

**JOTI JOURNAL**  
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**FEBRUARY-DECEMBER 2010**

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- (i) न्यायालय द्वारा अनुज्ञात संशोधन वाद पत्र एवं लिखित कथन में समाविष्ट करने की प्रक्रिया क्या होगी?
- (ii) क्या किसी धन की वसूली से संबंधित आज्ञापति के निष्पादन हेतु कार्यवाही के दौरान आज्ञापति धारक की मृत्यु होने या निष्पादन कार्यवाही प्रारंभ होने के पहले ही आज्ञापति धारक के मृत्यु हो जाने पर उसके विधिक प्रतिनिधियों को कार्यवाही जारी रखने अथवा प्रारंभ करने हेतु उत्तराधिकार प्रमाण पत्र प्रस्तुत करना होगा?
- (iii) क्या एक सह प्रतिवादी, अन्य सह प्रतिवादी एवं उसके साक्षियों की प्रतिपरीक्षा करने हेतु अनुज्ञात किया जा सकता है?
- (iv) उन अपराधों के संबंध में जिनके लिए कारावास की दण्डाज्ञा 10 वर्ष तक विस्तारित है, दण्ड प्रक्रिया संहिता की धारा 167 (2) के प्रावधान के अंतर्गत अभियुक्त को अधिकतम कितने दिनों के लिए निरूद्ध किया जा सकता है?
- (v) क्या मजिस्ट्रेट परक्राम्य लिखत अधिनियम, 1881 की धारा 138 के अधीन दण्डनीय अपराध का संज्ञान परिवाद के साथ प्रस्तुत शपथ पत्र पर ले सकता है अथवा द.प्र.सं. की धारा 200 के अधीन परिवादी के न्यायालय में कथन होना आवश्यक है?
- (vi) दण्ड प्रक्रिया संहिता की धारा 320 में 2008 के संशोधन के पश्चात् भारतीय दण्ड संहिता की धारा 324 की शमनीयता की वर्तमान प्रास्थिति क्या है?
- (vii) अभियुक्त द्वारा जहां चिकित्सा विधिक प्रमाणपत्र (M.L.C.) अथवा शव-परीक्षण प्रतिवेदन (Post Mortem Report) असली होना स्वीकार कर लिया गया है वहां संबंधित चिकित्सक की परीक्षा के बिना क्या उन्हें सारभूत साक्ष्य के रूप में पढ़ा जा सकता है?
- (viii) पचास बल्क लीटर से अधिक मदिरा के विनिर्माण, परिवहन, कब्जा, विक्रय आदि से संबंधित मामलों का विचारण किस मजिस्ट्रेट द्वारा किया जा सकता है?



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

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<b>ACCOMMODATION CONTROL ACT, 1961 (M.P.)</b>		
<b>Section 12</b> – See Section 111(d) of Transfer of Property Act, 1882	1	1
<b>Section 12 (1) (b) &amp; (f)</b> – Right of sub-tenant to oppose eviction – Sub-tenant has no right to oppose the claim for eviction on the ground of bonafide need – He has merely a right to oppose eviction on the ground of sub-tenancy under Section 12 (1) (b) of the Act – Such decree cannot be interfered with at the instance of sub-tenant that the original plaintiff was not competent to represent the estate at the time of institution of suit	147*	189
<b>Section 12 (1) (d)</b> – Eviction on the ground of non-user of accommodation – Burden of landlord to prove – It has to be proved that suit accommodation was not used by the tenant “without reasonable cause” – If landlord establishes his claim, the onus shifts on the tenant to establish “reasonable cause” of non-user	197	263
<b>Section 12 (1) (f)</b> – Amendment after commencement of trial – Permissibility – Suit for eviction at the stage of defendant evidence – Plaintiff executed lease deed of adjacent shop – Immediately thereafter defendant sought amendment in written statement – Held, subsequent event has occurred after commencement of trial and application for amendment filed with due diligence – Trial Court erred in exercising its jurisdiction in rejecting application	148*	189
<b>Section 12 (1) (f)</b> – Suit for eviction on the ground of bonafide need – Case of plaintiff is that the suit shop was obtained on rent by defendant from his father and later on after partition the plaintiff became its owner and landlord – During evidence certified copy of partition decree was produced – Its admissibility was objected for want of stamp and registration – Trial Court decreed the suit in favour of plaintiff without deciding the objection – Held, objection as to admissibility of partition decree is to be decided before recording the findings about bonafide need	72	89
<b>Section 12 (1) (f) and (c)</b> – Eviction suit – Enquiry as to title, extent and proof of – Denial of title in WS, effect of – If a title of the landlord is disclaimed in the written statement, the ground is made out for eviction under Section 12 (1) (c) of the Act	73	90
<b>Sections 12 (1) (f) and 13 (6)</b> – Suit for eviction on the ground of bonafide need that plaintiff’s son wanted to do footwear business in the suit premises – The High Court was of the view that since plaintiff’s son had no experience in footwear business, hence there was no bonafide need – The Supreme Court has set aside the judgment of the High Court and held, that the person can start new business even if he has no experience in the new business – Claim should not be rejected only on the ground that plaintiff’s son had no experience in footwear business	74*	92
<b>Section 13 (6)</b> – Striking out defence on account of non-depositing of due rent, effect of – Held, even if the defence is struck off, other defence under the general law is always available to the tenant – Hence, the tenant has right to cross examine landlord and his witnesses to point out falsity or weakness of the case	198	264

ACT/ TOPIC	NOTE NO.	PAGE NO.
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**Sections 23-J, 12 (1) (a), 12 (3), 13 (5), 12 (1) (f)** – Plaintiff was a landlady of a special category mentioned under Section 23-J – Plaintiff has filed the suit under Section 12 (1) (a) and (f) before Civil Court – Suit cannot be dismissed for want of jurisdiction – Reasons mentioned

In spite of notices and after service of summons of the Court, tenant has chosen not to deposit the rent in Court – Tenant took the risk of suffering the order of eviction – Ground under Section 12 (1) (a) made out – Tenant is not entitled for protection under Sections 12 (3) and 13 (5) as the tenant never deposited the rent as claimed by the landlord

Bonafide need – Plaintiff retired from service – Though in cross-examination, admitted that he is still in occupation of the house allotted by his employer at Bhilai – It cannot be said that plaintiff is making a false claim of bona fide need just to evict the tenant

Alternative accommodation – Alternative accommodation should be reasonably suitable for non-residential accommodation 149\* 189

### **AGRICULTURE CATTLE PRESERVATION ACT, 1959 (M.P.)**

**Sections 4 and 6** – See Sections 451 and 457 of the Criminal Procedure Code, 1973 273 373

### **ALL INDIA BAR COUNCIL (FIRST CONSTITUTION) RULES, 1961**

**Rule 13** – Acquiring interest in litigation – During pendency of litigation – An Advocate of party purchased the disputed property by sale deed – Held, said transaction was forbidden by Rule 13 of Rules 1961, therefore, it was unlawful and void 280 (ii)\* 380

### **ARBITRATION ACT, 1940**

**Section 29** – Power of the arbitrator to award interest – Held, it is well settled that arbitrators have the competence, jurisdiction and power to award interest from the date of award to the date of payment as also for pre-reference, *pendente lite* and post-award – The only caveat is that the amount of interest so awarded is reasonable and not prohibited by agreement 2\* 1

**Sections 30, 33 and 14** – Scope of interference with reasoned award by the Court – Reappreciation of evidence on record is not permissible under the Act 75 92

### **ARBITRATION AND CONCILIATION ACT, 1996**

**Sections 2 (1) (b) and 7 (2)** – Meaning of arbitration agreement – It need not be stamped 76\* 93

**Sections 2 (h) and 7** – Whether it can be said that there is an arbitration agreement between the parties where one of the parties seeking arbitration is a company which came into existence subsequent to the contract containing the arbitration agreement? Held, No – Parties to the agreement must be person in existence – The scope of Section 15 of Specific Relief Act is different 199 264

**Sections 2 (1) (b), 7 and 8** – Survival of the arbitration agreement – Held, merely because the contract has come to an end by its termination due to breach, the arbitration clause does not perish nor is rendered inoperative, rather it survives for resolution of disputes arising in respect of, or with regard to or under the contract – Legal position reiterated

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Court's power to refer party to arbitration – Held, once the pre-requisite conditions are satisfied, the Court must refer the parties to arbitration – Position explained	3	2
<b>Sections 5, 8 and 27</b> – Reference to arbitration – Scope of – Though such matter of the suit was within the jurisdiction of the arbitration but, since the case relates to allegation of fraud and serious malpractices, it is held, such matter does not warrant to be tried and decided by arbitrator – It should be tried in a Court of law which would be more competent and have the means to decide such a complicated matter		
Requirement to file the original deed containing arbitration clause – Held, since the original deed was not filed within the requirement of Section 8 (2) of the Act, it must be held that the mandatory requirement under the Act has not been complied with – Therefore, Court would not be empowered to refer the matter to Arbitrator	150	190
<b>Sections 7, 8 and 11</b> – Whether <i>Will</i> or further declaration of the testator (deceased) provides for reference of dispute to arbitrator can be considered as arbitration agreement among the legatees as contemplated under Section 7 of the Arbitration and Conciliation Act, 1996? Held, No	77	93
<b>Section 11</b> – Appointment of arbitrator – Considerations thereof – Examination of the agreement under Section 11 (6) is necessarily to be restricted to the question whether there is an arbitration agreement between the parties – The examination cannot extend to examine the agreement to ascertain the rights and obligations regarding performance of such contract between the parties – Legal position explained	253	341
<b>Section 14</b> – The Court does not have any power to extend the time for making and publishing an award under the Arbitration and Conciliation Act – But the Court can opt to do so in exercise of inherent power on application of either party	78*	95
<b>Section 31</b> – Award of interest – Power of Arbitration Tribunal – The provision of Section 31 (7) of the Act merely authorize the Tribunal to award interest in accordance with the contract which may be simple or compound and in the absence of any specific provision relating to interest in the contract, to award simple interest at such rate as it deems fit from the date on which the cause of action arose till the date of payment		
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<b>Sections 34 and 37</b> – Amendment application under Order 6 Rule 17 CPC filed to incorporate additional grounds for setting aside arbitral award under Section 34 filed after expiry of limitation under Section 34 (3) – Bar under Section 34 of Arbitration and Conciliation Act would not invariably be applicable to such amendment in the interest of justice	200	265

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<b>BAR COUNCIL OF INDIA RULES</b>		
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<b>CARRIERS ACT, 1865</b>		
Section 9 – Presumption of negligence under Section 9 of the Carriers Act is also applicable to a complaint under the Consumer Protection Act and it is for the carrier to prove absence of negligence	211 (iv)	280
<b>CATTLE TRESPASS ACT, 1871</b>		
Sections 10 and 20 – See Sections 96, 304 Part II/304 Part II r/w/s 34 of Indian Penal Code, 1860	108*	132
<b>CIVIL COURTS ACT, 1958 (M.P.)</b>		
Section 15 (3) – Trial Court returned the plaint for want of pecuniary jurisdiction after revaluation of the plaint at the last stage of proceeding – Held, such return of plaint would result in a fresh trial – Hence, the order of return of plaint is set aside and the trial Court is directed to refer the matter to District Judge to pass appropriate order under Section 15 (3) of M.P. Civil Courts Act, 1958	201	266
<b>CIVIL COURT RULES, 1961 (M.P.)</b>		
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Ex Parte Proceedings – When improper? Held, if the date has been fixed by the Board Reader on having Presiding Officer on leave; such date cannot be treated as a date fixed for hearing – Until and unless the case is fixed for hearing, the Court should not direct to proceed ex parte		
Order granting Succession Certificate was without due procedure as proceedings were defective in substance – Order granting Succession Certificate set aside – Matter remitted back for decision after giving opportunity of hearing to both parties		
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<b>Section 2 (2) and Order 21 Rule 11</b> – Decree – Execution of – Only final decree is executable – Executing Court cannot execute preliminary decree in absence of final decree – When final decree is part of preliminary decree, preliminary decree is executable		
Final and preliminary decree – Preliminary decree would not convert automatically into final decree	302	421
<b>Sections 2 (11), 11 and Order 22 and Rules 3 &amp; 5</b> – Whether the term 'legal representative' as defined in S.2 (11) of CPC is synonymous to term 'legal heir'? Held, No		
Order of substitution of legal representative under O.22 R.5 – Scope of – Such an order is only for the purposes of the suit itself – The L.Rs. are impleaded only for the purpose of prosecuting the case – Substitution does not make any person the heir to the deceased		
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<b>Section 11</b> – Applicability of the principle of <i>res judicata</i> – Earlier suit filed for declaration and possession and it was held that the Civil Court has no jurisdiction to grant relief of possession under the Land Tenancy Laws – The defendant, however, held to have perfected his title as regards tenancy rights by adverse possession		
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(ii) Principle of <i>res judicata</i> will not apply when the entire matter was still in appeal and the matter had not attained finality	1	1
<b>Section 11</b> – <i>Res judicata</i> , scope and applicability of – A plea decided even in earlier suit for injunction touching the title between the same parties would operate as <i>res judicata</i> in later suit if in such earlier suit, a decision as to question of title was necessary for granting or refusing injunction and the relief for injunction was found or based on the findings of title between the same parties	4	3



