JOTI JOURNAL

(BI-MONTHLY)

JUNE 2021

MADHYA PRADESH STATE JUDICIAL ACADEMY
JABALPUR

MADHYA PRADESH STATE JUDICIAL ACADEMY, JABALPUR

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JOTI JOURNAL JUNE - 2021

SUBJECT- INDEX

EDITORIAL

Esteemed Readers,

A quarter of a century ago, while introducing orientation training for the new appointees to judicial office, the former Chief Justice of Australia, Sir Anthony Mason has said, "In the past, new judges were expected somehow to acquire almost overnight the requisite knowledge of how to be a judge. Perhaps it was thought that judicial know-how was absorbed by a process of osmosis."

Long back, we surmounted the myths of our legal system that a judge by experience as a law scholar is fully equipped to conduct trial in any manner. Now, judicial education and training has become a necessary feature of our judicial set-up. However, simply training judges in courtroom procedures or updating them on recent pronouncements is not enough. Judicial education must focus not only on helping judges to master the content but also on helping them to develop more generalised abilities that they need in order to meet the complex demands of justice. Madhya Pradesh State Judicial Academy is well aware of its responsibility to fulfill the need of judicial education and training to the judges administering justice at the lower rung of the hierarchy.

We have come half way through this year. When this year dawned, we were hopeful that it will not be anything like the previous year. But, the onslaught of pandemic took such a disastrous turn that everything we went through in 2021, could possibly be one of the most difficult times in the history of this institution. In the light of the scale of recent changes due to pandemic, the Academy has adopted newer methodology of online model of judicial education and training and we are continuously trying to run our educational programmes while ensuring that it does not affect the modalities of imparting education and training in a traditional way.

Induction training to the new judges is one of the core activities of this Academy. We had proposed to conduct the Final Phase Induction Training Course for Civil Judges (Entry Level) of 2020 batch through traditional mode but had to be rescheduled. In order to complete the overall Induction Training Course within the stipulated time, on the direction of Hon'ble the Chief Justice, the Final Phase Induction Training Course for Civil Judges (Entry Level) of 2020 batch was conducted from 20.05.2021 to 12.06.2021 through online and other modes of telecommunication. This was the first batch, to whom all the three Phases of Institutional Induction Training course, were conducted online. We had tried to treat the course like an in-person class. Persistence is perhaps

the biggest key to success in online learning. As members of an institution that is always ready to adapt to new methods that may be *avante garde* in nature, we have done all in our capacity to hold up the high standards that were set back when traditional methods of training were prevalent. The success of our new methods, however, now solely lies on the shoulders of the participants who imbibed this methodology to its fullest utility.

Recently, Hon'ble the High Court of Madhya Pradesh in Writ Petition No. 9320 of 2021 [*In Reference (Suo Motu) v. The State of Madhya Pradesh and others*] underlined the need of strict compliance of the guidelines issued by Hon'ble the Supreme Court in *Arnesh Kumar v. State of Bihar and another, (2014) 8 SCC 273* and directed the Madhya Pradesh State Judicial Academy to conduct programmes for the same. Hence, the Madhya Pradesh State Judicial Academy in collaboration with the M.P. Police Academy organized eleven programmes for sensitizing the Judicial Magistrates and Police Officers towards these guidelines wherein 1062 Judicial Officers and 1599 Police Officers participated.

Continuous judicial education is also an area of concern for this Academy. Thus, Interactive Session on – Key issues relating to cases under the Protection of Women from Domestic Violence Act, 2005 for 98 Judicial Magistrates dealing cases under the Act and Workshop on – Motor Accident Claim Cases for 77 Judges dealing with Motor Accident Claim Cases were also conducted online in the month of June.

We keep abreast the judicial fraternity with the latest developments in the field of judging through this Journal since long. To make this effort accessible through web, its software was launched in the beginning of this year, in which a new feature *"Samasya Samadhan"* is also added. Through this column, the Academy has made an attempt to answer the queries raised by the Judges of the District Judiciary from time to time. I take this opportunity to call upon you to send more queries to the Academy. The involvement of the readers will only strengthen our Journal.

Lastly, while we cannot literally stand together as we must follow social distancing norms, we must stand together in spirit. I implore all of you to get vaccinated as soon as possible, follow all instructions that are being released by the relevant authorities and keep yourself, your family and your friends safe, sound and healthy.

