-

"**3. (1) Definitions:**

(a) In these Rules, "Act" means the Arbitration and Conciliation Act, 1996;

(b) "Appeal" means an Appeal filed in the 'Court' under the Act;

(c) "Application" means an application filed in the 'Court' under the Act;

(d) "Arbitral Award" includes an interim, a partial and a preliminary or final award;

(e) "Arbitrator" means person appointed as an Arbitrator in terms of the Act;

(f) "Chief Justice" means the Chief Justice of the High Court of Madhya Pradesh;

(g) "Code" means "The Code of Civil Procedure, 1908"; and

(h) "Rules" means "The Madhya Pradesh Arbitration Rules, 1997".

(2) The words and phrases not defined, in these Rules, shall bear the same meaning as defined under the Act."

2. For rule 4, the following rule shall be substituted, namely:-

**"4. Application/Appeal:**

(1) Save as otherwise provided in these Rules, all Applications/ Appeals, Affidavits and Proceedings, under the Act shall be as per the prescribed Formats annexed herewith as Format no.1, 2, 3 & 4.

(2) Every application under Section 9, Section 14, Section 27, Section 34, Section 39 and Section 43 of the Act shall be made

in writing and shall be supported by an affidavit, it shall be divided into paragraphs, numbered consecutively, and shall contain the name, description and place of residence of the parties. It shall contain a statements in concise from –

(a) of the material facts constituting cause of action;

(b) of facts showing that the Court to which the application appeal is presented has jurisdiction;

(c) relief prayed for;

(d) names and addresses of the persons liable to be affected by the application; and

(e) original Arbitration Agreement or the Award.

(3) An application for enforcement of and arbitral award under Section 36 of a foreign award under Section 47 or Section 56 shall be in writing signed and verified by the Applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the particulars prescribed in Sub-rule (2) of Rule 11 of Order XXI of the Code.

(4) Every application for execution of Award under Chapter I – *"New York Convention Awards"* or Chapter II – *"Geneva Convention Awards" of PART-II- "Enforcement of certain Foreign Awards"* of the Act shall be in the terms as prescribed under Sections 47 and 56 of the Act, as the case may be.

(5) Every application for enforcement of a foreign award shall be accompanied by an affidavit or affidavits showing that:-

(a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

(b) the subject matter of award is capable of settlement by Arbitration under the law of India.

(c) the award has been made by the arbitral tribunal provided for in the submission to and arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;

(d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;

(e) the enforcement of the award is not contrary to the public policy or the law of India."

3. After rule 4, the following rule shall be added, namely:-

**"4A. Mode of application/appeal:**

Save as otherwise provided in these Rules, all Applications/Appeals shall be placed on board for admission after prior notice to all parties concerned.

(1) Procedure after filing of Application/Appeal and requisitioning of Lower Court Records:

(a) In cases, arising out of matters pending before the lower Court, Tribunal or Authority, the record shall not be requisitioned unless ordered by the Court.

(b) Where such record has been requisitioned, it shall be retained in the High Court/ District Court (as the case may be) only as long as absolutely necessary; otherwise it shall be returned and called back as convenience permits.

(2) In cases, arising out of judgments or orders finally adjudicating the case, the record of lower Court or Tribunal shall be requisitioned after admission of the case notwithstanding the fact that no order requisitioning the record has been made by the Court or the Registrar.

(3) The Applicant/Appellant may file pleadings and/or evidence along with the memorandum of appeal or application which he considers necessary to enable the Court to appreciate the scope of dispute for the purpose of admission, interlocutory orders or disposal.

(4) Notice shall be served on all opposite parties and on such other persons as the Court may direct:

Provided that at the hearing of any such Application/Appeal, any person who desires to be heard in opposition to it and appears to the Court to be proper, may be heard, notwithstanding that he has not been served with the notice; but may be liable to costs in the discretion of the Court.

Provided further that where at the hearing of the Application/ Appeal, the Court is of opinion that any person who ought to have been served with notice of the Application/Appeal, has not been so served, the Court may order such notice to be served and adjourn the hearing upon such terms, if any, as the Court may think fit.