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<b>Sections 11, 115 and Order 7 Rule 11 – Res Judicata</b> – In earlier suit by Trust, question of title, execution of gift deed was directly in issue and Courts decided the said issue against the Trust – In the present suit, plaintiffs are claiming title through Trust without impleading Trust – Held, if issues now cannot be raised by the Trust then any person claiming under Trust now cannot file suit – Suit barred by principles of <i>res judicata</i>		
If on the given facts the suit appears to be barred under some law i.e. on application of principles of <i>res judicata</i> then the Court would be entitled to dismiss the suit applying the provisions contained under Order 7 Rule 11(c)	256*	344
<b>Sections 15 to 20 and 92</b> – Jurisdiction of Principal Civil Court of original jurisdiction (District Court) or any other empowered Court in that behalf by the State Government under Section 92 of CPC is concurrent without reference to any pecuniary limits – The provisions of Sections 15 to 20 of CPC will also not apply to suit filed under Section 92 of CPC	155	200
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<b>Section 24</b> – Transfer of suit – Where the disputed property in two suits is the same but nature of dispute and parties to suits are different – No ground for conduction of a joint trial – Rejection of application for transfer of suit is proper		
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<b>Section 30, Order 12 Rules 2, 2A, 3A &amp; 4</b> – Admissions of facts and documents – Period and stage at which it is permitted – For admission of facts, the period and stage has been specified under Rule 4 of Order 12 while for admission of the documents, no such period and stage has been specified either under Order 12 Rule 2 or 3A of CPC or in the Civil Courts Rules and Orders		
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<b>Sections 34 and 146 and Order 21 Rule 30</b> – Money decree – Death of decree-holder during pendency of execution proceeding – Executing Court directed heirs of the deceased on the objection of judgment-debtor to obtain succession certificate so that the execution proceeding may be continued – Executing Court granted interest on decretal amount for the period of which the heirs of decree-holder have taken for obtaining the succession certificate – Held, Executing Court did not exceed its limit by passing the order	202	267
<b>Section 35 and Order 6 Rule 17</b> – Application for amendment of pleadings – Should not be refused if it is bonafide, legitimate, honest and necessary and should not be permitted if it is malafide, worthless and dishonest		
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<b>Sections 35, 35-A and 151</b> – Whether a Court has power to pass an order directing a plaintiff in a suit to file an undertaking that in the event of not succeeding in the suit, he shall pay certain sum by way of damages to the defendant? Held, No, as no where in law Courts have been authorised or competent to issue such order		
Imposition of realistic costs to discourage vexatious, frivolous, malicious or speculative litigation – Provisions of Section 35-A and 35-B of CPC are not sufficient and there is urgent need to revisit the provisions to achieve the goal	305 (i) & (iii)	424
<b>Sections 35-B &amp; 148 and Order 17 Rule 1 (2)</b> – Non-payment of costs – Effect – Section 35-B does not contemplate or require dismissal of the suit as an automatic consequence of non-payment of costs by the plaintiff – If the costs levied were not paid by the party on whom it is levied, such defaulting party is prohibited from any further participation in the suit		
Extension of time for payment of costs – Court can do it in exercise of its general power to extend time under Section 148 CPC, but such extension can only be in exceptional circumstances and by subjecting the defaulting party to further terms		
Adjournment, grant of – Where a genuine and bonafide request is made for adjournment, instead of resorting to forfeiture of the right to cross-examine, the court may grant time by levying costs	81	96
<b>Section 41 and Rule 5</b> – Stay of execution of eviction decree passed by the Courts below cannot be asked as of right – The appellate/revisional court may direct to pay monthly rent at a rate higher than the contractual rent – Cautions and procedure to be followed stated	65	77
<b>Section 89 and Order 10 Rule 1-A</b> – Section 89 of CPC – Interpretation of – To meet with anomalies and draftman's errors, the Apex Court made changes in Section 89 by interpretation process, which shall remain in force till the legislature corrects the mistake		
ADR process – Object of Section 89 CPC is that settlement should be attempted by adopting an appropriate ADR process – Having a hearing after completion of pleadings, to consider recourse to ADR process, is mandatory – But actual reference to an ADR process in all cases is not mandatory – The Apex Court enumerated illustrative categorisation of 'suitable' and 'unsuitable' cases to an ADR process		
ADR process – Proper stage and procedure – The stage at which the Court should explore whether the matter should be referred to ADR process, is after the pleadings are complete and before framing the issues, when the matter is taken up for preliminary hearing for examination of parties under Order 10 of CPC – However, if for any reason, the Court had missed the opportunity to consider and refer the matter to ADR process before framing issues, nothing prevents the Court from resorting to Section 89 even after framing issues – But once evidence is commenced, the Court will be reluctant to refer the matter to the ADR processes lest it becomes a tool for protracting the trial – The procedure to be adopted by a Court under Section 89 CPC has been laid down by the Apex Court	306	428

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'Necessary party' and 'proper party', connotation there of – Mere likelihood of a third party to secure a right/interest in suit property after the suit is decided against the plaintiff in a suit for specific performance of contract does not make such party a necessary or proper party – Legal position explained	257	345
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<b>Order 6 Rule 15 (4)</b> – Verification of pleadings – Written statement containing admissions duly signed and verified by the defendants and equally duly attested by the Advocate – Not accompanied by affidavit – Application pointing out such defect was not filed in the trial Court – Defendant not objecting but allowed the trial Court to proceed with such written statement – Held, written statement not invalid	196 (ii)*	262
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<b>Order 47 Rules 1 &amp; 4</b> – Decree passed by trial court for mandatory injunction – No evidence was produced in respect of relief of <i>mesne profits</i> or this ground was not considered by the trial court – Trial Court not granted the relief of <i>mesne profits</i> in absence of evidence or deliberately – Petitioner moved an application under Order 47 Rule 1 CPC before the trial court seeking relief of <i>mesne profits</i> by amendment of decree – Held, it was not a case of error apparent on the face of record – Setting aside the Trial Court's order allowing the application for review, was proper	16*	21
<b>CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1966 (M.P.)</b>		
<b>Rule 14 (8)</b> – Departmental proceedings – Delinquent cannot be permitted to engage legal practitioner under the aforesaid Rule on the ground that Presiding Officer is a Judge and is not legal practitioner	319	447
<b>CIVIL SERVICES (MEDICAL ATTENDANCE) RULES, 1958 (M.P.)</b>		
<b>Rule 1 (3)</b> – Rule 1 (3) of the 1958 Rules does not apply to retired Government servant – But if a Government servant, while in service, admitted in hospital due to ailment and attained the age of superannuation during the treatment in hospital, then he is entitled to reimbursement of the entire expenses including the period after the date of superannuation	315*	443
<b>Rules 2 (d) (ii) and 4</b> – Wholly dependent – Husband of the petitioner was receiving meagre pension – The husband of the petitioner has to be treated as wholly dependent for the purpose of reimbursement of medical bills – Therefore, petitioner is entitled for reimbursement in respect of treatment availed by her husband.		



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Husband of the petitioner was treated at All India Institute of Medical Sciences, New Delhi without prior permission – Held, State Government cannot deny reimbursement of medical bills on the ground that prior permission has not been obtained – Writ petition allowed – Respondents directed to reimburse the amount with interest @ 8% p.a.

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### COMPANIES ACT, 1956

**Section 5, 291 and Clauses 24, 26, 30, 31 & 45** – See Section 141 of the Negotiable Instruments Act, 1881

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**Sections 34 and 149** – See Sections 2 (h) and 7 of the Arbitration and Conciliation Act, 1996

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### CONSTITUTION OF INDIA

**Articles 14 and 16 (1)** – Appointment in judiciary – Filling up of vacancies in excess of notified/advertised vacancies is without jurisdiction being violative of Articles 14 and 16(1) of the Constitution of India, thus a nullity inexecutable and unenforceable in law – In case the vacancies stand filled up, the process of selection comes to an end and waiting lists etc. cannot be used as a reservoir to fill-up the vacancy which comes into existence after the issuance of notification or the advertisement

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**Articles 15 and 17** – Centuries old Indian caste system still takes its toll from time to time which needs to be abolished for a smoother functioning of the rule of law

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**Article 16** – See Section 4 of Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

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**Articles 16 (4) (1) and 15(3)** – Reservation policy for public employment – Difference and applicability of horizontal and vertical reservation – Explained

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**Article 20 (3)** – See Section 100 (4) and (5) of the Criminal Procedure Code, 1973

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**Articles 20 (3) and 21** – Law relating to Polygraph Test, Brain Fingerprinting Test or Narco Test

Protection against self-incrimination – Available even at the stage of investigation not only to an accused but also to a suspect or a witness of crime – Therefore, subjecting a person to Polygraph Test or Brain Fingerprinting Test or Narco Test involuntarily amounts to testimonial compulsion as well as forcible interference with person's mental process – It violates the provisions of Article 20 (3) and right of privacy under Article 21 of the Constitution

The aforesaid tests do not fall within the scope of Sections 53, 53-A and 54 of Cr.P.C., which permit examination of accused by medical practitioner

However, aforesaid tests may be administered after recording consent before Judicial Magistrate but any information or material discovered as a result of the said tests can only be admitted in accordance with Section 27 of the Evidence Act

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**Article 21** – A woman's right to make reproductive choices to procreate or not to procreate is a dimension of 'personal liberty' under Article 21 of the Constitution of India – Woman's right to privacy, dignity and bodily integrity should be respected

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<b>Article 21</b> – See Sections 24, 91, 94, 154, 156, 161,162, 170, 172, 173, 207, 208 and 243 of the Criminal Procedure Code, 1973	<b>266</b>	<b>357</b>
<b>Articles 72 and 161</b> – See Criminal Trial	<b>99*</b>	<b>125</b>
<b>Articles 141, 226, 227, 323-A and 323-B</b> – Power and jurisdiction of High Courts under Articles 226 and 227 of the Constitution of India in respect of the matters for which Tribunals have been created under Articles 323-A and 323-B of the Constitution of India – Explained	<b>210*</b>	<b>279</b>
<b>Article 215</b> – See Section 12 of the Contempt of Courts Act, 1971	<b>90*</b>	<b>107</b>
<b>Articles 233 and 235</b> – Appointment of Judicial Officers – Verification of character and antecedents must be done before making appointment – The Apex Court directed that all the High Courts would ensure that “Reports of police verification”, conducted in accordance with law, are received by the authority concerned before an order of appointment/posting in the State Judicial Service is issued by the said authority	<b>318 (i)*</b>	<b>447</b>
<b>Article 311</b> – See Civil Services (Classification, Control and Appeal) Rules, 1966 (M.P.)	<b>319</b>	<b>447</b>

## **CONSUMER PROTECTION ACT, 1986**

**Sections 2 (1) (c) (d) (g) and 14 (1) (d)** – Subrogation in context of insurance policy explained

The contract of insurance is a contract of indemnity – The doctrine of subrogation in this context is to enable the insurer to step into the shoes of the assured and enforce the rights and remedies available to the assured

Difference between 'assignment' and 'subrogation' explained **211 (i),(ii) & (iii) 280**

**Section 2 (1) (d)** – Definition of 'consumer', interpreted and explained

Appellant had bought the truck for a consideration which was paid by him – It was bought to be used exclusively for the purpose of earning his livelihood by means of self-employment – Buyers of goods or commodities for 'self consumption' in economic activities in which they are engaged would be 'consumers' as defined in the Act even if he was to employ a driver for running the aforesaid truck **17\* 22**

**Sections 2 (1)(g) and (o)** – Deficiency in service – Test to determine the extent of fault, imperfection, nature and manner of performance etc. – No single test is determinative – It must depend on the facts of the particular case, having regard to the nature of service to be provided **265 356**

**Section 2 (1) (o) (g)** – See Insurance Contract **292 407**

**Section 17 (2) (b) (as amended w.e.f. 15.02.2003)** – Territorial jurisdiction of consumer forums – Insurance policy taken at Ambala (Haryana) but claim for compensation made at Chandigarh where also respondent Insurance Company has a branch office – Not permitted as the expression “branch office” in amended Section 17 (2) (b) of the Act would mean branch office where cause of action had arisen **89 105**

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Motor Vehicle – Liability of insurance company to indemnify the owner		
Whether in case of use of the vehicle against the terms of the policy, insurance company can repudiate the claim of the owner of the motor vehicle relating to the damage of the vehicle, in toto? Held, No – Claim has to be settled on non-standard basis, keeping in view the guidelines issued by the insurance company	163	207
See Medical Negligence	184	237
<b>CONTEMPT OF COURTS ACT, 1971</b>		
<b>Section 12</b> – Maintainability of Contempt Petition for execution of a decree passed by competent Civil Court – Held, not maintainable as the statute provides for a mechanism for execution of the decree passed	90*	107
<b>CONTRACT ACT, 1872</b>		
<b>Section 55</b> – When time is the essence of contract – When there are many instances of contract for sale where the fact that time is to be of essence of the contract has been specifically mentioned which clearly shows the intention of the parties to make time to be the essence of the contract – It would be apposite to conclude that the intention of the parties of making the time being the essence of the contract	146 (iii)	184
<b>Sections 69 and 140</b> – See Sections 2 (1) (c) (d) (g) and 14 (1) (d) of the Consumer Protection Act, 1986 and Section 9 of the Carriers Act, 1865	211	280
<b>COURT FEES ACT, 1870</b>		
<b>Section 4</b> – See Section 149 and Order 7 Rule 11 (c) of the Civil Procedure Code, 1908	7*	11
<b>Section 7 (iv)(c)</b> – Proper court fees, determination of – Suit for declaration that sale deed is illegal and void – Sale deed in question executed by the husband of plaintiff No.1 and father of remaining plaintiffs – Plaintiffs were not party to sale deed – Held, being the successor of executant of the sale deed in question, plaintiffs are bound by the sale deed – Even if the relief clause is couched in declaratory form, the relief of avoidance and/or cancellation is implicit in the declaratory relief – Plaintiffs are required to pay <i>ad valorem</i> court fees on the valuation of sale deed	91	108
<b>Section 7 (iv)(c)</b> – Determination of leviable court fees – Suit for cancellation/avoidance of document – Value of sale price or market price of the property – Held, it is sale price and not market price on which court fees is required to be paid – Market price is irrelevant in determination of leviable court fees		
Distinction between ‘sale price’ and ‘market price’ – Explained	164	209
<b>Section 7 (iv) (c)</b> – What is the court fee payable in regard to the prayer for declaration that the sale deeds are void and are not binding on the coparcenary and for consequential relief of joint possession and injunction? Held, the suit is not for cancellation of sale deed resultantly, the court fee need not be paid on sale consideration mentioned in the sale deeds – Computation of court fee is required to be made u/s 7(iv)(c) of the Act	320	448

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<b>Section 7 (iv)(d) – Revocation of licence – Suit for relief of mandatory injunction to hand over possession against licensee, valuation of – Where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to mandatory injunction and such relief can be valued u/s 7(iv)(d) of the Court Fees Act – The licensor will have to bring a suit for possession if he had not been diligent and such a suit would be governed by S. 7(v) of the Court Fees Act</b>	18	22
<b>CRIMINAL PROCEDURE CODE, 1973</b>		
<b>Sections 9 (6) and 327 – Scope of power of High Court and Sessions Court under Section 9 (6) of CrPC about place of sitting of Sessions Court</b>	212*	284
<b>Sections 24, 91, 94, 154, 156, 161, 162, 170, 172, 173, 207, 208 and 243 – Cryptic telephonic message not giving particulars of the offence or accused which are bereft of any details made to the police could not be treated as FIR, as their object is only to get the police to the scene of offence and not to register the FIR</b>		
Where the signature of a witness is taken on the statement recorded u/s 161 in contravention of Section 162 (1) Cr.P.C., the evidence of such witnesses does not become inadmissible		
Role of Public Prosecutor and Judge in a criminal trial – The role of Public Prosecutor is to ensure fair play in proceedings and to bring before the Court all relevant facts for determination of truth and justice to all parties including the victims – The criminal Courts must also ensure that Prosecutor is doing his duties to the utmost level of efficiency and fair play – Scope of disclosure to ensure administration of justice by the Prosecutor explained	266 (i),(ii) & (iv)	357
<b>Sections 53, 53-A and 54 – See Articles 20 (3) and 21 of the Constitution of India</b>	264	354
<b>Section 91 – Summoning of documents at the stage of framing of charge – It cannot be said to be absolute proposition of law that under no circumstance the Court can look into the material produced by defence at the time of framing of charge – There can be rare and exceptional cases where alleged defence material could be shown to the trial Court for demonstrating that prosecution version is totally absurd or preposterous and defence material could be looked into by the Court at the time of framing of charge</b>	165	210
<b>Sections 95 and 96 – Issuance of forfeiture notification – Essential considerations there for – The Government must form an opinion to the effect that the newspaper, book or document containing any matter, the publication of which is an offence under certain provisions of Indian Penal Code mentioned in Section 95 Cr.P.C. and the Government must state the grounds of its opinion – Mere citation of the words of the section is not sufficient – Legal aspects to be kept in mind while examining the validity of such notification laid down</b>	267	366

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'Charge-sheet' and 'Final report', meaning of – Held, neither the charge-sheet nor final report has been defined in Cr.P.C. – Charge-sheet or final report, whatever may be the nomenclature, only means a report under Section 173 of the Code, which has to be filed by police officer on completion of investigation	322	451
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When new investigating officer has been directed to conduct the investigation afresh and in accordance with law, it cannot be said that the investigating officer has committed any jurisdictional error in examining the witnesses afresh and filing the charge sheet as per law	287 (ii)*	399