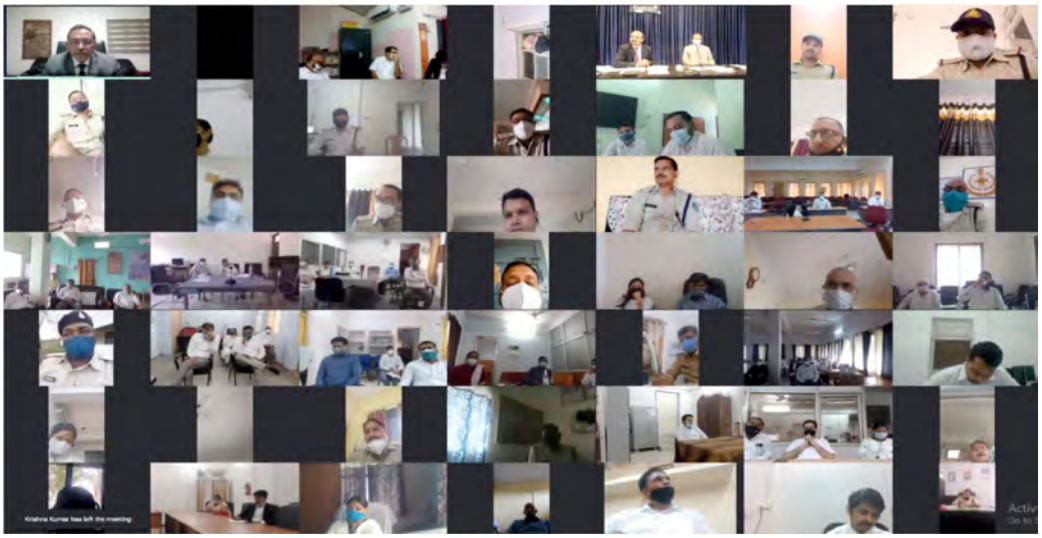
Ramkumar Choubey
Director

GLIMPSES OF ONLINE THIRD PHASE INDUCTION TRAINING COURSE FOR CIVIL JUDGES (ENTRY LEVEL) 2020 BATCH (20.05.2021-12.06.2021)

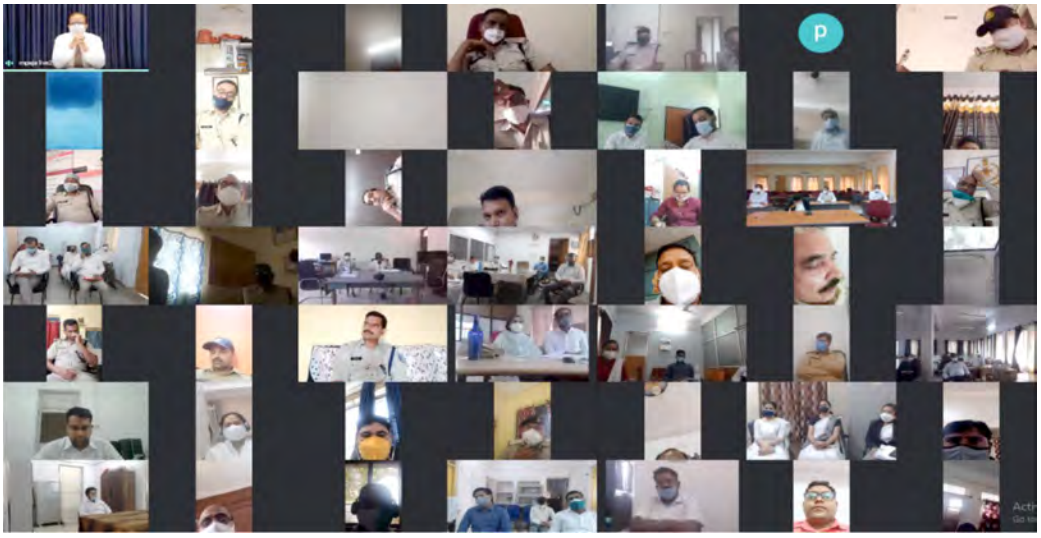
Hon'ble the Chief Justice addressing the participants during valedictory session on 12.06.2021