(5) (a) All questions of fact arising for determination under this part shall be decided ordinarily upon affidavit, but the Court may direct that such other evidence be taken as it may deem fit.

(b) Where the Court orders that certain matters in controversy between the parties shall be decided on oral evidence, it may either itself record the evidence or may direct any Court or Tribunal or a Commissioner appointed for the purpose to record it in accordance with the procedure prescribed by law.

(6) The Court may in such proceedings impose such terms as to costs as it thinks fit.

(7) The Court may in its discretion, either before the opposite party is called upon to appear and answer or afterwards on the application of the opposite party, demand from the Applicant security for the costs of the application/appeal."

**4. In Schedule A;**

(i) at serial no. 1, in column No. 3, the figure "300" shall be substituted by the figure "500"

(ii) Serial no. 2 and the entries relating thereto, shall be deleted.

(iii) at serial no. 3, in column No. 3, the figure "500" shall be substituted by the figure "1000"

(iv) at serial no. 4, in column No. 3, the figure "200" shall be substituted by the figure "350"

(v) at serial no. 5, in column No. 3, the figure "1000" shall be substituted by the figure "2000"

(vi) at serial no. 6, in column No. 3, the figure "50" shall be substituted by the figure "100"

**5. In Schedule B, in Column No. 3:**

(i) at serial no. 1, the figure "300" shall be substituted by the figure "500"

(ii) at serial no. 2, the figure "300" shall be substituted by the figure "500"

(iii) at serial no. 3, the figure "500" shall be substituted by the figure "1000"

(iv) at serial no. 4, the figure "300" shall be substituted by the figure "500"

(v) at serial no. 5, the figure "500" shall be substituted by the figure "1000"

6. In rule 6, after the word "application", the symbol and word "/appeal" shall be inserted.

7. In rule 8, after the word "application", the symbol and word "/appeal" shall be inserted and at the end of para, after the word "applicant" the symbol and word "/Appellant" shall be inserted.

8. In rule 9, in sub-clause (2), after the word "application", the symbol and word "/appeal" shall be inserted.

9. After rule 10, the following Formats shall be added namely;

## Format No. 1

## [Rule 4(1)]

## IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE/BENCH AT GWALIOR

**Arbitration case No. ………………………/20…………………**

**Cause Title**

| | | |
|---|---|---|
| Applicant(s) | : | The name [Company/Institution/Firm/Person(s)] ………………………., age………, father/husband's name………………………occupation………………., complete address………………………………………., fax number with S.T.D. code………, and E-mail address……………………………, if any; of each Applicant |

**Vs.**

| | | |
|---|---|---|
| Non-Applicant(s) | : | The name [Company/Institution/Firm/Person(s)] …………………………, age………, father/husband's name………………………occupation……………….., complete address………………………………………., fax number with S.T.D. code………, and E-mail address……………………………, if any; of each Non-Applicant |

**(An Application under Section 11 of the Arbitration and Conciliation Act, 1996)**

The Applicant(s) beg to submit for appointment of Arbitrator(s) on the following facts and grounds:-

1. There is an Arbitration Agreement dated ……………………………… between Applicant & Non-Applicant.
2. Whether original/certified copy of the agreement is filed – if not, reason therefor :
3. The date……………………………on which a request for referring the dispute to the Arbitration has been made by the Applicant to the Non-Applicant.
4. The description with date of reply of Non-Applicant, if any :
5. Details of remedies exhausted :

   (a) …………………………………………………………………

   (b) …………………………………………………………………

   (c) …………………………………………………………………

The Applicant declares that he has taken all necessary steps for appointment of an Arbitrator(s).

**6. Delay, if any, in filing the application and explanation therefor:**

[State exact period within which the application is filed after expiry of statutory period for appointment of Arbitrator(s), if any]

**7. Facts of the case:**

(Give a concise statement of facts in chronological order in separate paragraphs)

**8. Grounds urged:**

[Separately state the grounds on which the relief (s) is/are claimed]

**9. Specify whether any application was previously instituted before any Court, the status or result thereof along with copy of the order, if any.**

**OR**

**A declaration that no proceeding on the same subject matter has been previously instituted before any Court.**

**10. Relief Prayed for:**

(Specify below the relief prayed for)

Place : ………………

Date : ……………....