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<b>Sections 177 and 178</b> – Territorial jurisdiction – Offence punishable under Sections 4 and 6 of Dowry Prohibition Act, 1961 – Entire cause of action or bundle of facts contained in the case accrued within the territorial jurisdiction of criminal Court at Bhopal – So criminal court at Bhopal has exclusive jurisdiction to try the case and the Court of JMFC Guna has no jurisdiction to try the case	217*	289
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<b>Section 311</b> – Recalling of prosecution witnesses – The witnesses have deposed that they have witnessed the incident – After six months, an application u/s 311 of Cr.P.C. has been filed for recalling them alongwith their affidavits in which they denied witnessing the incident – Held, once a witness is examined as prosecution witness, he cannot be allowed to perjure himself by resiling from testimony given in the Court on Oath – These witnesses cannot be permitted to change their previous version – Trial Court rightly rejected the application	326*	459
<b>Section 313</b> – Examination of accused – Purpose and mode of conducting examination – Section 313 of Cr.P.C. is to provide opportunity to accused to explain circumstances appearing against him and for Court to have an opportunity to examine accused and to elicit an explanation from him, which may be free from fear of being trapped by an embarrassing admission or statement – Such statement can be used by Court to the extent that it is in line with case of prosecution but same cannot be the sole basis for convicting an accused	327 (vi)*	459



**Section 313** – Examination of accused – Significance of – The statement of accused can be used to test the veracity of exculpatory nature of the admission, if any, made by the accused – However, such statements should not be considered in isolation but in conjunction with evidence adduced by the prosecution – Thus, conviction of the accused cannot be based merely on the statement made under Section 313 of CrPC as it cannot be regarded as substantive piece of evidence

328 (i)\* 460

**Section 319** – Order under Section 319 for summoning additional accused – Must not be passed until the materials brought before the Court are such that atleast one is convincing for the purpose of exercise of the extraordinary jurisdiction – Court is required to apply stringent test; one test is that whether the evidence would reasonably lead to conviction of the person

22 27

**Section 319** – Summoning of additional accused, scope of – A person who is named in the FIR or complaint but against whom chargesheet is not filed by police or have been dropped by the police during investigation and/or who have not been arrayed as accused against whom proceedings have been quashed, can be proceeded against under Section 319 CrPC

Exercise of discretionary power under Section 319 CrPC – This is really an extraordinary power which is conferred on the Court and should be used very sparingly – The Sessions Court can take cognizance against a person qua whom there is no committal order

171 219

**Section 320 (2)** – As the offence u/s 324 IPC was compoundable with the permission of the Court, on the date of commission u/s 320 (2) Cr.P.C., it would be compoundable despite subsequent amendment in Section 320 Cr.P.C. in 2005, which made it non-compoundable

329\* 461

**Section 340** – Whether on the basis of answers given during the aforesaid examination, the Court can prosecute the party under Section 340 of Cr.P.C. r/w/s 195 of IPC? Held, No

310 (ii) 437

**Section 357** – Section 357 (3) of the Code provides that when a Court imposes a sentence of which fine does not form a part, the Court may while passing judgment, order the accused person to pay by way of compensation such amount as may be specified in the order to the victim and in default of payment of such compensation, a default sentence of imprisonment can also be imposed

This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system – It is, to some extent, a constructive approach to crimes – It is indeed a step forward in our criminal justice system – The Apex Court, therefore, recommended to all the Courts to exercise this power liberally so as to meet the ends of justice in a better way

271\* 372

**Sections 374 and 386 (b)** – Delayed recording of statement not fatal – As prime witness 'K' was hiding and saving his life from the mighty and cruel caste group was a normal human instinct, three months delay in giving his statement to the police in the facts and circumstances of the case is fully explained

88 (iii) 103

**Section 378** – Nature and scope of powers of appellate Court in appeal against acquittal reiterated with explaining the meaning of "perverse finding"

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<b>Section 407</b> – Petitions for transfer of criminal case, consideration of – Accused's counsel was ill-treated, beaten and threatened by the members of Bar of Dhar – Bar Association Dhar has also resolved that no member of Bar of Dhar shall appear on behalf of the petitioners/accused persons – The case transferred to Indore for administrative convenience and in the interest of fair and impartial justice	173*	221
<b>Section 428</b> – Benefit of set off under Section 428 CrPC – Only the period of detention undergone by the convict during the investigation, enquiry or trial of the same case can be set off – Detention in other cases cannot be considered for set off – Legal position in this regard by referring its earlier cases explained	93	111
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<b>Section 438</b> – Anticipatory bail – The principles laid down by the Apex Court with regard to pre-arrest or regular bail are indicative of the broad outlines for grant of regular bail/ anticipatory bail – No straitjacket formula can be prescribed for universal application, as each case for grant of bail has to be considered on its own merits	272*	373
<b>Sections 438 and 439</b> – Application of bail under Section 439 of the Code, maintainability and pre-condition therefor – Application may be presented through a counsel yet, it can be considered only when the accused is in custody, i.e. is in physical control of the Court or at least physically present in the Court and has submitted himself to the jurisdiction and order of the Court		
Regular bail application, expeditious disposal of – Application for regular bail must be considered and disposed of on merits as expeditiously as possible in view of the pre-condition as to custody		
Interim bail, grant of – In order to enable production of case diary on the date of hearing, accused may disclose the date of his proposed surrender to custody at least three days in advance – No adjournment should be asked for by the Prosecutor on the ground of non-availability of case diary – However, as the Court hearing a regular bail application has inherent power to grant interim bail, accused may alongwith his regular bail		

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<b>Section 451</b> – Application by complainant for Supurdgi of gun, subject matter of robbery, dismissed by CJM holding that the gun is subject matter of evidence during trial – Revision also dismissed by ASJ – Held, where stolen or looted articles are seized by police, it should be released on supuradnama to the person who prima facie establish his possession over the articles	330*	461
<b>Section 451</b> – Interim custody of vehicle during trial – Vehicle seized under Section 50 of the Wild Life (Protection) Act, 1972 – Power of Magistrate – Held, Magistrate can release such vehicle in the interim custody during the pendency of trial – Mere seizure of vehicle on the charge of commission of an offence would not make the property to be of the State Government under Section 39 (1) (d) of the Act	218	289
<b>Sections 451 and 457</b> – Disposal of seized vehicles – To avoid natural decay and loss of roadworthiness of the seized vehicles upon being kept in open with the police/investigating agency, the Apex Court has issued further directions with regard to the disposal of such vehicles in order to ensure full and complete compliance of the earlier direction issued regarding implementation of Sections 451 and 457 of the Cr.P.C. and regarding compliance of Section 158(6) of the M.V. Act	331	461
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<b>Section 472</b> – See Section 2 (k) of the Juvenile Justice (Care & Protection of Children) Act, 2000	353	494
<b>Section 482</b> – At the time of framing of charge, it is not possible to hold the prosecution as false, frivolous or fictitious – It is to be decided after recording evidence – To frame a charge, strong suspicion about the commission of offence and the involvement of the accused is sufficient	25	30
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It is normally expected that there should be independent evidence to support the case of the prosecution – However, it is not an inviolable rule – On appreciation, if the evidence of the police officer (official witness) is otherwise reliable then it can form the basis of conviction	241 (ii) & (iii)	323
Evidentiary value of dying declaration – Not obtaining the certificate from the medical officer regarding the condition of deceased not sufficient to discard the dying declaration – See Section 32 (1) of Evidence Act, 1872	276*	376
Factors relevant to grant of death sentence – It is not only the nature of the crime but the background of the criminal, his psychology, his social conditions and his mindset for committing the offence are also relevant	98 (i)	122
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In any criminal case where statements are recorded after a considerable lapse of time, some inconsistencies are bound to occur – But it is the duty of the Court to ensure that the truth prevails – If on material particulars, the statements of prosecution witnesses are consistent, then they cannot be discarded only because of minor inconsistencies	27*	33
“Life imprisonment” means imprisonment for the whole of the remaining period of the convicted person’s natural life within the scope of Section 45 of IPC – On a conjoint reading of Sections 45 and 57 of the Penal Code and Sections 432, 433 and 433-A CrPC, it is now well established that a convict awarded life sentence has to undergo imprisonment for at least 14 years	99*	125
Motive – Necessity to prove – Held, it is not always necessary for prosecution to establish definite motive for commission of crime to secure conviction of accused – It would always be relatable to facts and circumstances of a given case – Absence of motive does not essentially result in acquittal of accused if he is otherwise found guilty by cogent and reliable evidence		
Unlawful assembly – Determination of its common object – Relevant considerations therefor – Conduct of each of the members of the unlawful assembly before attack, at the time of attack and thereafter, as well as motive for crime are relevant considerations – However, time of forming unlawful intent is not material – Furthermore, it is not even expected from prosecution to assign particular or independent roles played by each accused	327 (ii) & (v)*	459
Plea of alibi – Burden and degree of proof – Plea of alibi has to be proved with absolute certainty so as to completely exclude the possibility of the presence of the accused at the relevant time – Such plea should be established by positive evidence – But the failure of the plea of alibi would not necessarily lead to the success of the prosecution case which has to be independently proved by the prosecution beyond reasonable doubt	332	465
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## ESSENTIAL COMMODITIES AND SERVICES

See Clauses 2 (e) and 11 of the Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (M.P.)

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## ESSENTIAL COMMODITIES (EXHIBITION OF PRICES AND PRICE CONTROL) ORDER, 1977

**Clause 6 (2)** – See Clauses 2 (e) and 11 of the Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (M.P.)

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## EVIDENCE ACT, 1872

**Section 3** – Hostile witness – First informer turned hostile to prosecution and resiled from the contents of the FIR but he admitted his signature on the FIR and the factum of lodging the report at the police station – The evidence of such witness cannot be treated as effaced or washed off from the record altogether – But, the same can be accepted to the extent the version of such witness is found to be dependable on a careful scrutiny thereof

278 (iii)\* 378

**Section 3** – See Section 300 of the Indian Penal Code, 1860

345      482

**Section 3** – See Sections 7 and 8 of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, Sections 120-A, 464, 467, 471, 477-A, 409 and 411 of Indian Penal Code and Section 13 of Prevention of Corruption Act, 1988

140\*      176

**Sections 3 and 9** – Child witness – Boy of seven years kidnapped for ransom – Since, the child witness himself was the victim of the offence and the natural manner and confidence with which, he narrated the incident in the Court, he cannot be disbelieved merely on the ground that he was a child witness

Test Identification Parade – The boy of seven years had remained with the accused persons for 7 days and had correctly identified all the four accused persons – It was not necessary to have held the test identification proceeding for him

279 (i) 378  
& (ii)\*

**Sections 3, 27 and 45** – Appreciation of evidence in respect of so called weapon of offence, which was lost – In absence of weapon being produced before the Court, the evidence of the discovery of the so called weapon could not be relied upon – Similarly, the medical officer conducting the post-mortem of the deceased cannot relate the injuries found upon the dead body with that particular weapon without seeing that weapon in the Court – This evidence should have been discarded

275\*      376

**Sections 3 and 32 (1)** – Just after the incident and before suicide, prosecutrix had described misdemeanour of the accused to eye-witness – Entire statement made by prosecutrix to eye-witness soon before her death was admissible u/s 32 (1) of the Act

Appreciation of evidence – Defence plea – Love letters of accused recovered from the house of prosecutrix was suggestive that she was in love with the accused – Held, such plea was neither raised by the accused in his examination under Section 313 of CrPC nor in the cross-examination of prosecution witnesses – Further, no love letter said to have been written by prosecutrix to the accused was tendered in evidence – Defence plea cannot be accepted

ACT/ TOPIC	NOTE NO.	PAGE NO.
Appreciation of evidence – Defence plea of alibi and alternative plea that accused was invited to her house by the prosecutrix only – These inconsistent and alternative pleas cannot be accepted – However, they strengthened the prosecution case		
Prosecutrix dead – Effect of non-examination – Merely because the prosecutrix was dead and consequently could not be examined, can never be a ground to acquit accused if there is evidence otherwise available proving the criminal act of the accused	115 (ii),(iii) (iv)&(v)*	141
<b>Sections 3 and 119</b> – Examination of dumb and deaf witness – Procedure and precautions for recording evidence – Explained	101 (i)*	127
<b>Sections 8, 9 and 45</b> – An expert is only an expert if he follows well-accepted guidelines to arrive at a conclusion and supports the same with logical reasoning, which is the requirement of law as laid down in the Evidence Act – In absence of the weapon of offence and test firing, no opinion can be rendered on account of differences in the marks on the two fired bullet/cartridge cases		
Where alleged accused person refused to submit for Test Identification Parade before the Magistrate without any justified and credible reason, his identification by showing himself or his photograph by the police (Investigating Agency) to the witnesses is permissible to ensure his identity and involvement in the incident – Even where there is no previous Test Identification Parade, the Court may appreciate the dock identification as being above board and more than conclusive	266 (iii) & (v)	357
<b>Section 9</b> – In a criminal case where the names of the accused persons have not been mentioned in FIR, identification parade would be of paramount importance – But in view of the fact that the witnesses were present at the time of the arrest of the accused rather they had been arrested on identification of the witnesses, holding identification parade would have been a futile exercise/inconsequential	26*	32
<b>Section 9</b> – TI parade – Value of – Facts which establish identity of an accused are relevant – Purpose of TI parade is to test and strengthen trustworthiness of substantive evidence of a witness in Court – TI parade belongs to investigation stage and if adequate precautions are taken, its evidence may be used for the purpose of corroboration		
	232 (ii)	307
<b>Sections 9, 32 (2) and 67</b> – Medical report – How can be proved if doctor not available?		
	102 (i)*	128
<b>Sections 9 and 114-A</b> – Sole evidence of prosecutrix – The statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration – The Court may convict the accused on the sole testimony of the prosecutrix		
Discrepancies and inconsistencies in the testimony of witnesses – Minor discrepancies on trivial matter, which do not affect the core of the prosecution case, may not prompt the Court to reject the evidence in its entirety		
Determination of age – Can be determined by examining the teeth (dental age), height, weight, general appearance (minor signs) i.e. secondary sex characters, ossification of bones and producing the birth and death/school registers, etc		