Hon'ble Shri Justice Sheel Nagu, Co-Chairman, Governing Council, MPSJA addressing the participants during inaugural session on 20.05.2021

GLIMPSES OF VIRTUAL AWARENESS PROGRAMME FOR JUDGES/JUDICIAL MAGISTRATES & POLICE OFFICERS (20.05.2021-01.06.2021)

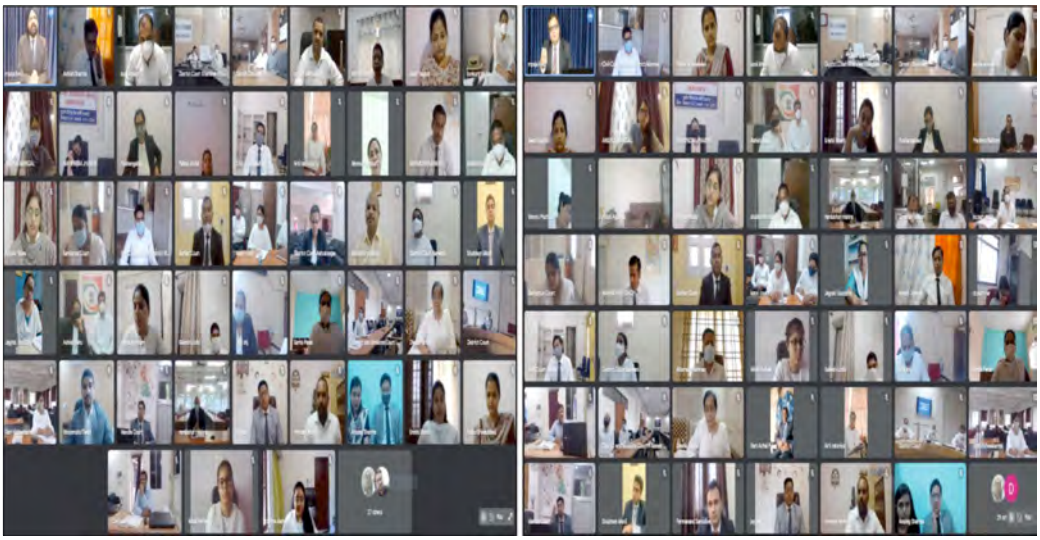


Hon'ble Shri Justice Prakash Shrivastava, Chairman, Governing Council, MPSJA addressing the participants during inaugural session on 25.05.2021



Participants from various headquarters

GLIMPSES OF EDUCATIONAL PROGRAMMES CONDUCTED ONLINE



Interactive Session on – Key Issues relating to Cases under the Protection of Women from Domestic Violence Act, 2005 (19.06.2021)

Workshop on – Motor Accident Claim Cases (26.06.2021)

APPOINTMENT OF JUDGES IN HIGH COURT OF MADHYA PRADESH

Hon'ble Shri Justice Anil Verma, Hon'ble Shri Justice Arun Kumar Sharma, Hon'ble Shri Justice Satyendra Kumar Singh, Hon'ble Smt. Justice Sunita Yadav, Hon'ble Shri Justice Deepak Kumar Agarwal and Hon'ble Shri Justice Rajendra Kumar (Verma) have been administered oath of office by Hon'ble Shri Justice Mohammad Rafiq, Chief Justice, High Court of Madhya Pradesh on 25th June, 2021 as Judges of the High Court of Madhya Pradesh in a Swearing-in-Ceremony held in the Conference Hall of South Block of High Court at Jabalpur.

Hon'ble Shri Justice Anil Verma was appointed as Judge of the High Court of Madhya Pradesh. Born on 16th March, 1964 at Bilaspur (now in Chattisgarh). Graduation in Science from Rani Durgawati Vishwavidyalaya and LL.B., attaining the 5th position, from Pt. Ravishankar Shukla University. Inspired by his father Shri K.K.Verma (retired District & Sessions Judge), joined Madhya Pradesh Judicial Services in the year 1987 as Civil Judge Class II on 26th August, 1987 at Balaghat (M.P.) Promoted as officiating District Judge in Higher Judicial Services on 4th September,1998. Granted Selection Grade Scale w.e.f. 10th October, 2007 and Super Time Scale w.e.f. 1st December, 2015.