**Name**

**Signature**

**of Advocate for Applicant(s)**

## Format No. 2
## [Rule 4(1)]

## IN THE DISTRICT COURT …………………., MADHYA PRADESH

**Miscellaneous Case No. ………………………/20…………………**

**Cause Title**

Applicant(s) : The name [Company/Institution/Firm/Person(s)] ………………………., age………, father/husband's name………………………occupation………………., complete address………………………………………., fax number with S.T.D. code………., and E-mail address………………………………, if any; of each Applicant

**Vs.**

Non-Applicant(s) : The name [Company/Institution/Firm/Person(s)] …………………………,age………, father/husband's name………………………occupation………………., complete address………………………………………., fax number with S.T.D. code………., and E-mail address………………………………, if any; of each Non-Applicant

**[An Application under Section 9/14/27/34/39/43 (as the case may be) of the Arbitration and Conciliation Act, 1996]**

The Applicant(s) beg to submit for .................................. on the following facts and grounds:-

1. There is an Arbitration Agreement dated……………………………… between Applicant & Non-Applicant.
2. Whether original/certified copy of the agreement is filed – if not, reason therefor.
3. The date……………………………on which a request for referring the dispute to the Arbitration has been made by the Applicant to the Non-Applicant.
4. The description with date of reply of Non-Applicant, if any:
5. Details of remedies exhausted:

   (a) …………………………………………………………………

   (b) …………………………………………………………………

   (c) …………………………………………………………………

   The Applicant declares that he has taken all necessary steps for appointment of an Arbitrator(s).

**6. Delay, if any, in filing the application and explanation therefor:**

(State exact period within which the application is filed after expiry of statutory period for appointment of Arbitrator(s), if any)

**7. Facts of the case:**

(Give a concise statement of facts in chronological order in separate paragraphs)

**8. Grounds urged:**

[Separately state the grounds on which the relief (s) is/are claimed]

**9. Specify whether any application was previously instituted before any Court, the status or result thereof along with copy of the order, if any.**

**OR**

**A declaration that no proceeding on the same subject matter has been previously instituted before any Court.**

**10. Relief Prayed for:**

(Specify below the relief prayed for)

Place : ………………

Date : ……………....

**Name**
**Signature**
**of Advocate for Applicant(s)**

## Format No. 3
## [Rule 4(1)]

## IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE/BENCH AT GWALIOR

**Arbitration Appeal No. ………………………/20…………………**

**Cause Title**

Appellant(s) : The name [Company/Institution/Firm/Person(s)] ………………………., age………, father/husband's name……………………occupation……………………., complete address………………………………………., fax number with S.T.D. code………., and E-mail address………………………………., if any; of each Appellant

**Vs.**

Non-Appellant(s) : The name [Company/Institution/Firm/Person(s)] ………………………., age………, father/husband's name……………………occupation………………….., complete address………………………………………., fax number with S.T.D. code………., and E-mail address………………………………., if any; of each Non-Appellant

**(An appeal under Section 37 of the Arbitration and Conciliation Act, 1996)**

Claim in appeal valued at Rs………………………………

Court Fees paid Rs……………………………………

Claim before the Tribunal……………………………

Amount awarded…………………………………………

Being aggrieved by the award as detailed in paragraph (I) below, the Appellant prefers this appeal on the following facts and grounds:

(I) **Particulars of the Award:**

(a) Case Number: ……………………………………………………………..

(b) Date of the Award: ……………………………………………………..

(c) Award passed by: ……………………………………………………..

(d) The name of the Member: …………………………………………………

(e) Designation and place of sitting of the Tribunal: …………………………

(II) **Particulars of the Agreement:**

1. Date: ……………………………………………………………………

2. Place: …………………………………………………………………

(III) **Particulars of the Facts (in chronological order):**

1. ……………………………………………...…………………………

2. ……………………………………………...…………………………

(IV) **Details of Order passed by the Tribunal (in Short):**

………..……………………………………………………………………

……………………….…………………………………………………….