ACT/ TOPIC	NOTE NO.	PAGE NO.
Evidence of rustic/illiterate villager – Appreciation there of – The Apex Court observed that in a case like rape, “it is impossible to lay down with precision the chain of events, more particularly when illiterate villagers with no sense of time are involved” – Such witness may not be able to give precise account of incident – However, that cannot be a ground to reject his testimony		
Presumption of non-consensus – Where prosecutrix stated that she has been forcibly caught, threatened at knife-point and thereafter subjected to gang rape – Under the provisions of Section 114-A of Evidence Act, the Court shall presume that she does not consent	349 (i), (iii),(v), (vi)&(vii)*	488
<b>Sections 17, 58 and 68 – Admissions – Evidentiary value – Held, it is undoubtedly correct that a true and clear admission would provide the best of the facts admitted – It may prove to be decisive unless successfully withdrawn or proved to be erroneous – However, an admission about the making of the <i>Will</i> does not amount to admission of due execution and genuineness of the <i>Will</i> and such admission would not finish the need for independent proof of the <i>Will</i></b>	<b>250 (ii)</b>	<b>336</b>
<b>Section 25 – Confessional statement of accused recorded under the offence of TADA Act along with offences under IPC but later on the offences under TADA Act were dropped and the trial was made only for offences under IPC – In such trial, prosecution cannot utilize the aforesaid confessional statement as charges were framed only for offences under IPC</b>	<b>221</b>	<b>292</b>
<b>Section 27 – Recoveries made pursuant to disclosures made by accused – Admissibility in evidence – Condition necessary for bringing Section 27 of Evidence Act into operation restated</b>	<b>328 (ii)*</b>	<b>460</b>
<b>Section 27 – See Section 100 (4) and (5) of the Criminal Procedure Code, 1973</b>	<b>177*</b>	<b>225</b>
<b>Sections 32 and 157 – Statement made under Section 164 CrPC in expectation of death – Evidentiary value of – When maker of the statement not dying – It is not a dying declaration and is not admissible under Section 32 of the Evidence Act – However, such statement is admissible under Section 157 of the Evidence Act as former statement made by the witness in order to corroborate his testimony in the Court</b>	<b>114 (ii)*</b>	<b>140</b>
<b>Section 32 (1) – Absence of signature or thumb impression of the deceased on dying declaration – The deceased had suffered about 90 to 95 per cent burn injuries covering 90 to 95 per cent of body surface – The post-mortem report also indicates that there was bandage in her thumb as it was burnt – In such situation, it was not possible to take her signature or left thumb impression on the dying declaration – Only because of this reason a dying declaration, which is otherwise found to be true, voluntary, correct and trustworthy, cannot be rejected</b>	<b>28</b>	<b>34</b>
<b>Section 32 (1) – Dying declaration – Principal of dying declaration restated</b>	<b>336*</b>	<b>470</b>

ACT/ TOPIC	NOTE NO.	PAGE NO.
<b>Section 32 (1)</b> – Dying declaration – While recording dying declaration, factors such as mental condition of the maker, alertness of mind and memory, evidentiary value etc. have to be taken into account – Principles laid down earlier by the Apex Court governing the dying declaration analysed and restated	337	471
<b>Section 32 (1)</b> – Evidentiary value of dying declaration – Though Executive Magistrate had not obtained the certificate from the medical officer regarding the condition of the deceased; that itself is not sufficient to discard the dying declaration – Only the person, who recorded the dying declaration must be satisfied that the deceased was in a fit state of mind	276*	376
<b>Section 32 (1)</b> – In mass murder case, one of the injured lady in her dying declaration before succumbing to her injuries, due to fear psychosis, omitted to mention the names of some accused – In the given circumstance, it is not unnatural and her testimony cannot be discarded on that account		
Witness turning hostile due to fear psychosis of upper caste people is not unnatural	88 (iv) & (v)	103
<b>Section 32 (1)</b> – Multiple dying declarations – Case diary statement of the deceased recorded by the police officer under Section 161 CrPC which had not been recorded in the manner provided by the Police Regulations with regard to the recording of dying declarations, could not be relied upon – But the second dying declaration recorded by the Executive Magistrate which was in substance identical with the statement recorded by the police officer, can be relied upon	229 (ii)*	302
<b>Section 32 (1)</b> – Multiple dying declarations – The entire prosecution case hinges on the three dying declarations made by the deceased – The basic consistency between the three dying declarations given to the father, the Investigating Officer and the Tehsildar/ Magistrate is that the accused brought kerosene oil, poured the same on the deceased and set her on fire and she died because of the burn injuries – It is the real genesis of all the three dying declarations – The guilt of the accused of committing murder of the deceased is fully and clearly made out as no other view is possible in the light of the three dying declarations	27*	33
<b>Sections 32 (1) and 60</b> – In Indian law, even if the deceased was no where near expectation of death, still his/her statement would become admissible under Section 32 (1) of Evidence Act provided it satisfies one of the two conditions set forth in this Section, as to the cause of his/her death or as to any of the circumstances of the transaction which resulted in his/her death, in cases in which the cause of that person's death comes into question are themselves relevant factor	338 (i)*	473
<b>Sections 32 (2) and 67</b> – Statement made in discharge of professional duty – Proof of signature and handwriting of doctor – Treating Surgeon not traceable – Therefore, not examined – Medical reports proved by other doctors – Held, medical report admissible in evidence in view of Section 32 (2) of the Act – Signature and handwriting of a person can be proved under Section 67 of the Act	29*	35
<b>Section 35</b> – An entry in a register maintained in the ordinary course of business by a public servant in the discharge of its official or by any other person in performance of duty specially enjoined by law of the country in which such register is kept would be relevant		

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factor only if the conditions mentioned in Section 35 of Evidence Act are fulfilled – Hence, the entry of date of birth in the admission form, the school record and transfer certificate must satisfy the conditions laid down in Section 35 of Evidence Act.	233 (ii)*	309
<b>Sections 35 and 114 III. (e)</b> – Determination of the age of the prosecutrix – Entry in respect of date of birth in the school register – Admissibility and probative value there of – The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information	348 (ii)*	488
<b>Section 41</b> – Judgment rendered by Probate Court is conclusive and binding on criminal and other Courts but for mere pendency of proceedings before Probate Court, would not attract the provisions of Section 41 of the Act to effect the criminal proceedings	30	35
<b>Sections 41, 42 and 43</b> – Finding in civil proceedings – Whether binding in a subsequent criminal proceeding founded upon the same allegations? Held, No – The finding of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and <i>vice versa</i> – However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act with the relevancy of previous judgment in subsequent case may be taken into consideration	339	474
<b>Section 45</b> – Age of prosecutrix – Margin of error – Age of prosecutrix assessed above 14 and below 16 years on the basis of findings of radiological examination of joints comprising radius, ulna and femur bones and crest of ilium – Admission of doctor regarding margin of error of two years on both sides was misconceived as ossification test was not confined to x-ray examination of a single bone only – Margin of error could be 6 months	103 (i)*	129
<b>Section 45</b> – Evidence of handwriting expert – When Trial Court relied on report of handwriting expert, it ought to have examined handwriting expert in order to give accused opportunity of cross examining the expert – Without examining handwriting expert as a witness in Court, no reliance could be placed on his opinion	340*	475
<b>Section 45</b> – In cases where medical issue is to be settled and question of science is involved, the central role of expert cannot be disputed – Evidence of expert witness is admissible – Requirements for admissibility of expert evidence reiterated		
Credibility of expert opinion – Without examining expert as a witness, no reliance can be placed on his opinion alone – Its credibility depends on the reasons stated in support of his conclusions and data and material furnished, which formed the basis of his conclusion	31	36
<b>Section 45</b> – See Articles 20 (3) and 21 of the Constitution of India	264	354
<b>Sections 45 and 67</b> – Application for examination of disputed signature by hand writing expert – The application filed at the stage of final arguments is maintainable	341	476
<b>Section 58</b> – Facts admitted need not be proved – Written statement containing admissions not withdrawn until closure of plaintiff's evidence – Defendant denying his signature on the written statement while appearing as witness of another defendant – Held, plaintiff		

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entitled to take benefit of admissions and not required to prove the sale deed which was admitted in the written statement to have been executed	196 (iii)*	262
<b>Section 58</b> – See Order 15 Rule 1 of the Civil Procedure Code, 1908	205	272
<b>Sections 61, 67 and 81</b> – Document, how to be proved – Plaintiff has admitted the fact of publication of the magazine but has denied the contents of magazine – It becomes absolutely necessary for the defendant to summon the magazine and the prayer for calling the editor/publisher/maker of the magazine	157 (ii)*	202
<b>Sections 61 and 74</b> – The report of the Committee enquiring into the security scam is not a judgment of Court – Therefore, its contents cannot be taken in evidence without formal proof about the contents of its report	243 (B)	326
<b>Section 65</b> – See Sections 35 and 36 of the Stamp Act, 1899	144*	183
<b>Section 68</b> – See Sections 2 (11), 11 and Order 22 Rules 3 and 5 of the Civil Procedure Code, 1908	255	342
<b>Section 68</b> – See Section 63 (c) of the Succession Act, 1925	145	183
<b>Section 76</b> – See Section 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	67*	82
<b>Section 91</b> – See Section 20 of the Specific Relief Act, 1963	142	180
<b>Sections 101 and 102</b> – See Sections 499 and 500 and Exception 10 of Section 499 of the Indian Penal Code, 1860	289	401
<b>Section 109</b> – Burden of proof on Advocate to prove that the relationship with party, which he represents in the case before the Court, has ceased to stand because he affirmed that at the time of transaction, the relationship was ceased	280 (i)*	380
<b>Section 112</b> – Presumption of legitimacy is a presumption of law – When a child is born from a wedlock, there is a presumption in favour of his legitimacy which largely depends on the presumed fact that the parties to a marriage have necessary access to each other	106 (ii)	130
<b>Section 114</b> – Closely related witnesses, appreciation of – The evidence of such witnesses cannot be ignored or thrown out solely on this ground	111 (ii)	138
<b>Section 114</b> – See Section 141 of the Negotiable Instruments Act, 1881	189	247
<b>Section 116</b> – See Section 12 (1) (f) & (c) of the Accommodation Control Act, 1961 (M.P.)	73	90
<b>Section 134</b> – Effect of non-examination of all witnesses present on spot – It is not necessary that all those persons must be examined by the prosecution to prove the guilt of the accused and if the testimonies of other witnesses are found to be trustworthy and cogent, cannot be discarded on account of aforesaid shortcomings	32	38
<b>Section 137</b> – Murder trial – Merely on the ground of delay in examination of particular witness, prosecution version does not become suspected – It would depend upon several factors – I.O should be asked in cross-examination to explain the reasons for delay – In absence of that, defence cannot gain any advantage therefrom	33	40

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<b>Section 137</b> – The right of the accused under Section 145 (2) of the NI Act is limited to cross-examine the complainant (or his witnesses) giving evidence on affidavit under Section 145 (1) of N.I. Act – Evidence on affidavit given by complainant or his witness is in the nature of examination-in-chief and he is not required to depose again in examination-in-chief before being cross-examined as to the facts stated in the affidavit		
Right to give evidence on affidavit as provided to the complainant under Section 145 (1) N.I. Act is not available to the accused	190 (ii) & (iii)	250
<b>Section 138</b> – Re-examination – The purpose of re-examination is only to get clarification of some doubts that arose in the cross-examination – One cannot supplement the examination-in-chief by way of a re-examination and for the first time, start introducing totally new facts, which have no concern with the cross-examination	34*	42
<b>Sections 145 and 155 (3)</b> – The FIR or the statement recorded u/s 164 Cr.P.C. can only be used as a previous statement for the purposes of either corroborating or for contradicting the person, who made it – It cannot be used for contradiction unless the attention of witness has first been drawn to those parts by which it is proposed to contradict the witness	269*	369
<b>FAMILY COURTS ACT, 1984</b>		
<b>Section 7</b> – Power of Family Court to direct for medical examination of party to matrimonial proceeding by expert – Under the inherent power, the Court can direct the party for medical examination, if necessary	178	226
<b>Sections 7 and 20</b> – Provisions of Family Courts Act shall have over riding effect on all other enactments in force dealing with the subject matters governed under Section 7 of the Act which also include a suit or proceeding for maintenance	104 (i)	129
<b>Section 9</b> – Object of the Family Court to decide matrimonial disputes with human approach	9 (ii)	13
<b>Section 19 (4)</b> – Order passed by the Family Court under Section 125 of CrPC– Criminal revision in High Court – Can be preferred under Section 19 (4) of the Family Courts Act	268 (ii)	368
<b>FLAG CODE OF INDIA, 2002</b>		
See Section 2 of the Prevention of Insults to National Honour Act, 1971	62*	76
See Section 2 of the Prevention of Insults to National Honour Act, 1971	136	171
<b>GAUVANSH VADH PRATISHEDH ADHINIYAM, 2004 (M.P.)</b>		
<b>Sections 4, 6 and 9</b> – See Sections 451 and 457 of the Criminal Procedure Code, 1973	273	373
<b>GENERAL CLAUSES ACT, 1897</b>		
<b>Section 9</b> – See Section 138 of Negotiable Instruments Act, 1881	59	73

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## GUARDIANS AND WARDS ACT, 1890

**Sections 7, 9, 14 and 17** – Child custody – In regards custody of a minor child, New York (USA) Court has, upon the consent of the disputing parents, passed the order – The mother of the child removed the child to India in contravention of the order, thereafter, the father of the child filed *habeas corpus* petition under Article 32 of the Constitution in the Supreme Court for production and handing over the custody of the child – The parents of child directed to seek order from the New York Court; having considered the interest of child and conformity with comity principle

179      227

**Sections 12 and 19** – Guardianship and custody of minor child – Considerations are different – A person who is fit to be appointed as a guardian, may not be fit to get custody of the same child

222      293

## HINDU LAW

Joint family property – Factum of proof – Determination – Plaintiff is required to establish that there was sufficient nucleus which could have been the source of acquisition of property – Whole of the money required for the purchase of the property is not required to be proved

Self acquired property – Factum of proof – Determination – It is sufficient in law that there is proof about the nucleus which could have been the source of acquisition – Once the existence of such a nucleus is proved, obviously it is for the person asserting his self acquired property to prove affirmatively that he acquired it from his own self acquired funds

105\*      130

Joint family property – Family governed by Mitakshra School of Hindu Law – Patta was not granted in favour of one of the members of the joint family in his individual capacity – If, for any purpose, the name of such coparcener was entered into in the revenue records, the same would not mean that the land vested in him – It would vest in the joint family – Legal position explained

35      43

## HINDU MARRIAGE ACT, 1955

**Sections 5 and 7** – Evidence to establish marital status – Long co-habitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage

36      43

**Sections 13 and 13-B** – Irretrievable breakdown of marriage is not one of the grounds for granting divorce indicated under Section 13 or 13-B of the Hindu Marriage Act – This doctrine is only available to the Supreme Court under Article 142 of the Constitution

Divorce by mutual consent – Consent of both the parties given at the time of presentation of the petition must be continued till the decree is finally passed – The Courts, except the Apex Court, are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed

37      46

**Section 13-B** – Petition for divorce on the ground of mutual consent – Continuance of such consent till passing decree is must – Where husband was absent on the first date of hearing and later on the case was preponed and thereafter, decree was passed, Court failed to discharge its duty in relation to hearing party – Continued consent of husband cannot be presumed from such absence – The decree is liable to be set aside

9 (iii)      13

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<b>Section 13 (1) (i-a)</b> – Cruelty – It is not necessary for a party claiming divorce to prove that the cruel treatment is of such a nature as to cause reasonable apprehension that it will be harmful or injurious for him/her to live with the other party – Rather, it is enough that conduct of one of the parties is so abnormal and below the accepted norm that other spouse could not reasonably be accepted to put up with it	223	295
<b>Section 13 (1) (i-a)</b> – Cruelty – The categories of cruelty in matrimonial cases are never be closed [Lord Denning in <i>Sheldon v. Sheldon, (1966) 2 All ER 257 (CA)</i> ] – It depends upon the type of life the parties are accustomed to or their economic and social conditions and also the culture and the human values to which they attach importance		
Sometimes, it may be in form of violence or attitude or approach or even silence, in specific situation	224	296
<b>Sections 13 and 28</b> – Question relating to legitimacy of child in divorce matter on an application of husband – The Apex Court held that it was not open to the High Court at the appellate stage to direct a DNA test to be performed on the child while there is no allegation that the child was born as a result of illicit relationship	106 (i)	130
<b>Section 16</b> – The illegitimate children born out of live-in relationship are entitled to claim share only in self-acquired property of their parents – They cannot claim share in ancestral coparcenary property of their parents	342	477
<b>Section 26</b> – Orders about custody of child and visitation rights are always considered interlocutory – They can be altered and modified as per the needs of the child		
	225	297