In the course of service spanning over 33 years as Judicial Officer, His Lordship has served in a variety of positions at different places like Balaghat, Indore, Chhindwara, Narsinghpur, Bareli (Raisen), Lakhnadon (Seoni), Rajnandgaon (now in Chhattisgarh), Umaria and Sagar. Also held the posts of District Judges (Inspection), High Court of Madhya Pradesh, Bench Indore, President, District Consumer Forum, Chhatarpur, Secretary, Law & Legislative Affairs Department, Bhopal and Principal Judge, Family Court, Sagar. Also served as Principal District Judge (formerly known as District & Sessions Judge) Sagar. Was Principal Registrar, High Court of Madhya Pradesh, Bench Indore from 4th June, 2018 till elevation.

His Lorship, continuing the legacy of his late grandfather Shri Motilal Verma, an eminent freedom fighter, also authored several books on cultural and national history of India. These books include *Ajeya Krantikari Rajguru, Sataar Tat Aur Azaad, Bhagat Singh Ke Saathi Batukeshwar Dutt, Wo Chaar Zabaanj Krantikari*. *Cricket Khelna Seekhe* is also a celebrated piece of work authored by him. He has also made praiseworthy contribution in the book "Judicial History & Courts of Madhya Pradesh" published by High Court of Madhya Pradesh.

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Hon'ble Shri Justice Arun Kumar Sharma was appointed as Judge of the High Court of Madhya Pradesh. Born on 29th July,1961 at Vidisha (M.P). After obtaining the degrees of B.Sc. and LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 27th August, 1987 at Sagar. Was promoted as officiating District Judge in Higher Judicial Services on 2nd June,1999. Granted Selection Grade Scale w.e.f. 10th October, 2007 and Super Time Scale w.e.f. 11th April, 2016.

In the course of service as Judicial Officer, His Lordship served in different capacities at various places like Sagar, Nasrullaganj (Rajgarh), Sehore, Bagli (Dewas), Ujjain, Indore, Sabalgarh (Morena), Agar Malwa (Shajapur), Bhopal, Tikamgarh and Indore. Also held the posts of Principal Judge, Family Court, Chhatarpur and Deputy Welfare Commissioner, Bhopal Gas Victims, Bhopal. Also served as Principal District Judge (formerly known as District & Sessions Judge) Tikamgarh. Was Principal District Judge Chhatarpur from 28th March, 2019 till elevation.

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Hon'ble Shri Justice Satyendra Kumar Singh was appointed as Judge of the High Court of Madhya Pradesh. Born on 24th October, 1961. After obtaining degrees of B.Sc from Lucknow University in 1981 and LL.B. from Allahabad University in 1984, joined Madhya Pradesh Judicial Services as Civil Judge Class II on 3rd November, 1987 at Satna. Promoted as officiating

District Judge in Higher Judicial Services on 4th June, 1999. Granted Selection Grade Scale w.e.f 10th October, 2007 and Super Time Scale w.e.f 1st July, 2016.

In the course of service as Judicial Officer, His Lordship served in different capacities at different places like Satna, Lakhnadon (Seoni), Jabalpur, Indore, Maihar (Satna), Bhopal, Sagar, Ujjain. Also served as Principal District Judge (formerly known as District & Sessions Judge) Alirajpur and Ujjain. Also held prominent positions as Registrar (Vigilance), Principal Registrar (Vigilance) at High Court of Madhya Pradesh, Jabalpur, Additional Secretary, Law & Legislative Affairs Department, Bhopal. Was Principal Secretary, Law & Legislative Affairs Department, Bhopal from 14th May, 2018 till elevation.

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Hon'ble Smt. Justice Sunita Yadav was appointed as Judge of the High Court of Madhya Pradesh. Was born on 13th January, 1963. Graduated in Science and obtained LL.B. degree from Ravishankar University, Raipur in 1986. Joined Madhya Pradesh Judicial Services as Civil Judge Class II on 7th September, 1987 at Raipur (then part of M.P). Was promoted as officiating District Judge in Higher Judicial Services on 27th July, 2000. Granted Selection Grade Scale w.e.f 1st August, 2008 and Super Time Scale w.e.f 1st October, 2016.