(V) **Other relevant Facts:**

…………………………………………………………………………..……

…………………………………………………………………………..….

(VI) **Grounds of appeal:**

1. ……………………………………………...…………………………

2. ……………………………………………...…………………………

(VII) **Relief Claimed in appeal:**

……………………….………………………………………………………

……………………….………………………………………………………

(VIII) **Caveat:**

That, no notice of lodging a caveat by the opposite party is received.

OR

Notice of caveat is received and the Appellant has furnished the copies of the memo of appeal together with copies of the annexure (if any) to the Caveator.

Place : ………………

Date : ……………....

**(Signature)**

**Advocate for Appellant(s)**

Note: To be filed in duplicate.

## Format No. 4
## [Rule 4(1)]

## IN THE HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR/BENCH AT INDORE/BENCH AT GWALIOR

## OR

## IN THE DISTRICT COURT……………………., MADHYA PRADESH

**Arbitration Case/ Appeal No. ………………………/20…………………**

**Cause Title**

| | | |
|---|---|---|
| Applicant(s) | | The name [Company/Institution/Firm/Person(s)] |
| Appellant(s) | : | ………………………….., |
| | | Vs. |
| Non-Applicant(s) | | The name [Company/Institution/Firm/Person(s)] |
| Non-Appellant(s) | : | ………………………….., |

## AFFIDAVIT

I,…………………………………(Name of the Person), Father/Husband's name………............………. age…………years, occupation……………...…………… R/o…………………………. (Complete address), …………………………… (Designation of the person) of ………………………………………(the name of [Company/Institution/Firm]), do hereby solemnly affirm on oath and state as under:-

1. That, I am the Applicant/Appellant/Non-Applicant in the instant Application and well conversant with the facts and circumstances of the case.
2. That, the ……………………………………………………………………..
3. That, the ……………………………………………………………………..

**DEPONENT**

## VERIFICATION

I,…………………..(Name of the Person), the Deponent do hereby verify that the contents of affidavit from paragraph 1 to …………. are true to my personal knowledge and belief. Verified and signed on this …….. (Date) day of………(Month)…………(Year) at………….(Name of the place).

**DEPONENT**
**REGISTRAR GENERAL**
High Court of Madhya Pradesh

## NOTIFICATION DATED 10.04.2020 OF DEPARTMENT OF PUBLIC HEALTH & FAMILY WELFARE, GOVERNMENT OF MADHYA PRADESH AMENDING THE MADHYA PRADESH EPIDEMIC DISEASES, COVID-19 REGULATION, 2020

**No. F-10-2/2020/17/Medi-2/601:** In exercise of the powers conferred under Sections 2, 3 & 4 of The Epidemic Diseases Act, 1897, the Governor of Madhya Pradesh issued "The Madhya Pradesh Epidemic Diseases, COVID-19 Regulation 2020", dated 23th March, 2020.

Definition of Authorized persons as published in the said Regulation is hereby amended to include inter alia, the Dean of Government Medical Collage which are for the time being in force operational in the State under relevant laws.

By Order and in the name of Governor of Madhya Pradesh
Rajeev Chandra Dubey, Secretary

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## थाना प्रभारी (सब इंस्पेक्टर के पद से अन्यून) को आपदा प्रबंधन अधिनियम, 2005 के अंतर्गत कारित किये गये अपराधों के संबंध में परिवाद दायर करने के लिए प्राधिकृत अधिकारी के रूप में अधिकृत किये जाने संबंधी गृह विभाग, मध्यप्रदेश शासन का आदेश दिनांक 23.04.2020