## **HINDU MINORITY AND GUARDIANSHIP ACT, 1956**

**Sections 6 and 13** – Custody of minor – Considerations thereto – The interest of the minor is of paramount importance to the Court which stands in *loco parentis* to the minor – The wishes of the minor are also to be given due weightage – Legal position reiterated

281      380

## **HINDU SUCCESSION ACT, 1956**

**Sections 15 and 30 and Schedule** – Rule of succession in the case of female Hindus – Object – Held, the basic aim of Section 15 (2) of the Hindu Succession Act, 1956 is to ensure that inherited property of an issueless female Hindu dying intestate goes back to the source – It was enacted to prevent inherited property falling into the hands of strangers

250 (iii)      336

**Sections 15 (2) and 16** – Property inherited by daughter from her parental family died issueless, devolution of – Property inherited by a daughter from the side of her parental family, shall devolve on her death upon the heirs of her father and not to the husband or her in-laws family

107      132

## **IDENTIFICATION OF PRISONERS ACT, 1920**

**Sections 3, 4 & 5** – Directions issued by the High Court – Prevalence of – Held, directions are subject to the provisions of the Prisoners Act, Police Regulations and CrPC In case of conflict, statute prevails

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Identification of prisoners – Desirability of taking photographs of the accused, complainant and material witnesses in criminal cases – The directions given by the M.P. High Court to the State Government to ensure sufficient safeguard against impersonation confirmed and slightly modified by the Apex Court		
Prisoners Act – Applicability – Held, so far as the accused is concerned, the Prisoners Act apply at both pre-trial and post-trial stages	38	48
<b>INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986</b>		
<b>Sections 4 and 6</b> – Object of the Act – It was enacted to punish the publishers and advertisers who knowingly disseminate materials that portray women in an indecent manner		
	283 (vii)	384
<b>INDIAN PENAL CODE, 1860</b>		
<b>Sections 34 and 149</b> – “Common intention” and “common object” – Both Sections 34 and 149 IPC deal with combinations of persons who become punishable as sharers in an offence – The dominant feature of Section 34 is the element of intention and participation in action – This participation need not in all cases be by physical presence whereas in a case where Section 149 applies, a constructive liability arises in respect of those persons who do not actually commit the offence	343	480
<b>Sections 45 and 57</b> – See Criminal Trial	99*	125
<b>Section 84</b> – Exception to unsoundness of mind		
The benefit of this provision is available to a person who at the time when the act was done was incapable of knowing the nature of his act or that what he was doing was wrong or contrary to law and the fact that he was of unsound mind earlier or later are relevant only to the extent that they, along with other evidence, may be circumstances in determining the mental condition of an accused on the day of incident	39*	51
<b>Section 95</b> – Trivial act, determination of – The act in question should be adjudged by the nature of the injury, the position of the parties, relation between them, situation in which they are placed, the knowledge or intention with which the offending act is done and other related circumstances – The same cannot be judged solely by measure of physical or other injury the act causes	226	298
<b>Sections 96, 304 Part II/304 Part II r/w/s 34</b> – Right of private defence in case of rescuing cattle being taken to the cattle pond – Death caused to a person – No offence – If deceased, without having right to rescue the cattle being taken to the cattle pond, tried to rescue under the circumstances in which accused apprehended that the deceased or other person accompanying him may cause grievous injury	108*	132
<b>Sections 99 and 308</b> – Right of private defence – How plea can be raised? Plea of self defence can be raised in cross-examination of prosecution witnesses or by way of defence evidence or otherwise – It need not be specifically raised in examination under Section 313 Cr.P.C		



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Right of private defence, extent of – Complainant under grave and sudden provocation on account of beating given by the complainant party to the female members of the family of appellants – Held, right of private defence in no case extends to inflicting of more harm than necessary for the purpose of defence – Appellants exceeded the right of private defence – Conviction under Section 308/34 upheld	29*	35
<b>Sections 107, 109 and 306</b> – Abetment of suicide when made out as provided for under Section 107 restated	109	133
<b>Sections 107 and 306</b> – Abetment to suicide – It involves a mental process of instigating a person or intentionally aiding a person in doing of a thing (suicide) – It also requires an active act or direct act which leads deceased to commit suicide – Hypersensitivity to ordinary petulance, discord and differences in domestic life quite common to society, should not be sufficient for conviction under Section 306	110	135
<b>Sections 107 and 306</b> – Abetment of suicide – Necessary ingredients – Requirement to constitute ‘instigation’ – Explained	227	299
<b>Sections 120-A, 464, 467, 471, 477-A, 409 and 411</b> – Criminal breach of trust, scope and ingredients of		
Stolen property, connotation of – For the purpose of Section 410, a property is stolen when its possession is transferred by theft, extortion, robbery, dacoity or criminal breach of trust or which was obtained under misappropriation committed whether in India or outside	140 (v) & (vi)	176
<b>Section 120-B</b> – Criminal conspiracy – Accused, being bank employees, illegally advanced loan under disguise of Call Money transaction to broker dealing in security to willfully facilitate him to enter into securities transactions – Criminal conspiracy established	243 (C)	326
<b>Sections 141 and 149</b> – Conviction under Sections 141 and 149 of the Code – Where large number of persons are implicated collectively, the courts have to be very careful in case where general allegations are made against a large number of persons and the courts should categorically scrutinize the evidence and hesitate to convict the large number of persons if the evidence available on record is vague – There must be reasonable circumstances which lend assurance to the story of prosecution	344*	481
<b>Sections 149 and 96 to 106</b> – ‘Common object’, translation there of – ‘Common object’ does not require a prior concert and a common meeting of minds before the attack – It is to be ascertained from the acts and language of the members composing it and from consideration of all the surrounding circumstances – It may be gathered from the course of conduct adopted by the members of the assembly – Legal position restated		
Right of private defence, exercise of – It does not include a right to launch an offensive or aggression	282	381
<b>Sections 153-A, 292, 499, 500 and 509</b> – Promoting enmity between different groups – Held, when the appellant was not speaking on behalf of one group and content of her statement was not directed against any particular group, Section 153-A IPC has no application		

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Obscenity – Gauging thereof – The appellant has merely referred to the increasing incidence of premarital sex and called for its societal acceptance – She made that statement in the context of a survey which has touched on numerous aspects relating to the sexual habits of people in big cities and same was published in a news magazine as part of survey – Appellant’s remarks does not amount to obscenity within the meaning of Section 292 IPC

Premarital sex and live-in relationship – Held, mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults engage in sexual relations outside the marital setting, with the exception of adultery under Section 497 IPC

Insult to the modesty of woman – Held, in order to establish this offence, it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act – When grievance is with the publication of what the appellant had stated in a written form, this offence must be made out

Defamation – Ingredients of offence – There is neither any intent on the part of appellant to cause harm to the reputation of the complainant nor can Court discern any actual harm done to their reputation – Both the elements i.e. *mens rea* and *actus reus* are missing – No case of defamation is made out

283 (i),(ii) 384  
(iii),  
(iv)&(v)

**Section 194** – The documents prepared during investigation were fabricated for procuring conviction as inserting time during the trial by the Investigating Officer surreptitiously – The conviction under Section 194 IPC on complaint filed by Sessions Court upheld

40 51

**Section 195** – See Section 340 of Criminal Procedure Code, 1973

310 (ii) 437

**Section 300** – Murder – Appreciation of evidence – Where there are multiple testimonies and equally large number of witnesses testifying before the Court – There must be a string joining evidence of all witnesses and thereby satisfying test of consistency in evidence amongst all the witnesses

In a given case, there is consistency in the evidence of witnesses regarding five accused/ appellants about the role played by them, therefore, they are liable to be convicted – However, evidence inconsistent about two other appellants, they are entitled to be acquitted

345 482

**Section 300** – Murder trial – Appreciation of evidence – An eye witness, friend of deceased, narrated whole story of the prosecution – The fact that articles found in stomach of deceased on post mortem did not match with the fact of taking of food by the deceased and the time of death as stated by the eye witness and also delay in recording of his police statement are insignificant under the circumstances of the given case

Testimony of tender aged boy – Appreciation of – The doctor who conducted the post mortem has found ten injuries suffered by the deceased – But the eye witness, a boy of 13-14 years, had not described the assault, so that it could suggest causing ten injuries – Even then the testimony of the witness of tender age is reliable as a witness of tender age is not expected to explain each and every injury – He has deposed about the participation of the accused persons and crucial part played by some of them – Offence proved

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<b>Section 300</b> – See Section 154 of the Criminal Procedure Code, 1973	92	109
<b>Section 300/34</b> – Murder of two boys under superstition – Main accused beat and killed by way of sacrifice that they would regain their lives – Other accused who were present and close relatives but not opposed the gruesome act due to superstitious psyche cannot be said to have a common intention to commit the crime – Their acquittal is proper	42	53
<b>Sections 300 and 149</b> – Murder – Unlawful assembly – Merely on the ground that appellant was member of the assembly of which one member had gun when appellant cannot be attributed with knowledge that there was likelihood of commitment of murder of deceased on the ground of prior altercation with his brother – Apart from that, there was no enmity between deceased and appellant – No exhortation was given by appellant to kill deceased and no injury was caused by him – Therefore, accused/appellant cannot be convicted for murder with the aid of Section 149 IPC	284	390
<b>Sections 300 and 149</b> – Murder – Unlawful assembly – Proof – Evidence of eye witnesses is consistent about weapons used to assault the deceased i.e. <i>pharsa, lathi</i> etc. – But doctor has stated that deceased had also sustained four punctured wounds – In this regard, he was declared hostile and admitted that he had not measured dimension, depth and thickness of the injuries – Such opinion of medical expert should be ignored and his evidence regarding nature of other injuries as to the cause of death can be relied upon	285	393
<b>Sections 300 Exception 1, 302 or 304 Part II</b> – Grave and sudden provocation – Provocation is an external stimulus which can result into loss of self-control – Such provocation and the resulting reaction need to be measured from the surrounding circumstances – Here, the provocation must be such as will upset not merely a hasty, hot tempered and hypersensitive person but also a person with calm nature and ordinary sense – Thus, the protection extended by the exception is to the normal person acting normally in the given situation		
There is no fixed rule that whenever a single blow is inflicted, Section 302 IPC would not be attracted – Under Clause <i>Thirdly</i> of Section 300 IPC, culpable homicide is murder if it is proved that the act which caused death was done with the intention of causing death or was done with the intention to inflict that particular bodily injury which in the ordinary course of nature was sufficient to cause death – Once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows	286	394
<b>Section 300/304 Part II</b> – Murder – Accused caused injuries to her co-wife without intention to cause death as she had knowledge that it is likely to cause death – Liable to be convicted under Section 304 Part II but not for murder	43	54
<b>Section 302</b> – Honour killing over inter caste/community marriage	98 (ii)	122
<b>Section 302</b> – Murder trial – Appreciation of evidence		
Delay in sending vital documents to the Court – Effect of – Held, delay in despatch of the vital documents such as FIR and statements recorded under Section 161 CrPC by itself may not be fatal to the prosecution in each and every case – This question may have to be assessed and appreciated on fact		

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Defective or suspicious investigation – Effect of – Held, if the court is convinced that the testimony of a witness to the occurrence is true, the Court is free to act on it, albeit the investigating officer's suspicious role in the case	228	301
<b>Section 302</b> – Murder trial – Appreciation of evidence – Presence of two eye-witnesses at the time of incident reflects from FIR which was promptly lodged and revealed from the evidence of the doctor who had initially treated the injured – Presence of such eye-witnesses acceptable	229 (i)	302
<b>Section 302</b> – Murder trial based on circumstantial evidence, principles of – When an incriminating circumstance is put to the accused and the accused either offers no explanation or offers the explanation which is found to be untrue, then the same becomes additional link in the chain of circumstances to make it complete	111 (i)	138
<b>Section 302</b> – Murder trial – <i>Corpus delicti</i> – Necessity of – It is not essential to establish <i>corpus delicti</i> ; the fact of the death of the deceased must be established like any other fact by direct or circumstantial evidence although the dead body may not be traced		
Testimony of hostile witness – Appraisal of – Evidence of such a witness remains admissible and there is no legal bar to have a conviction upon testimony of hostile witness if corroborated by other reliable witness	346	484
<b>Section 302</b> – See Section 137 of the Evidence Act, 1872	33	40
<b>Section 302/34</b> – Murder trial, appreciation of evidence – Held, the knowledge of medicine and human body is a matter of science – A court of law, which has not acquired special knowledge and skill in medical science, would not be justified in brushing aside opinion of a medical officer, who has performed the post-mortem of a dead body, without any evidence on record to the contrary supported by the opinion of learned authors of standard textbooks	112*	138
<b>Sections 302, 34 and 149</b> – Murder trial – Applicability of Section 34 – Held, to show common intention to commit crime, it is not necessary for the prosecution to establish, as a matter of fact, that there was pre-meeting of minds and planning before commission of crime – If intention is proved but no overt act is committed, the section can still be invoked		
Related witness – Reliability of – There is no hard and fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before Court – Where deceased was attacked in presence of his brothers, who were unable to interfere because of fear of gunfire and manner in which incident occurred – It is but natural for prosecution to produce them as eyewitnesses		
Interested witness – Close relative of the deceased does not, <i>per se</i> , become an interested witness – An interested witness is one who is interested in securing conviction of a person out of vengeance or enmity or due to disputes and deposes before Court only with that intention and not to further cause of justice – However, version of interested witness cannot be thrown overboard, but has to be examined carefully before accepting the same	327 (i), (iii)&(iv)*	459
<b>Sections 302 and 148</b> – Murder Trial – Appreciation of evidence – Witness belonged to a deprived section of society and her statement was recorded after 8 years of the incident – As improvements and inconsistencies in the statements given by the witnesses to the		