Her Ladyship, as Judicial Officer served in different capacities at various places like Raipur (now in Chhattisgarh), Satna, Dabra (Gwalior), Bhopal, Chhatarpur, Gwalior and Morena. Also served as Principal District Judge (formerly known as District & Sessions Judge) Ashoknagar and Datia. Also held the posts of Deputy Welfare Commissioner at Bhopal Gas Victims, Bhopal and as Executive Director (Law), Delhi Electricity Regulatory Commission, New Delhi. Was Principal District Judge, Datia from 3rd July, 2017 till elevation.

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Hon'ble Shri Justice Deepak Kumar Agarwal was appointed as Judge of the High Court of Madhya Pradesh. Was born on 21st September, 1961. After obtaining the degrees of B.Sc. and LL.B. in the years 1981 and 1985, respectively, joined Madhya Pradesh Judicial Services as Civil Judge Class II on 1st September,1987 at Narsinghpur. Promoted as officiating District Judge in Higher Judicial Services on 7th August, 2000. Granted Selection Grade Scale w.e.f. 1st August, 2008 and Super Time Scale w.e.f. 3rd October, 2016.

In the course of service as Judicial Officer, His Lordship served in different capacities at different places like Narsinghpur, Lakhnadon (Seoni), Ratlam, Indore, Waraseoni (Balaghat), Sagar, Hoshangabad, Bhind. Also served as Principal District Judge (formerly known as District & Sessions Judge) Balaghat and President District Consumer Forum. Was Principal District Judge, Gwalior from 01.012.2018 till elevation.

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Hon'ble Shri Justice Rajendra Kumar (Verma) was appointed as Judge of the High Court of Madhya Pradesh. Was born on 1st July, 1961 at town Lakhna, District Etawah (U.P.). After obtaining LL.B. degree from Allahabad University, joined Madhya Pradesh Judicial Services on 28th September, 1987 at Bhind. Was promoted as officiating District Judge in Higher Judicial Services on 31st July, 2000. Granted Selection Grade Scale w.e.f. 1st August, 2008 and Super Time Scale w.e.f. 5th October, 2016.

In the course of service as Judicial Officer, His Lordship has served in different capacities at various places like Bhind, Sheopur, Seodha (Datia), Alirajpur, Tarana (Ujjain), Guna, Mahasamund (now in Chhattisgarh), Burhanpur, Biaora (Rajgarh) and Dewas. Also served as Principal District Judge (formerly known as District & Sessions Judge) Alirajpur and Rajgarh. Also held the posts of President, District Consumer Forum, Khandwa, Principal Judge Family Court, Bhopal and Secretary, Govt. of M.P., Law & Legislative Affairs Department, Bhopal. Was Principal District Judge, Bhopal from 1st December, 2018 till elevation.

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

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HON'BLE SHRI JUSTICE BRIJ KISHORE SHRIVASTAVA DEMITS OFFICE

Hon'ble Shri Justice Brij Kishore Shrivastava demitted office on His Lordship's attaining superannuation.

His Lordship was born on 1st July, 1959. After obtaining degrees of B.Sc. and LL.B., joined Madhya Pradesh Judicial Services as Civil Judge Class II on 7th November, 1985. His Lordship was promoted to Higher Judicial Services as Additional District & Sessions Judge on 16th May, 1997.

His Lordship, as Judicial Officer, worked in different capacities at various places like Gwalior, Vidisha, Bhind, Gohad, Susner, Jora, Ashoknagar, Seoni, Jabalpur, Datia and Lakhnadon. Also, held the posts of OSD and Registrar (Judicial) in the High Court from 2006 to 2010. Held the post of President, District Consumer Forum, Chhatarpur from 2010 to 2012. Also served as District & Sessions Judge, Damoh and Shivpuri. His Lordship was District & Sessions Judge, Ujjain from 25th October, 2016 till elevation. His Lordship took oath as Judge, High Court of Madhya Pradesh on 19th June, 2018.

During His Lordship's tenure, rendered valuable services as Judge and also Member of various Administrative Committees.

His Lordship was accorded farewell ovation on 30th June, 2021 in the Conference Hall of South Block, High Court of Madhya Pradesh at Jabalpur.

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

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PART - I

ADDRESS OF HON'BLE THE CHIEF JUSTICE*

A very good afternoon to everyone joining us.