**क्रमांक एफ. 2–1472/2020/दो/सी–2:** राज्य शासन द्वारा आपदा प्रबंधन अधिनियम, 2005 (2005 का अधिनियम संख्या 53) की धारा 60 के प्रस्तर (क) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए संबंधित पुलिस थाने के थाना प्रभारी (सब इंस्पेक्टर के पद से अन्यून) को आपदा प्रबंधन अधिनियम, 2005 के अध्याय–10 की धारा 51 से 59 अंतर्गत कारित किये गये अपराधों के संबंध में अपने अधिकारिता के न्यायालयों में परिवाद दायर करने के लिए प्राधिकृत अधिकारी के रूप में अधिकृत किये जाने की स्वीकृति प्रदान करते है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेश से
**मोहम्मद शाहिद अबसार, सचिव**

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## MEMORANDUM OF THE HIGH COURT OF M.P. REGARDING PAYMENT OF TRAVELLING ALLOWANCE TO GOVERNMENT EMPLOYEE CALLED AS WITNESSES

No. A/3043
III-2-9/40 Jabalpur, dated 20.12.2017

To,

The District & Sessions Judge,
(All in the State)

Sub - Payment of Travelling allowance to witnesses.

As directed, on the subject mentioned above, please find enclosed circular of State Government, General Administration Department, Mantralaya, no. C-4-2015-3-1 dated 06.10.2015, which was endorsed vide this Registry endt. no. B/5477 dated 10.11.2015, which speaks that "If a Government employee is called as witness after retirement, he is entitled for same Travelling Allowance/Dearness Allowances as regular Employee", for kind information & appropriate action to all the Judges.

Encl:- As above

**Registrar (DE)**

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## सेवानिवृत्त शासकीय अधिकारियों को शासकीय गवाह के रूप में आहूत किये जाने पर टी.ए./डी.ए. प्रदाय करने के संबंध में सामान्य प्रशासन विभाग, मध्यप्रदेश शासन का परिपत्र

क्रमांक सी 6–4–2015–3–एक भोपाल, दिनांक 06 अक्टूबर, 2015

प्रति,

शासन के समस्त विभाग
अध्यक्ष राजस्व मण्डल, मध्यप्रदेश ग्वालियर
समस्त संभागायुक्त
समस्त विभागाध्यक्ष
समस्त कलेक्टर
समस्त मुख्य कार्यपालन अधिकारी, जिला पंचायत,
मध्यप्रदेश

विषय – सेवानिवृत्त शासकीय अधिकारियों को शासकीय गवाह के रूप में आहूत किये जाने पर टी.ए./डी.ए. प्रदाय करने के संबंध में निर्देश।

1. किसी सेवानिवृत्त अधिकारी को न्यायालय आदि के पेशी पर बुलाया जाता है, इस प्रकार की यात्राओं के सम्बन्ध में मध्यप्रदेश यात्रा भत्ता नियम के सेक्शन – xxiii के अन्तर्गत सहायक नियम–136 में निहित प्रावधानों के अंतर्गत टी.ए./डी.ए. प्रदाय करने के सम्बन्ध में पात्रता का प्रावधान रखा गया है।

2. बहुधा यह देखा गया है कि किसी सेवानिवृत्त शासकीय सेवक को जब किसी प्रकरण में शासकीय गवाह के रूप में माननीय न्यायालय में गवाही/साक्ष्य के लिये बुलाया जाता है, तब उन्हें टी.ए./डी.ए. आदि की सुविधा से वंचित रखा जाता है। उन्हें स्वयं के खर्चे पर आना पड़ता है। यह स्थिति न तो उचित है और न ही व्यवहारिक।

3. अतः ऐसे सेवानिवृत्त शासकीय सेवक (अधिकारी/कर्मचारी) जिनकों किसी न्यायालय में साक्ष्य आदि के लिए आहूत किया जाता हो, सेवानिवृत्त शासकीय सेवक द्वारा की गयी यात्रा के सम्बन्ध में उक्त कंडिका–एक में वर्णित यात्रा भत्ता नियम/निर्देशों का पालन सुनिश्चित किया जाये।

**एम.के. वार्ष्णेय**
प्रमुख सचिव

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## NOTIFICATION DATED 10.01.2020 OF MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT, GOVERNMENT OF INDIA REGARDING THE DATE OF ENFORCEMENT OF TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

S.O. 135 (E).— In exercise of the powers conferred by sub-section (3) of section 1 of The Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019), the Central Government hereby appoints the 10$^{th}$ day of January, 2020 as the date on which the provisions of the said Act shall come into force.