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police <i>vis-a-vis</i> their statement in Court can be ignored unless they go to the root of the matter and affect the veracity of the prosecution story because such discrepancies are bound to occur	44	55
<b>Section 302/149</b> – Vicarious liability – Inference against the members of the unlawful assembly for commission of another offence would depend upon the facts and circumstances of each case, background of the incident, the motive, the nature of the assembly, the nature of the arms carried by the members of the assembly, their common object and the behaviour of the members soon before the act or after the actual commission of the crime would be relevant factors for drawing an inference in that behalf	45	57
<b>Sections 302/149, 395, 364 and 201</b> – Abduction and murder trial – Appreciation of evidence – Finding of the Appellate Court should be based on proper analysis and marshalling of entire evidence and documents on record	88 (ii)	103
<b>Sections 302, 304 Part I and Exception 4 to Section 300</b> – Murder trial – Appellant/ accused had caused one knife-blow on back and another knife-blow on chest of the deceased resulting in his death – Premeditation to cause death of deceased proved – Hence, Exception 4 to Section 300 not applicable	230	303
<b>Sections 302 and 304 Part II r/w/s 149</b> – Culpable homicide not amounting to murder	113	139
<b>Sections 302, 304-B &amp; 498-A</b> – Ingredients of Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act are different from the ingredient of Section 304 IPC	27*	33
<b>Sections 302 and 307</b> – Murder trial, appreciation of interested witness	114 (i)*	140
<b>Sections 302 and 326 r/w/s 149 and 148</b> – Partisan witness, appreciation of Common object, necessity of proof of overt acts – Held, where a large number of persons have alleged to have participated in the crime, the Court has to apply rule of caution and convict those accused persons whose overt acts is proved	166 (iii) & (iv)	212
<b>Sections 304 Part II and 299</b> – Rash or negligent act, when may amount to culpable homicide? Explained – Such an act may not amount to culpable homicide unless the act(s) which resulted in death, have been done by the offender willfully and with knowledge	46	58
<b>Section 304-B/498-A</b> – Dowry death – Bride burning – Appreciation of evidence – Complaint lodged by the father of the deceased was not elaborate and specific complaint – He can hardly be blamed for it as it was a tragic moment for him and that time was of pain and agony for him – Therefore, accused cannot take any advantage of it – Moreso, subsequent statements of different witnesses have fairly established on record that the deceased was tortured and harassed for satisfying the demand of dowry by the accused – Offence proved	287 (i)*	399
<b>Section 304-B</b> – Dowry death – Body of deceased hurriedly cremated before investigation – But absence of <i>corpus delicti</i> does not vitiate, as other evidences established that the death was unnatural due to burning within 7 years of marriage – Along with that the deceased was subjected to cruelty in connection with demand of dowry by husband and relations – Conviction for destruction of evidence also proved	347	486

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<b>Section 304-B</b> – Offence of dowry death – Interpretation of ‘soon before death’ – It cannot be given restricted meaning – The concept of reasonable time is the best criterion – There must be proximity link between the acts of cruelty along with the demand and the death	333	467
<b>Sections 304-B and 498-A</b> – Dowry death – Nature of proof required – A prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture, may not be believed by the court in cases under Sections 498-A and 304-B IPC	338 (ii)*	473
<b>Section 306</b> – 15 year old prosecutrix all alone in her house – Accused suddenly entered there into and closed the door from inside – Accused squeezed mouth of prosecutrix and gave threats to defame her and came out of the house and ran away when inhabitants of the locality came there and called the prosecutrix by name – Just after some time prosecutrix committed suicide by hanging from roof – Held, there was proximate and live link between offending act of accused and the extreme step taken by the prosecutrix – Accused was rightly held abettor of the suicide	115 (i)*	141
<b>Section 364-A</b> – See Section 2 (k) of the Juvenile Justice (Care & Protection of Children) Act, 2000	353	494
<b>Section 364-A</b> – Seven year old boy was kidnapped and a demand for ransom was made – Defence plea that it was not proved that accused persons made demand of ransom for release of kidnappee and that there was no apprehension that the kidnappee might be put to death or hurt – Held, to attract the provisions of Section 364-A, it is required to prove that accused kidnapped a person and kept him under detention for a ransom		
Seven year old boy was kidnapped – He was not kept confined in any closed room or house but he was kept in the village, which was 200 km. away from his residence – Seven year boy could not have gone to his house himself – He was kept there by extending assurance to him that his parents would come there to fetch him – In these circumstances, such detention after his kidnapping is clearly punishable u/s 364-A IPC		
Three accused persons kidnapped the boy and one of the accused persons communicated the demand of ransom to the grandfather of the boy – Prosecution has not proved which particular accused made or communicated the demand of ransom – Held, it is not always necessary to prove that which particular accused made or communicated the demand of ransom		
From the evidence of kidnappee and other circumstances proved by prosecution evidence, it has been amply established that accused had wrongfully concealed and kept kidnappee in his house knowingly that he had been kidnapped – Therefore, accused is guilty for the charge u/s 368 r/w/s 364-A of IPC	279 (iii),	378 (iv),(v) & (vi)*

**Sections 375 and 376** – Rape of minor – Importance for determination of age of prosecutrix 116\* 141

**Section 376** – Offence of rape – Appreciation of evidence – In the present case, delay of 42 days in lodging the FIR was properly explained by the victims and the other witnesses – Discrepancies in the evidence of the victims were negligible in nature – Victims were taken to the doctor for medical examination after a month and 14 days in which circumstances it was unlikely that any sign of sexual intercourse would be visible – Version of the prosecutrix, held acceptable 231 305

**Section 376** – Offence under Section 376 IPC: —

- (i) Testimony of prosecutrix – Consent – Mere absence of injuries on the person of prosecutrix, it cannot be inferred that she was consenting party
- (ii) Corroboration – It is not necessary in every case – It requires only in the cases of high improbability
- (iii) Reliability – Prosecutrix stated in cross-examination that the accused threatened her with dagger on her refusal to go to place as per his directions – Such fact neither stated in her statement under Section 161 CrPC nor in the FIR – Such contradiction not sufficient to discard her as prosecutrix made categorically clear and unequivocal deposition that accused committed forcible sexual intercourse with her – Her testimony is reliable 48 60

**Section 376** – No test identification parade – Effect – Prosecutrix remained in company of accused persons for a pretty long time – She had sufficient time to see, identify and keep their features and personality in mind – Description and features of accused persons was stated in FIR which was lodged without any delay – No harm would cause to prosecution case if no test identification parade was held 102 (ii)\* 128

**Section 376** – Rape case – Delay in lodging FIR, effect of – The delay in lodging FIR in sexual offences has to be considered with a different yardstick – Ordinarily, the family of the victim would not intend to get a stigma attached to the victim – Delay in lodging the FIR in a case of this nature is a normal phenomenon

Consent of prosecutrix, appreciation of – An act of helplessness in the face of inevitable compulsions is not consent in law – More so, it is not necessary that there should be actual use of force – Threat of use of force is sufficient 348 (i) 488  
& (iii)\*

**Section 376** – Rape case – Non-co-operation of police caused delay in recording FIR – The delay does not cast doubt looking to the clear and cogent evidence of prosecutrix and her mother

Defence plea of false implication due to dispute over a common wall not acceptable as it is not so grave to compel family of prosecutrix to put its reputation at stake – Conviction upheld 180 229

**Section 376** – Rape – Whether conviction can be awarded in case the prosecutrix has not been examined? Held, merely because a victim is dead and consequently, could not be examined, can never be a ground to acquit an accused if there is evidence otherwise available proving the criminal act of the accused concerned 47 58

**Sections 376 and 363 – Kidnapping –** Word 'takes' does not necessarily connote taking by force and is not confined only to use of force, actual or constructive but means 'to cause to go', 'to escort' or 'to get into possession' **103 (iii)\* 129**

**Sections 376 (2) (g) – Gang rape –** Delay in lodging FIR, effect of – Held, when FIR by a Hindu lady is to be lodged with regard to such an offence, many questions would obviously crop up for consideration before one finally decides to lodge the FIR – Thus, it cannot be said that there has been inordinate or unexplained delay in lodging FIR

Gang rape, appreciation of evidence – Appellants/accused had taken a plea of consensual sex with victim which was found to be unbelievable – Offence proved **117 142**

**Section 376 (2) (g) – Test Identification Parade –** Is not substantial piece of evidence – It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant

Injury on the person of the prosecutrix – Considerations there of – Held, the absence of injury or mark of violence on the body of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix **349 (ii) 488**

**& (iv)\***

**Section 376 (2) (g) – Prosecutrix dumb and deaf –** It is true that normally conviction for commission of offence under Section 376 of IPC can be based on the statement of prosecutrix without any corroboration – Moreover, the statement of the prosecutrix in the present case is not corroborated by any evidence even doctor has not given a definite opinion about the commission of rape – Evidence of the prosecutrix is not legal evidence to support the conviction – Conviction and sentence set aside **101 (iii)\* 127**

**Section 376 (2) (g) – Test Identification Parade –** Is not substantive piece of evidence – It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant

Injury on the person of the prosecutrix – Considerations thereof – Held, the absence of injury or mark of violence on the body of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix **349 (ii) 488**

**& (iii)**

**Sections 392, 395 and 120-B –** See Section 439 of the Criminal Procedure Code, 1973 **97 120**

**Section 395 –** Dacoity in public temple – Appreciation of evidence – Suspects including accused persons were arrested on different dates and thereafter TI parade was held – Accused persons identified by inmates of the temple in court, whose presence in the temple was natural – There was sufficient light to identify the accused persons – Offence proved **232 (i) 307**

**Section 409 –** Criminal breach of trust – Accused, being bank employees, illegally diverted huge sum which is to be used for specific purpose to a private person and allowed to retain the same for a period to make an unlawful gain therefrom – The offence of criminal breach of trust established **243 (D) 326**



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<b>Section 420</b> – Cheating in case of agreement for sale of land – If the allegation in complaint <i>prima facie</i> shows that at the very initiation of the negotiations there was intention to cheat, then issuance of process and going for trial in the case is proper – Any triable issue of defence raised by accused persons could only be determined by leading evidence at the trial	350	489
<b>Sections 463 to 471</b> – Forged document, meaning of – Mere alteration of document does not amount to forgery it unless the act is done for some illegal gain or such objective Apex Court expressed dissatisfaction as to the lack of bonafides in investigation and taking cognizance by the Trial Court mechanically	181	231
<b>Section 498-A</b> – Complaints under Section 498-A – Tendency of over implicating the husband and all his immediate relations is not uncommon – Held, the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases – Duty of Bar and Bench in such cases, underlined	288	400
<b>Section 498-A</b> – Cruelty to wife – Relative of husband – Foster sister of husband does not come within the purview of the relative of husband as she is not related by blood, marriage or adoption – Therefore, she cannot be tried for an offence under Section 498-A of IPC	351	490
<b>Sections 499 and 500 and Exception 10 of Section 499</b> – Complaint of defamation u/s 500 r/w/s 499 IPC – The defence of accused under Exception 10 of Section 499 IPC – Ground of consideration and stage – Held, said question has to be considered on the facts and circumstances of each case, having regard to the nature of imputation made, the circumstances in which it came to be made and status of person who makes the imputation as also status of person against whom the imputation is allegedly made – Accused must justify his defence by adducing evidence – Onus is discharged, the moment he proves the same on preponderance of probability	289	401

## **INSECTICIDES ACT, 1968**

**Sections 24 (3) and (4)** – Shelf life of an insecticide – Insecticides are substances specified in Schedule to the Insecticides Act – Many of the substances with the passage of time may lose their identity if exposed or come into contact with other substances – Thus, the shelf life of the insecticides shall have its bearing when they are tested or analysed in the laboratory after the expiry of shelf life

Accused's right to get the sample of the insecticide tested and analysed by Central Insecticides Laboratory (C.I.L) – Held, merely notifying the intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the Court with the jurisdiction to send the sample for analysis by the C.I.L – It was further held that the accused is not required to demand in specific terms that the sample be sent for analysis to the C.I.L – Mere intention to adduce evidence in controversion of the report, implies demand to send the sample to the C.I.L for test and analysis – Legal position explained

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## INSURANCE ACT, 1938

Section 39 – Effect of nomination of policy holder – Insurer gets a valid discharge of its liability under the policy on payment to nominee but such amount is subject to the law of succession applicable to the deceased	36	43
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## INSURANCE CONTRACT

Construction of insurance contract – Principles of – Held, in interpreting documents relating to a contract of insurance, duty of the Court is to interpret the words in which the contract is expressed by the parties, because it is not for the Court to make a new contract, however reasonable, if the parties have not made it themselves – Moreover, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer

Liability of insurer – “Excess clause” in the insurance policy – Meaning of – It limits the liability of the insurer in regard to each claim, only to the amount of loss, in excess of the sum specified in the excess clause, which the insured has agreed to bear either by himself or by securing other insurance coverage	292	407
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## INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993

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## JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

Claim as to juvenility, determination of – The relevant date for the determination of age of juvenile is the date of commission of offence	49*	62
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Section 2 (k) – Determination of juvenility in case of continuing offence – Held, offence under Section 364-A IPC does not come to an end only on account of death of the victim since ransom calls have been made even though victim had been killed – Even after the death of the victim, every time a ransom call was made, a fresh period of limitation commenced – Accordingly, it would be the date on which the last ransom call was made which has to be taken to be the date of commission of offence and accordingly Juvenile Justice (Care & Protection of Children) Act, 2000 was no longer applicable to the accused who had attained the age of 18 years by then	353	494
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Section 7-A – Under Section 7A of J.J. Act, Court or Juvenile Justice Board or Child Welfare Committee has power to decide the claim of juvenility raised before them – Procedure to be followed in determination of age prescribed under Rule 12 which came into force from 26.10.2007 and thereafter, age determination enquiry has to be conducted as per provision of sub rule (3) of Rule 12 by the Court etc.	233 (i)*	309
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Sections 7-A, 15, 20 and 64 – Appeal by juvenile undergoing sentence under Sections 302, 304, 324 r/w/s 34 of IPC – Claim of juvenility raised in appeal and found to be correct – Appellant has already undergone imprisonment for more than the maximum period provided u/s 15 of the Act – Appellant entitled to be released under the mandate of Sections 15 and 64 of the Act and Rule 98 of the Rules	234	309
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<b>Section 12</b> – Whether provisions of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 have overriding effect over the provision of Section 18 of SC & ST (P.A.) Act? Held No – Scope of application of both provisions is different, therefore, provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, does not have any overriding effect over the provision of Section 18 of the SC & ST (P.A.) Act	354*	496
<b>JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007</b>		
<b>Rule 12</b> – See Section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000	233 (i)*	309
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<b>LAND ACQUISITION ACT, 1894</b>		
<b>Sections 3 (a) and 25</b> – Application for inclusion of claim with respect to compensation of Nilgiri trees and water tank on the acquired land – Application allowed on the ground that compensation for land must be determined inclusive of benefits arising out of the land and things attached to the earth – However, mere allowing the application would not clothe claimants to claim higher compensation – They have to prove existence of facts on the basis of which they are claiming higher compensation	118	144
<b>Sections 4 (1) and 23</b> – When acquired lands have to be valued uniformly at the same rate and when acquired lands in different areas have to be valued at different rates? Held, it depends upon the extent of land acquired, the location, proximity to an access road/main road/Highway or to a city/town/village and other relevant circumstances – Explained with illustrations		
Determination of compensation – Deduction towards developmental costs depends on various factors – It may vary from 20% to 70% – In case where acquired area of land is of larger extent and comparative sale transaction is related to small extent, 25% deduction is proper		
Comparable sale transaction made one year before preliminary notification for acquisition of land – 10% to 12% increase in market value per year can be provided with regard to the land situated near urban area and having potential for non-agricultural development	235	313
<b>Sections 12 (2) and 18 (2) Proviso Clause (b) and 28-A</b> – Limitation period for seeking reference to Court shall start from the date of actual or constructive knowledge of essential contents of the award	183	235
<b>Section 18</b> – Who can make reference ?		
Limitation and constructive knowledge of award	119	146
<b>Section 23</b> – Determination of market value – Depends on many factors including nature and quality of land; agricultural and homestead land – Location and position of land also play an important role – Courts are expected to consider negative and positive factors	120	148

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**Sections 23 and 24** – Concept and scope of deduction of “development cost” to arrive at market value – Explained – Purpose or future use of acquired land and any increase of value of land will have no role in determination of market value as a general rule

In certain acquisitions, Courts have chosen to ignore the difference in the quality/situational advantages and treat all lands equally for awarding uniform compensation having regard to the common purpose of acquisition – Such course is proper or not, may have to be decided in the context of respective acquisitions – In this regard, relevancy of purpose is required to be properly understood and carefully applied with reference to special circumstances, otherwise, it may lead to absurd and unjust results

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**Sections 23 and 24** – Determination of market value of land – Relevant considerations for capitalisation of yield method – Consequential or remote benefits occurring from agricultural activity is not relevant consideration for determination of fair market value – It is only direct agricultural crop produced by agriculturist from acquired land or its price in market at best, which is the relevant consideration to be kept in mind

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**Sections 23 and 54** – Determination of market value of land – Admissibility of previous judgment relating to value of land – Held, previous judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must be a previous judgment of that same Court

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### LAND REVENUE CODE, 1959 (M.P.)