At the very outset let me congratulate all of you for being a part of judicial fraternity. It is a pleasure for me to share some of my feelings with you today in the valediction of your induction course. You all have completed a year long induction training at field as well as in the State Judicial Academy. Now, the training wheels part of your journey is accomplished with the end of this final phase training course. But, learning will never stop. Having an understanding of every single aspect is difficult but is most definitely achieved through the constant search for education. The process of learning should never take a backseat in your life.

This pandemic has indeed thrown a wrench into the aspect of personal communication between you and the faculties who are here for your training. However, our Judicial Academy welcomed the challenge as an opportunity by offering online training tools similar to that of traditional methods of teaching like I can say with certainty that the substance of training has remained unchanged in our current endeavour of switching to online modes of education.

Dear Judges, you are perhaps the first batch in the history of judicial education and training to complete the entire Institutional Training in virtual mode. Under the contingency, we were compelled to conduct these programmes virtually. But consider it as additional learning in some way or the other. It is an opportunity in disguise which could not be learnt by an adversarial method of learning. Virtual working has made it possible for all of you to be trained in the best way. In future, your batch will have the privilege to announce that you were the pioneers who have adopted the working of virtual modes.

You will be given the responsibility of judicial work in the Court with independent charge very soon. You must be aware of your great responsibility of dispensation of justice to the common man. Being a Civil Judge (Entry Level) and Judicial Magistrate, you will be the front-line face of the justice dispensation system of the State and in fact your courts are the courts of fact. Although, the law remains unchanged, for every case, the fact situation is different, hence, has to be dealt with differently from the point of view.

Since you chose this profession of Judgeship, it has to be borne in mind that it is different from other professions as it has its distinguishable characteristics when compared against any other Government or private sector.

At this point, when you are ready to take onerous responsibility of dispensing justice to the people, I would like to share some insights that I have

*(Text of the address of Hon'ble Shri Justice Mohammad Rafiq, Chief Justice of High Court of Madhya Pradesh in the valedictory session of the Online Third Phase Induction Training Course for the newly appointed Civil Judges (Entry Level) of 2020 Batch on 12.06.2021 at MPSJA.

gained over the years being a part of our justice system which may help you to develop the core qualities of a Judge.

The first and foremost is behaviour

As a Judge, you must be courteous, respectful and humble in Court but it should not be considered as a sign of weakness. This trait must be carried in the court room as well as outside; whether it is with the superior, litigants, lawyers or staff.

Behaviour with colleagues is a factor that shapes your journey as a Judge. In both the legal profession and judgeship, the art and craft is learnt through practice and the wise words of seniors. Therefore, one who wants to learn from his seniors has to be courteous enough to impress that he is ready to learn.

Hubris is the cause of downfall of all great people. In recent times, the egocentric attribute of newly appointed Judges is often talked about. Ego is a trait which should be destroyed. Ego will lead to distress and a lot of failures in life. Being nice is something we have learnt ever since we were little. If you are gracious and courteous, you will never lose anything but end up gaining a lot of good company along the way and respect.

Another significant aspect in the life of a judge is punctuality

The most important thing for a Judge is to be always punctual, whether it is reaching court, handing out judgments or any work assigned by the superiors. Being punctual is a trait that is very significant in being an organised human being. We all have the same 24 hours and how we use it to our best potential is the core of the time management. Adherence to punctuality is a key to any Judge. Therefore, a Judge must sit on the dais on time and should not leave prior to it. This should be followed not only in the court but in any other place where you are expected to be present at a particular time.

The third trait of a judge is he should be scholarly

The pursuit of complete knowledge is something that no person can achieve. Legal knowledge in particular, is acquired till the final day of one's career. Therefore, I urge upon you to open your mind to accept your fallibility and pursue learning. As judges, your responsibility towards educating yourself at every step of the way is imperative. You must be hungry for knowledge, the more the merrier. Always submerge yourself in the endless depths of knowledge, welcome new thoughts and ideas. An open mind is the easiest place for innovation and creativity to grow.