[F. No. P.13011/7(4)/2019-DP-III (Pt-2)]

**RADHIKA CHAKRAVARTHY,**
Jt. Secretary

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## NOTIFICATION DATED 26.06.2020 OF HOME DEPARTMENT, GOVERNMENT OF MADHYA PRADESH, REGARDING SUPPLY OF COPY OF POLICE REPORT ALONGWITH THE ANNEXED DOCUMENTS TO THE PERSON/VICTIM, LODGING THE FIR

**Notification No. F.21-56-2020-B-1-Two.** – In Exercise of the powers conferred under the clause (ii) of sub-section (2) of Section 173 of Criminal Procedure Code, 1973 (1 of 1975), the State Government, hereby, prescribes that wherever an officer-in-charge of police station submits a police report under section 173 (2)(i) before a Court, he shall also provide, free of cost, a copy of the same police report along with all annexed documents as being submitted before the Court, to the person/victim, if any, who lodged the First Information Report in the case.

**By Order and in the name of Governor of Madhya Pradesh**
**S.N. Mishra, Principal Secretary**

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# PART - IV

## IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

## THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

**NO. 40 OF 2019***

[5th December, 2019.]

An Act to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

## CHAPTER I
## PRELIMINARY

1. **Short title, extent and commencement. –** (1) This Act may be called the Transgender Persons (Protection of Rights) Act, 2019.

   (2) It extends to the whole of India.

   (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. **Definitions. –** In this Act, unless the context otherwise requires,—

   (a) "appropriate Government" means,—

   (i) in relation to the Central Government or any establishment, wholly or substantially financed by that Government, the Central Government;

   (ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, the State Government;

   (b) "establishment" means—

   (i) any body or authority established by or under a Central Act or a State Act or an authority or a body owned or controlled or aided by the Government or a local authority, or a Government company as defined in section 2 of the Companies Act, 2013, and includes a Department of the Government; or

   (ii) any company or body corporate or association or body of individuals, firm, cooperative or other society, association, trust, agency, institution;

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* It came into force on 10th January, 2020, vide notification No. S.O. 135(E), dated 10th January, 2020, see Gazette of India, Extraordinary, Part II, sec. 2(ii).

(c) “family” means a group of people related by blood or marriage or by adoption made in accordance with law;

(d) “inclusive education” means a system of education wherein transgender students learn together with other students without fear of discrimination, neglect, harassment or intimidation and the system of teaching and learning is suitably adapted to meet the learning needs of such students;

(e) “institution” means an institution, whether public or private, for the reception, care, protection, education, training or any other service of transgender persons;

(f) “local authority” means the municipal corporation or Municipality or Panchayat or any other local body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(g) “National Council” means the National Council for Transgender Persons established under section 16;

(h) “notification” means a notification published in the Official Gazette;

(i) “person with intersex variations” means a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body;

(j) “prescribed” means prescribed by rules made by the appropriate Government under this Act; and

(k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner, hijra, aravani* and *jogta*.

## CHAPTER II
## PROHIBITION AGAINST DISCRIMINATION

3. **Prohibition against discrimination. –** No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:—

(a) the denial, or discontinuation of, or unfair treatment in, educational establishments and services thereof;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial of, or termination from, employment or occupation;

(d) the denial or discontinuation of, or unfair treatment in, healthcare services;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public;

(f) the denial or discontinuation of, or unfair treatment with regard to the right of movement;

(g) the denial or discontinuation of, or unfair treatment with regard to the right to reside, purchase, rent, or otherwise occupy any property;

(h) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.

## CHAPTER III

## RECOGNITION OF IDENTITY OF TRANSGENDER PERSONS

4. **Recognition of identity of transgender person. –** (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.

(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.

5. **Application for certificate of identity. –** A transgender person may make an application to the District Magistrate for issuing a certificate of identity as a transgender person, in such form and manner, and accompanied with such documents, as may be prescribed:

Provided that in the case of a minor child, such application shall be made by a parent or guardian of such child.