**Sections 115, 116 and 259** – See Section 9 and Order 7 Rule 10 of the Civil Procedure Code, 1908

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### LIMITATION ACT, 1963

**Section 3 and Articles 56 & 58** – See Order 23 Rule 3 of the Civil Procedure Code, 1908

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**Section 5** – Application for condonation of delay on behalf of the State and its agencies/instrumentalities – Consideration there of

Inordinate delay by the State in filing appeal – Condonation of – Held, grave error committed by the High Court in condoning the delay

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**Section 5** – Condonation of delay – Considerations therefor – Held, unless malafides writ large on the conduct of the party, generally as a normal rule, delay should be condoned – Position explained

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**Section 5** – Condonation of delay in bringing on record the legal representatives – Considerations therefor – Mere ignorance of legal consequence would not be sufficient to condone such a long delay – Position explained

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**Section 5** – Consideration of application for condonation of delay, criteria therefor – Application must be decided on considering the reasons shown in the affidavit in support of the application in a judicious manner and with an intent to promote justice

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**Section 5** – See Order 22 Rule 9 (2) & (3) of the Civil Procedure Code, 1908

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<b>Section 13 and Article 123</b> – Application for setting aside <i>ex parte</i> decree – Exclusion of time requisite for obtaining a copy of judgment/decree in computation of limitation – Held – Because no such certified copy is required to be filed along with the application, provision of Section 12 (3) of Limitation Act which provides exclusion of time for obtaining certified copy is not applicable in the case	356	497
<b>Article 58</b> – Suit for declaration – Limitation – Right to sue accrues when there is a clear and unequivocal threat to infringe the right of plaintiff by the defendant – Suit filed within 3 years from the date of infringement of such right, is not barred by limitation	357	498
<b>Article 64</b> – Adverse possession – Finding about actual owner is necessary Derivative title, proof of – Finding about vendor title is must	123*	152
<b>Article 127</b> – Application by Judgment-debtor to set aside sale in execution of a decree – Period of limitation – The execution proceeding was stayed at the instance of the third party – Application under Order 21 Rule 89 CPC was made by the Judgment-debtor after the stay order stood vacated – Whether the Judgment-debtor would be entitled to the benefit of the period during which he was prevented by the execution proceedings in taking steps to file the application for setting aside the sale? Held, Yes	124	153
<b>Article 137</b> – No application is required to pass the final decree – Hence, provisions of Limitation Act do not attract	79	95
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<b>MEDICAL TERMINATION OF PREGNANCY ACT, 1971</b>		
<b>Sections 2, 3, 4 and 5</b> – Consent of mentally retarded woman for termination of pregnancy is essential except where the woman is minor or mentally ill [Section 3 (4) (a)] and where Registered Medical Practitioner has to form an emergency opinion to save a pregnant woman's life [Section 5 (i)]	125 (i)	155
<b>MOTORYAN KARADHAN ADHINIYAN, 1991 (M.P.) [As amended w.e.f. 08.12.1999]</b>		
<b>Sections 16 and 16(5)</b> – See Sections 451 and 457 of the Criminal Procedure Code, 1973	174*	222
<b>MOTOR VEHICLES ACT, 1988</b>		
<b>Sections 3, 10, 147 and 149</b> – Driving licence – Breach of policy – Driver holding licence of greater responsibility (i.e. licence for LMV) than one which is required for driving two wheeler with gear – Insurer cannot be exonerated as there is no substantial breach of policy	126*	158
<b>Sections 140 and 166</b> – No fault compensation – Under Section 140 of the Motor Vehicles Act, victim or legal representative is entitled for compensation even if the accident is caused on account of fault of the victim – The amount of compensation paid under this section by the insurance company cannot be ordered to be refunded by the claimants on dismissal of claim under Section 166 of the Act	358	500

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<b>Section 147 (1) (b) (i) – Motor accident – Liability of Insurance Company to pay compensation under Section 147 (1) (b) (i) of the Act, extent of – The deceased was travelling in the vehicle along with the goods (vegetables) which he was taking for sale – The vehicle turned turtle resulting in death of the deceased in hospital due to injuries received by him in the accident – Held, insurer is liable to pay compensation as the requirement of Section 147 (1) (b) (i) of the Act is fulfilled</b>	<b>52*</b>	<b>64</b>
<b>Sections 147 (1) (b) and 82 – Violation of terms and conditions of policy of insurance – Effect on liability of Insurance Company to indemnify – Insurance company could not be held liable to indemnify the insured</b>	<b>53*</b>	<b>66</b>
<b>Sections 158, 163-A, 165 and 166 – Motor accident – Compensation – Various directions and suggestions by the Apex Court as remedial measures for delay in payment and in certain cases non-payment of compensation, have been made – Directions to the police and Accident Tribunal are as:</b>		
1. Directors General of Police are asked to issue instructions to ensure implementation of Section 158 (6) and prosecute drivers and owners of un-insured vehicles under Section 196 of Motor Vehicles Act		
2. Registrar Generals of High Courts have been given directions to instruct Claims Tribunals to register accident information report received under Section 158 (6) as application for compensation under Section 166 (4) and proceed with them without waiting for filing of claim applications by victims of family members and to ensure availability of register forms, etc.		
3. To facilitate compliance of Section 166 (4) by Tribunals, guidelines laid down	<b>185</b>	<b>239</b>
<b>Section 158 (6) – See Sections 451 and 457 of the Criminal Procedure Code, 1973</b>	<b>331</b>	<b>461</b>
<b>Section 163-A and 166 – Driver died in an accident – Borrowing vehicle was driven by the deceased – Deceased stepped into the shoes of the owner of the vehicle – The claim of legal representative of deceased is not maintainable under Section 163-A of the Act</b>	<b>54</b>	<b>66</b>
<b>Sections 163-A and 166 – Death of housewife/mother not having regular income in motor accident – Approach of computing compensation by comparing gratuitous service for a housewife/mother with work of a skilled worker, house keeper, servant or employee is highly unfair, unjust and inappropriate – The contribution made by the wife to the house is invaluable and cannot be computed in terms of money – Gratuitous service rendered by deceased with true love and affection to her children as mother, and to her husband as wife cannot be equated with service rendered by others – However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of the housewife/mother</b>		
Section 163-A does not apply to cases in which claims for compensation are filed under Section 166 – However, in absence of any other definite criteria for determination of compensation to dependents of non-earning housewife/mother, even in a claim under Section 166, it is reasonable to rely upon criteria specified in Schedule II Clause 6 and then apply appropriate multiplier	<b>359</b>	<b>501</b>

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<b>Sections 163-A, 168 and 169</b> – Claim for compensation – Claims Tribunal is required to follow summary procedure – It cannot determine issues arising in claim cases in piecemeal – The issue relating to maintainability is required to be considered along with other issues	360	506
<b>Section 166</b> – Motor vehicle accident case – Strict proof of accident caused by a particular vehicle in a particular manner may not be possible – The standard of proof beyond reasonable doubt could not be followed – Claimants can establish their case merely on touchstone of preponderance of probability	55	68
<b>Sections 166 and 173</b> – Ignorance of claimant's evidence on the basis of correspondence between respondent owner and insurer – Not legal	127*	158
<b>MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986</b>		
<b>Section 5</b> – Muslim divorced wife would be entitled to receive the amount of maintenance from her divorced husband under Section 125 CrPC as long as she does not remarry – The amount of maintenance to be awarded under Section 125 CrPC cannot be restricted for the <i>iddat</i> period only	104 (ii)*	129
<b>N.D.P.S. ACT, 1985</b>		
<b>Sections 8, 18, 20 (B) (i) &amp; (ii)</b> – Recovery and seizure of contraband substance from house – Requisite evidence to prove the guilt of accused – Police Officials raided the house allegedly belonging to the appellant/accused and recovered contraband substance from the house – Even assuming for a moment the house belonged to the appellant/accused and was in his possession, the prosecution was further required to show that the appellant/accused had exclusive possession of the contraband inasmuch as a large number of persons including the appellant/accused were living in the house – Legal position explained	56	69
<b>Section 15</b> – Possession of poppy husk – Accused persons belonging to another place were found sitting on the bags of poppy husk and on seeing the police, they tried to hide themselves behind the bags – In absence of satisfactory explanation, such conduct shows their guilty mind  Mere delay in sending the samples for forensic examination not sufficient to infer that the property must have been tampered while the chemical examiner reported that same was found in tact at the time of examination – On the aforesaid ground, adverse observation of the First Appellate Court is nothing like surmises and conjectures	239	320
<b>Sections 15, 42 and 57</b> – Conscious possession of contraband – The six bags, containing 32 kg of poppy husk in each of the bag, were not only recovered from the premises of the accused but from underneath the wheat chaff kept in the room which was opened by him with a key in his possession – Conviction under Section 15 of the NDPS Act held proper It cannot but be noticed that with the advancement of technology and the availability of high speed exchange of information, some of the provisions of the NDPS Act, including Section 42, have to be read in the changed context that non-compliance with the provision of Section 42 may not vitiate the trial if it did not cause any prejudice to the accused – Furthermore, whether there is adequate compliance of Section 42 or not is a question of fact to be decided in each case  Compliance with the provision of Section 57 of the NDPS Act is not mandatory – Only substantial compliance is sufficient	240*	322

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<b>Sections 20 and 42</b> – Search and seizure of <i>charas</i> from the accused's house – Compliance with requirement of Section 42 – Information was received by the police officer when he was on patrol duty in the town – He immediately, after receipt of the information, informed his superior officer on wireless – It would be substantial compliance of Section 42 of the N.D.P.S. Act since the situation was of an emergency	128	159
<b>Sections 27, 42 (2) and 50</b> – Whether non-corroboration of prosecution version by Panch witnesses and non-compliance of the mandatory requirements of Sections 42 (2) and 50 vitiate the search and seizure? Held, No – Drug traffickers should not go scot free on technical pleas		
Seizure of 100 grams of <i>Ganja</i> – Whether it was intended for accused's personal consumption – Burden to prove lies on accused	129 (i) & (ii)	162
<b>Section 50</b> – Section 50 of the NDPS Act only applies in case of personal search of a person and it does not extend to search of a vehicle or premises or container, brief case, bag etc. carried by accused person	241 (i)	323
<b>N.D.P.S. (AMENDMENT) ACT, 2001</b>		
Not applicable to any pending appeal	129 (iii)	162
<b>NEGOTIABLE INSTRUMENTS ACT, 1881</b>		
<b>Sections 7,8,9, 138 and 142</b> – Cognizance of the matter can be taken only upon complaint in writing by payee or holder of cheque in due course – Cheque was issued in favour of father of non-applicant – Nowhere in complaint it was stated that payee has died and who are the legal representatives – Nowhere it was stated as to how non-applicant is entitled for the cheque amount – The complaint is not maintainable	361	506
<b>Section 138</b> – Cheque was issued in security of transaction of milk between accused and father of complainant – Dishonoured – Held, it would not come within the purview of Section 138 of the Act	294	411
<b>Section 138</b> – Complaint about dishonour of cheque – Maintainable only against drawer of cheque – Company and its Directors cannot be made liable under Section 138 of the Act, if cheque is drawn by employee of the company on his personal account even for discharge of dues of the company	362	507
<b>Section 138</b> – Computation of period of 30 days – Date on which cheque was returned and received by the complainant has to be excluded	59	73
<b>Section 138</b> – Dishonour of cheque – Service of demand notice – Presumption of – The notice sent by registered A/d and also by U.P.C. on two addresses returned with remark of postman that addressee was not available at the time of distribution of letter – Presumption as to delivery of the notice ought to have been drawn in favour of complainant	186	243
<b>Section 138</b> – Offence u/s 138 of the Act, scope of – In absence of proof for establishing all the ingredients required to constitute an offence u/s 138 of the Act, issuance of cheque alone is not sufficient to bring the act within the sweep of the section – When it is established that the authority, as the drawer, had ceased to continue till the date it was presented for encashment	57	71



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<b>Section 138</b> – See Section 200 of Criminal Procedure Code, 1973	21	26
<b>Section 138</b> – See Section 256 of the Criminal Procedure Code, 1973	187	244
<b>Section 138</b> – The cheque in question was returned back by the Bank on one more ground that signature does not tally besides insufficient funds – Offence u/s 138 of Negotiable Instruments Act not made out	58	72
<b>Section 138</b> – The word 'Liability' – Explained		
Dishonour of cheque – Appellant alleged that plot which was sold to him earlier by respondent was re-sold to another person without his knowledge and a cheque of Rs. 75,000/- was issued by respondents – Held, it is not a case of appellant that respondents had agreed to pay Rs. 75,000/- – Cheque cannot be said to be issued in discharge of liability	295	412
<b>Section 138</b> – Whether cognizance of offence under Section 138 of the Negotiable Instruments Act can be taken on the basis of affidavit filed in support of complaint? Held, Yes – There is no legal requirement for recording of the statement under Section 200 of CrPC	188	246
<b>Sections 138 and 139</b> – Dishonour of cheque – Scope of presumption under Section 139 of the Act – It includes the existence of legally enforceable debt or liability		
In this regard, contrary observation in para 30 of the case of <i>Krishna Janardhan Bhat v. Dattatraya G. Hegde</i> , AIR 2008 SC 1325 is not correct	237	316
<b>Sections 138 and 141</b> – Dishonour of cheque – Offence by Company – Legal requirement to fasten vicarious liability against the officers of the Company – Held, a person should be responsible to the Company for the conduct of the business of the Company and also a person incharge of the business of the Company		
Necessary averments in the complaint where necessary – Explained	130	163
<b>Sections 138 and 147</b> – Compounding of offence relating to dishonour of cheque – To curb the tendency of parties to compound the offence at last stage, the Apex Court issued guidelines to encourage them for early compounding by imposing graded costs on accused		
Filing multiple complaints about cheques issued in one transaction causes tremendous harassment and prejudice to drawers of cheque – Therefore, Apex Court has made it mandatory to complainant to file along with complaint sworn affidavit that no other complaint has been filed in any other Court in respect of the same transaction	238	318
<b>Sections 138 and 147</b> – In view of the non-obstante clause, the provisions of Section 147 of the Negotiable Instruments Act have an overriding effect over the provisions of CrPC relating to the compounding of offences – Section 147 does not bar the parties from compounding the offence under Section 138 even at the appellate stage of the proceedings	131*	166
<b>Section 141</b> – Offence of dishonour of cheque by company – Vicarious liability of Directors and other officers of the Company – There is no presumption that every Director knows about transaction – Vicarious liability on the part of the accused must be pleaded and proved and not inferred – However, when an accused is the Managing Director or a Joint Managing Director or a Director had signed the cheque on behalf of the accused company, making of such specific averment not necessary	189	247