Being a Judge, you are the law scholars for all time. Knowledge of law and procedure are the primary tools for a Judge and it is imperative that you remain updated with new laws. This can only be possible by regular reading of journals and latest pronouncements of the Apex Court as well as your parent High Court. A habit of reading articles from the legal field which are being published in journals and news magazines including e-journals should also be cultivated. It is also advisable to pay some time to read some good books of great thinkers and authors particularly autobiographies of legal luminaries.

A Judge must be studious and well aware of all the facts of the case in hand and must read each and every page of the file down to the last line. Any judgment or order should be read carefully before putting your signature. After a judgment is signed, except for any clerical or arithmetical error, it cannot be altered. Therefore, a thorough and exhaustive check should be conducted before signing a judgment.

The next attribute of a judge is attitude

Be firm in your decision but restrain from being arrogant. A good leader is a person who makes the tough decisions that no one else does. They make decision after critically analysing every single aspect of the situation and the ramifications of that action. However when it comes to taking a decision, one should be open to discussion. Being close minded in your limited scope of knowledge is going to lead to a disastrous outcome for everyone involved. Any decision must be taken without fear or favour which is evoke of a Judge. When a Judge is working in fear, impartiality cannot be expected of him. Every case must be decided on its own merits without any extraneous consideration. Similarly, judgments should invariably be pronounced on the date fixed.

Dear Judges, you should keep in check the temptation to be a populist Judge. There may be instances where lawyers or litigants will pray for adjournments. It should be ensured that such unwarranted requests are not considered as these are responsible for delaying the disposal of cases. These delaying tactics are adopted by litigants and lawyers to hinder the progress of the cases. Your focus should always be the upon deciding the main case. Judges should have an attitude of sacrifice, if situation so desires.

Another important trait of a judge is he should be patient

You must have a good amount of patience. It is magical. Patience is a virtue that is seldom seen in this era of instant-everything and attention deficit. Keeping your head above water while everyone else loses theirs, only gives you an out of the box perspective that probably others missed in the middle of their meltdown. Patience is a trait that could take you to the heights because it shows that you can take control of any situation and steer towards the right path.

Then at the same time we should be sensitive

In the present situation and scenario, gender sensitivity is one of the main challenges before the judiciary. Lack of understanding on the subject could lead to gender biased decision making. As judges, you must be more sensitive to the problems of litigants who approach the courts for getting timely justice especially towards women and children. Lack of sensitivity creates distance between justice seeker and provider.

Then another factor influencing each one of us is social media

Although freedom of speech and expression is guaranteed under our Constitution and judges also enjoy this right, judges are constantly under the

public gaze. Hence this right must be used very cautiously while making comments on any social media platform as it is important as it influence his judicial conduct. He must comply with the relevant provisions of the Code of Judicial Conduct and distance himself from any conduct that would undermine the judge's independence, integrity or impartiality.

I would urge each one of you to become IT savvy and proficient in use of ICT

It is unquestionable that technology can play an influential role in ensuring access to justice for all. For proper dispensation of justice and to reduce the mounting arrears of cases, information and communication technology can be used as an effective tool to improve efficiency. This in turn will improve our judicial efficiency.

We should always know ethical standards of judicial conduct

As judge, you have to maintain the highest standards of integrity. Your ethics and character is the only thing that remains constant all the time. You have complete control over it and no one else. Everything in this world can change, but integrity remains deep rooted. The Bangalore Principles of Judicial Conduct states that "integrity" is essential for proper discharge of judicial office. Integrity and honesty are foundation of the judicial edifice. It is our responsibility to ensure that the judicial body which we serve is kept at a higher pedestal by our impeccable conduct.

To be a judge, you have to cultivate and maintain judicial aloofness and detachment, honesty and integrity, judicial independence, judicial temperament with humility and impartiality and I am sure all of you, as Judges, know about these ethical standards of judicial conduct.

At the same time you should always be concerned and vigilant about your health

A strong mind and body is a gift. We must respect and protect it and also develop. Therefore, always be conscious about your fitness and keep yourself healthy.

In the end, I would say so many aspire to be a part of this profession but only a few are chosen. You have been reposed an extraordinary level of trust and confidence and I am sure, in the years to come, you will turn out worthy of it. When there is an all round erosion of moral fibre, it is incumbent upon you to strengthen its pillars and foundation. I once again congratulate all of you for joining the judicial service and hope you will make us proud in the times to come.