6. **Issue of certificate of identity. –** (1) The District Magistrate shall issue to the applicant under section 5, a certificate of identity as transgender person after following such procedure and in such form and manner, within such time, as may be prescribed indicating the gender of such person as transgender.

(2) The gender of transgender person shall be recorded in all official documents inaccordance with certificate issued under sub-section (1).

(3) A certificate issued to a person under sub-section (1) shall confer rights and be a proof of recognition of his identity as a transgender person.

7. **Change in gender. –** (1) After the issue of a certificate under sub-section (1) of section 6, if a transgender person undergoes surgery to change gender either as a male or female, such person may make an application, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone surgery, to the District Magistrate for revised certificate, in such form and manner as may be prescribed.

(2) The District Magistrate shall, on receipt of an application along with the certificate issued by the Medical Superintendent or Chief Medical Officer, and on being satisfied with the correctness of such certificate, issue a certificate indicating change in gender in such form and manner and within such time, as may be prescribed.

(3) The person who has been issued a certificate of identity under section 6 or a revised certificate under sub-section (2) shall be entitled to change the first name in the birth certificate and all other official documents relating to the identity of such person:

Provided that such change in gender and the issue of revised certificate under sub-section (2) shall not affect the rights and entitlements of such person under this Act.

## CHAPTER IV
## WELFARE MEASURES BY GOVERNMENT

8. **Obligation of appropriate Government. –** (1) The appropriate Government shall take steps to secure full and effective participation of transgender persons and their inclusion in society.

(2) The appropriate Government shall take such welfare measures as may be prescribed to protect the rights and interests of transgender persons, and facilitate their access to welfare schemes framed by that Government.

(3) The appropriate Government shall formulate welfare schemes and programmes which are transgender sensitive, non-stigmatising and non-discriminatory.

(4) The appropriate Government shall take steps for the rescue, protection and rehabilitation of transgender persons to address the needs of such persons.

(5) The appropriate Government shall take appropriate measures to promote and protect the right of transgender persons to participate in cultural and recreational activities.

## CHAPTER V

## OBLIGATION OF ESTABLISHMENTS AND OTHER PERSONS

9. **Non-discrimination in employment. –** No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion and other related issues.

10. **Obligations of establishments. –** Every establishment shall ensure compliance with the provisions of this Act and provide such facilities to transgender persons as may be prescribed.

11. **Grievance redressal mechanism. –** Every establishment shall designate a person to be a complaint officer to deal with the complaints relating to violation of the provisions of this Act.

12. **Right of residence. –** (1) No child shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such child.

(2) Every transgender person shall have—

(a) a right to reside in the household where parent or immediate family members reside;

(b) a right not to be excluded from such household or any part thereof; and

(c) a right to enjoy and use the facilities of such household in a non-discriminatory manner.

(3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre.

## CHAPTER VI

## EDUCATION, SOCIAL SECURITY AND HEALTH OF TRANSGENDER PERSONS

13. **Obligation of educational institutions to provide inclusive education to transgender persons. –** Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities to transgender persons without discrimination on an equal basis with others.

14. **Vocational training and self-employment. –** The appropriate Government shall formulate welfare schemes and programmes to facilitate and support livelihood for transgender persons including their vocational training and self-employment.

**15. Healthcare facilities. –** The appropriate Government shall take the following measures in relation to transgender persons, namely:–

(a) to set up separate human immunodeficiency virus Sero-surveillance Centres to conduct sero-surveillance for such persons in accordance with the guidelines issued by the National AIDS Control Organisation in this behalf;

(b) to provide for medical care facility including sex reassignment surgery and hormonal therapy;

(c) before and after sex reassignment surgery and hormonal therapy counselling;

(d) bring out a Health Manual related to sex reassignment surgery in accordance with the World Profession Association for Transgender Health guidelines;

(e) review of medical curriculum and research for doctors to address their specific health issues;

(f) to facilitate access to transgender persons in hospitals and other healthcare institutions and centres;

(g) provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.