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<b>Section 142</b> – Dishonour of cheque – Cause of action – Three demand notices were issued – First two notices returned unserved – Third notice issued by registered post – Duly served – Payment not made within 15 days – Held, cause of action for filing the complaint arises to complainant after service of the third notice	296	414
<b>Sections 143 to 147</b> – Affidavit filed by the complainant or his witness under Section 145 (1) NI Act is subject to all just exceptions, meaning thereby the affidavit should contain formal proof of enclosed documents and if objections regarding admission and proof thereof are raised by accused and are sustained by the Court then prosecution can seek to summon the witnesses and get the defect in proof of documents corrected	190 (i)	250
<b>Section 145</b> – Object and scope in context of incorporation of Section 145 of N.I. Act stated – No need to summon witness again for his examination-in-chief despite affirming affidavit in that behalf	363	508
<b>NOTARIES ACT, 1952</b>		
<b>Section 8</b> – Whether it is necessary for complete memorial by a person seeking appointment as a Notary that the memorial has to be counter signed by all the persons mentioned in Rule 4 (3) of the Notaries Rules? Held, Yes	191 (i)	253
<b>NOTARIES RULES, 1956</b>		
<b>Rule 4</b> – Whether it is required to inform the applicant about incomplete memorial? Held, there is no such provision in the Rules to inform the applicant about the defect in the application and get it corrected	191 (ii)	253
<b>PARTNERSHIP ACT, 1932</b>		
<b>Sections 4 and 42 (2)</b> – Dissolution of a partnership firm on account of death of one of the partners is subject to the contract entered into by the parties – But when there are only two partners constituting the partnership firm, on the death of one of them, the firm is deemed to be dissolved despite the existence of a clause which say otherwise	132*	166
<b>Section 53</b> – See Order 39 Rules 1 & 2 of Civil Procedure Code, 1908	14*	21
<b>PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995</b>		
<b>Sections 2 (i), (q) &amp; (r)</b> – See Sections 2, 3, 4 & 5 of the Medical Termination of Pregnancy Act, 1971	125 (i)	155
<b>Sections 32 and 33</b> – Object and reasons of the Act – Duties cast upon the appropriate Government underlined		
Under Section 33, a disabled cannot be appointed unless posts are identified under Section 32, but the provision for reservation under Section 33 became effective immediately when the Act came into force in 1996 – Delay in identification of posts under Section 32 cannot be used as a tool to delay the benefit of reservation under Section 33		
	297*	416

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## PRACTICE AND PROCEDURE

After passing of final order, interim order merges with the final order – Undue advantage taken by the party under interim order should be neutralized	134 (i)	168
Orders – Administrative, quasi judicial or judicial – Orders must be supported by reasons as they are fundamentals of sound administration of justice delivery system – Reason is the heartbeat of every conclusion and it ensures clarity, objectivity, transparency and fairness in decision making	242	324
See Order 20 Rule 4 (2) of the the Civil Procedure Code, 1908	298	416

## PREVENTION OF CORRUPTION ACT, 1947

**Section 5 (1) (d) r/w/s 5 (2) and Section 6 (1) (c)** – Order granting sanction for prosecution – Validity thereof – Held, while granting sanction, officer concerned is not required to indicate that he had personally scrutinized the file and arrived at the satisfaction for granting sanction

364      509

**Sections 12 and 19** – Previous sanction under Section 19 is not necessary for taking cognizance of an offence punishable under Section 12 of the Prevention of Corruption Act, 1988

60      74

**Section 13** – Offences under Section 13 (1) (c) and (d) – Criminal misconduct, ingredients of

149 (iv)\* 176

**Sections 13 (1) (d)/13 (2), 7 and 20** – Trap – In case of illegal gratification – When it is proved that the accused accepted illegal gratification of substantial amount – Presumption under Section 20 arises in favour of prosecution and the burden to prove demand also discharged and shifted on the accused to explain as to how the amount came in his possession

133      167

**Section 13(1)(d)(iii)** – Accused, being bank employees were public servants and illegally made funds available to broker dealing in securities and thereby facilitated him to obtain pecuniary advantage within the meaning of Section 13 of the Act – Conviction under Section 13 (1)(d)(iii) upheld

The ingredients of sub-clause (iii) of Section 13 (1) (d) contemplate that a public servant who while holding office obtains for any person any valuable thing or pecuniary advantage without any public interest would be guilty of criminal misconduct – Sub-section (2) of Section 13 provides for the punishment for such criminal misconduct

**Section 19** – Sanction for prosecution – Competency – Even if the authority was incompetent to accord sanction, in appeal prosecution can rely upon Section 19 (3) of the Act as there was no failure of justice

Even though, in our opinion, the sanction orders are legal and valid, even if any doubt exists, the same becomes clear in view of the provisions of Section 19 (3)

243 (E) 326  
& 243 (A)

**Sections 19 and 19 (3)** – Error, omission or irregularity in sanction order – High Court reversed the judgment of conviction on the ground of irregularity in passing of the sanction order – Held, no finding has been recorded showing serious failure of justice had been caused to respondent – High Court was not justified in setting-aside the judgment of

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conviction in absence of such finding – Matter remanded back to High Court to consider the appeal on merits and dispose of accordingly		
Proof of sanction – Sanction order was clearly passed by the District Magistrate in discharge of routine official functions – Hence, there is a presumption that the same was done in a bona fide manner – There was no requirement for the District Magistrate to be examined as a witness by the prosecution	61	75
<b>PREVENTION OF CRUELTY TO ANIMALS ACT, 1960</b>		
Sections 10 and 11 – See Sections 451 and 457 of the Criminal Procedure Code, 1973	273	373
Section 11 (1) (d) – Interim custody of livestock – Goats and sheep illegally filled in trucks in cruel manner, while transporting seized by police and kept in custody on account of alleged commission of offence under Section 279 of IPC and Section 11 (1) (d) of Prevention of Cruelty to Animals Act – The respondents by vocation, trade in goats and sheep which is not prohibited by any law and by production of goats and sheep during trial, it cannot be proved that they were subjected to cruelty because no marks of cruelty would be found by the time elapsed – Respondents who are owners of the livestock are entitled to the interim custody of the same, subject to certain conditions	135	170
<b>PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971</b>		
Section 2 – Insult to the Indian National Flag – Petitioner was the Chief Guest in the function – Cognizance was taken by the JMFC under Sections 2 and 3 of the Prevention of Insults to National Honour Act, 1971, Flag Code of India, 2002 and Section 109 of I.P.C. – Order of taking cognizance against the petitioner was quashed u/s 482 because of non-availability of evidence to prove that petitioner has caused insult to the National Flag	136	171
Section 2 – Offence of insult to the National Flag of India – Alleged offence was committed outside India – Held, as per proviso to Section 188 of CrPC, cognizance cannot be taken without obtaining prior sanction of the Central Government	244*	329
Section 2 – Offence of insult to the Indian National Flag – The offence can only be constituted if any person within the public view, burns, mutilates, defaces, disfigures, destroys, tramples upon or otherwise brings into contempt commits an offence under the Act – Further held, the Flag Code of India contains the executive instructions of the Central Government and the same are not to be considered as law	62*	76
<b>PRIVATE INTERNATIONAL LAW</b>		
See Sections 7, 9, 14 and 17 of the Guardians and Wards Act, 1890	179	227
<b>PROBATION OF OFFENDERS ACT, 1958</b>		
Section 12 – Word “disqualification” contained in Section 12 of the Probation of Offenders Act – Application thereof – It applies only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment – Therefore, an employee cannot claim the right to continue in service merely on the ground that he had been given the benefit of probation	365 (i)*	510

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<b>PROPERTY LAW</b>		
See Sections 5 and 34 of the Specific Relief Act, 1963	366*	511
<b>PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005</b>		
<b>Sections 2 (q), 12 (1) and 19</b> – Application under Section 12 of the Act – Respondent, who may be – Only adult male member may be a respondent – Female cannot be impleaded as respondent		
Right of residence, claim of – Right of residence can be claimed in respect of shared house belonging to husband or house belonging to joint family of which husband is a member	137	173
<b>Section 12 Proviso</b> – Whether Magistrate can take cognizance of application filed by the aggrieved person without calling the D.I.R. from Protection Officer or the service provider? Held, Yes	299	418
<b>Sections 23 and 31</b> – Whether breach of order of interim maintenance under Section 23 of the Act is punishable u/s 31 of the Act? Held, Yes as it amounts to breach of protection order	63	76
<b>PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006</b>		
<b>Rules 5 and 6</b> – See Section 31 of Protection of Women from Domestic Violence Act, 2005	63	76
<b>PUBLIC GAMBLING ACT, 1867</b>		
<b>Section 4A</b> – Whether Court can order for confiscation of amount seized inspite of acquittal of offence punishable under Section 4A of the Act? Held, No – Accused is entitled to get back the amount seized under the Act on acquittal of the offence	245*	330
<b>PUBLIC LIABILITY INSURANCE ACT, 1991</b>		
<b>Sections 2 (c) and 3</b> – Whether electricity is a hazardous substance? Held, Yes		
No fault liability, applicability of – Deceased received the electric shock when he came in contact with the open parts of the live wire of starter – Held, the death of deceased was due to “handling” [as defined in Section 2 (c) of the Act] of hazardous substance and being the proximate cause of death, it is sufficient for the person who claims through such deceased to maintain claim for relief under the Act	246	330
<b>REGISTRATION ACT, 1908</b>		
<b>Sections 17 and 49</b> – Unregistered and unexecuted sale deed – When document has not been executed by all the sellers – Document could not be presented for registration – Sections 17 and 49 not applicable	194 (ii)	260
<b>Sections 17 (1) (b), (c), (2) (xi) and 49</b> – Whether an unregistered document purporting to extinguish the mortgage deed can be said to be admissible in evidence without being registered? Held, No – Further held, the document can be looked into for collateral purposes under the proviso to Section 49 of the Registration Act	64*	77
<b>Section 47</b> – Operation of registered documents – It operates from the date of execution and not from the date of its registration	368 (ii)	513.

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**Section 49 Proviso** – Suit for specific performance of contract – Unregistered sale deed adduced in evidence – Such sale deed admissible to prove the contract as well as evidence of any collateral transaction, not required to be effected by registered document

**247      331**

## **RENT CONTROL & EVICTION**

Bonafide requirement of landlord – Powers of Court – Once it is not disputed that the landlord is in bonafide need of the premises, it is not for the Courts to say that he should shift to the first floor or to any higher floor

**139\*      175**

Eviction suit – Determination of question as to legal representative of the deceased landlady – Legal representative claiming on the basis of 'Will' executed by the deceased landlady in his favour – Held, the tenant in this case could not have challenged the *Will* at all – He was an utter outsider and had no interest in the property as owner

**159 (ii)      203**

Issue regarding the title of the landlord raised by the tenant by way of amendment application in WS in a suit for eviction – Permissibility – Held, in a suit for eviction, if it is not filed on the ground of bonafide requirement of the landlord and more so when relationship of landlord and tenant between parties have been admitted, it would not be open for the tenant to deny the title of the landlord – The amendment application rejected – Legal position explained

**138      175**

Survival of relief based on bonafide requirement of landlord after his death – Held, ordinarily right to relief must be adjudged with reference to the date of institution of suit – However, subsequent developments that have a bearing on the right to relief cannot be shut out – If necessary, Court may mould the relief

**192      255**

The need for a more balanced and objective approach instead of a pro-tenant approach to the relationship between the landlord and tenant emphasized – Tenancy comes to an end on passing of the decree and does not continue until the tenant is actually evicted

**65      77**

## **RIGHT TO INFORMATION ACT, 2005**

**Sections 8 (1), 8 (1)(e), 8 (1) (g) and 8 (1)(h)** – Exemption from disclosure of information – Department claiming exemption u/s 8(1) from disclosure of information regarding materials forming the basis for issuance of the charge-sheet and initiation of a D.E. – Held, a Govt. servant have an access to the material forming basis of the charges and initiation of D.E., which can be utilized for his defence – It cannot be presumed that the D.E. gets impeded

**66\*      81**

## **RULE OF LAW**

Facets of recording of reasons in dispensation of justice – Judgment of Courts should meet the requirement of recording of reason with higher degree of satisfaction than administrative or quasi-judicial orders – Requirement of stating reasons for judicial orders necessarily does not mean a very detailed and lengthy order but there should be some reasoning recorded by the court for declining or granting relief

**248      333**

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## **SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989**

**Section 3 (1) (x)** – Offences under SC & ST (Prevention of Atrocities) Act, 1989 – Caste, proof of – As per provision of S. 76 of the Evidence Act, caste certificate cannot be treated as a public document – Prosecution is required to prove the same as other documents as are proved in a criminal case – Further held, accused can be convicted under the provisions of the Act on proving the facts by prosecution with reliable and admissible evidence that the complainant belongs to the caste notified and covered under the Act and also that the accused is not covered under the caste notified in the Act

67\*      82

**Section 18** – See Section 12 of the Juvenile Justice (Care & Protection of Children) Act, 2000

354\*      496

## **SCHEDULED COMMODITIES DEALERS (LICENSING AND RESTRICTION ON HOARDING) ORDER, 1991 (M.P.)**

**Clauses 2 (e) and 11** – Definition of the expression 'dealer' in the Scheduled Commodities Dealers (Licensing and Restriction on Hoarding) Order, 1991 (for short the Licensing Order, 1991) – A person who would be dealing in scheduled foodgrains in quantities of more than 200 quintals at a time and was not confined to individual transactions

Clause 11 of the said Order, requirement of – Documents to be carried with consignment of goods – Copies of sale receipt/invoice will be required as a safeguard against clandestine dealing

176      224

## **SERVICE LAW**

Confirmation in service – Automatic or deemed confirmation – Applicability of – This question will always depend upon the facts of the case and relevant rules applicable to that service

Confidential reports – Significance of – Held, highly competitive standard of service discipline and values are expected to be maintained by the Judicial Officers as that alone can help them for better advancement of their service career – It is mandatory that such confidential reports should be elaborate and written timely to avoid any prejudice to the administration as well as the officer concerned

318 (ii) 447  
& (iii)\*

Departmental Enquiry – Disagreement of Disciplinary Authority with the finding of Enquiry Officer, procedure therefor – Held, before recording disagreement with the finding of the enquiry officer, the disciplinary authority was required to convey tentative reasons therefor to the delinquent employee – Further held, reasonable opportunity of being heard ought to have been given to the concerned employee before passing the order as to compulsory retirement

68\*      83

Dismissal/removal from service – Conviction of an employee for an offence involving moral turpitude permits the authority to take appropriate steps for his dismissal/removal from service on the basis of such conviction inspite of the fact that the benefit of the provision of the Probation of Offenders Act had been granted by the Criminal Court to such an employee

365 (ii)\* 510

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<b>SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992</b>		
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Criminal misconduct, what it is ? If a public servant obtains for himself or for any other person, any valuable thing or pecuniary advantage, he would be guilty of criminal misconduct	140 (i) & (ii)*	176
<b>SPECIFIC RELIEF ACT, 1963</b>		
<b>Sections 5 and 34</b> – Legal position of subsequent purchaser restated – Petitioner/plaintiff buying property from DW4 when DW4 who had already sold it to respondent/defendant by registered sale deed, who has been in possession and enjoyment of the property since then – Held, DW 4 was no longer competent to execute the subsequent sale deed in respect of the same property as she has already divested herself of title of the said property	366*	511
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