## CHAPTER VII

## NATIONAL COUNCIL FOR TRANSGENDER PERSONS

**16. National Council for Transgender Persons. –** (1) The Central Government shall by notification constitute a National Council for Transgender Persons to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

(2) The National Council shall consist of—

(a) the Union Minister in-charge of the Ministry of Social Justice and Empowerment, Chairperson, ex officio;

(b) the Minister of State, in-charge of the Ministry of Social Justice and Empowerment in the Government, Vice-Chairperson, ex officio;

(c) Secretary to the Government of India in-charge of the Ministry of Social Justice and Empowerment, Member, ex officio;

(d) one representative each from the Ministries of Health and Family Welfare, Home Affairs, Housing and Urban Affairs, Minority Affairs, Human Resources Development, Rural Development, Labour and Employment and Departments of Legal Affairs, Pensions and

Pensioners Welfare and National Institute for Transforming India Aayog, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;

(e) one representative each from the National Human Rights Commission and National Commission for Women, not below the rank of Joint Secretaries to the Government of India, Members, ex officio;

(f) representatives of the State Governments and Union territories by rotation, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members, ex officio;

(g) five representatives of transgender community, by rotation, from the State Governments and Union territories, one each from the North, South, East, West and North-East regions, to be nominated by the Central Government, Members;

(h) five experts, to represent non-governmental organisations or associations, working for the welfare of transgender persons, to be nominated by the Central Government, Members; and

(i) Joint Secretary to the Government of India in the Ministry of Social Justice and Empowerment dealing with the welfare of the transgender persons, Member Secretary, ex officio.

(3) A Member of National Council, other than ex officio member, shall hold office for a term of three years from the date of his nomination.

**17. Functions of Council. –** The National Council shall perform the following functions, namely:—

(a) to advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to transgender persons;

(b) to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of transgender persons;

(c) to review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to transgender persons;

(d) to redress the grievances of transgender persons; and

(e) to perform such other functions as may be prescribed by the Central Government.

## CHAPTER VIII
## OFFENCES AND PENALTIES

**18. Offences and penalties. –** Whoever, —

(a) compels or entices a transgender person to indulge in the act of forced or bonded labour other than any compulsory service for public purposes imposed by Government;

(b) denies a transgender person the right of passage to a public place or obstructs such person from using or having access to a public place to which other members have access to or a right to use;

(c) forces or causes a transgender person to leave household, village or other place of residence; and

(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine.

## CHAPTER IX
## MISCELLANEOUS

**19. Grants by Central Government. –** The Central Government shall, from time to time, after due appropriation made by Parliament by law in this behalf, credit such sums to the National Council as may be necessary for carrying out the purposes of this Act.

**20. Act not in derogation of any other law. –** The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

**21. Protection of action taken in good faith. –** No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any local authority or any officer of the Government in respect of anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and any rules made thereunder.

**22. Power of appropriate Government to make rules. –** (1) The appropriate Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application shall be made under section 5;

(b) the procedure, form and manner and the period within which a certificate of identity is issued under sub-section (1) of section 6;

(c) the form and manner in which an application shall be made under sub-section (1) of section 7;

(d) the form, period and manner for issuing revised certificate under sub-section (2) of section 7;

(e) welfare measures to be provided under sub-section (2) of section 8;

(f) facilities to be provided under section 10;

(g) other functions of the National Council under clause (e) of section 17; and

(h) any other matter which is required to be or may be prescribed.

(3) Every rule made by the Central Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under sub-section (1), shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such legislature consists of one House, before that House.

**23. Power to remove difficulties. –** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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**STATE OF KARNATAKA V. APPA BALU INGALE AND ANOTHER, AIR 1993 SC 1126**

K. Ramaswamy, J. "The Judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seamless web of life. The great tides and currents which engulf the rest of man do not turn aside in their course and pass the judges idly by. Law should sub serve social purpose. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future to decide objectively, disengaging himself/herself from every personal influence or predilections."


मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर


मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

**मध्यप्रदेश राज्य न्यायिक अकादमी**
**मध्यप्रदेश उच्च न्यायालय, जबलपुर – 482 007**