Hope all of you are taking precautionary measures and good care of yourself and the people around you in this time of pandemic. Please keep yourselves safe. Wishing you all the best for your future endeavours.

Thank you!

Jai Hind!

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WAYS FOR EXPEDITIOUS EXECUTION PROCEEDINGS

Dhirendra Singh
Faculty (Sr.), MPSJA

Execution jurisdiction deserves special attention and expeditious disposal considering that the decree-holders have already succeeded in the litigation and hold a decree/award in their favour. Delays and difficulties in execution of decrees/awards erode public confidence and trust in the justice delivery system but it is well known that execution is one of the most favourite neglected subject of district judiciary.

In relation to the difficulties faced by a decree-holder in execution of the decree, way back in 1872 i. e. almost 150 years back, the Privy Council had observed in the case of ***General Manager of the Raj Durbhunga v. Coomar Ramaput Singh, (1871-72) 14 MIA 605***:

> "the difficulties of a litigant in India begin when he has obtained a decree."

Even after 50 years of the above observation, the situation had not improved and in the case of ***Kuer Jang Bahadur v. Bank of Upper India Limited, AIR 1925 OUDH 448*** it was again observed that:

> "Courts in India have to be careful to see that the process of the Court and the law of procedure are not abused by judgment-debtor in such a way as to make Court of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

In the course of time, it was found by the Superior Courts that inspite of the above observations, situation related to execution cases has not improved and Hon'ble the Supreme Court in the case of ***Babulal v. Hazarilal Kishorilal, (1982) 1 SCC 525*** again observed as thus;

> "Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections."

In ***Satyawati v. Rajinder Singh, (2013) 9 SCC 491***, the Supreme Court quoted the Privy Council's judgment of 1872 that the difficulties of a litigant in India begin when he has obtained a decree and observed that the position has not improved and the decree-holders still face the same problems. The Supreme Court further observed that if there is an unreasonable delay in execution of a decree, the decree-holder would be unable to enjoy the fruits of his success and the entire effort of successful litigant would be in vain.

So far as execution is concerned, it is not defined in the Code of Civil Procedure. It simply means the process for enforcing the decree that is passed in favour of the decree holder by a competent Court. The relevant provisions for execution in the Code of Civil Procedure, 1908 (CPC) and M.P. Civil Courts Act and Rules are as under:-

(i) Sections 36 to 74, Sections 144, 146 & 148 and Order XXI, Code of Civil Procedure.

(ii) Rules 184 to 242 M.P. Civil Courts Rules, 1961.

The execution of decrees/awards deserves special attention considering that inordinate delay in execution proceedings would frustrate the decree-holders from reaping the benefits of the decrees/awards. Order XXI of the CPC lays down the procedure for execution of decree. Order XXI Rules 1, 2 & 30 are related to payment under decree while Order XXI Rule 31 is related to delivery of specific movable property and Order XXI Rule 32 is related to specific performance, restitution of conjugal rights or an injunction, Order XXI Rule 34 is related to execution of document or endorsement of negotiable instruments, Order XXI Rule 35 & 36 are related to possession of immovable property.

As far as money decree is concerned, Order XXI Rule 1(b) of the CPC enables the judgment-debtor to directly pay the decretal amount to the decree-holder. Order XXI Rule 1(a) of the CPC gives an option to the judgment-debtor to deposit the decretal/award amount with the Executing Court and give the notice of deposit to the decree-holder under Order XXI Rule 1(2) of the CPC. Thus, in an ideal situation, the judgment-debtor is supposed to satisfy the decree/award without waiting for the institution of an execution case. For example, after the awards are passed by Motor Accident Claims Tribunals in motor accident claim cases, the insurance companies voluntarily deposit the award amounts with the Claims Tribunal. If the judgment-debtor does not voluntarily satisfy the decree/award, the decree-holder is compelled to initiate the execution proceedings. If the decree-holder is aware of the assets of the judgment-debtor, the Executing Court attaches the assets at the very threshold of the execution proceedings. The Executing Court thereafter initiates proceedings for sale of the attached assets of the judgment-debtor to satisfy the decree.

Section 151 of the CPC empowers the Court to make such orders as may be necessary to secure ends of justice or to prevent the abuse of process of the Court in exercise of its inherent powers. The power under Section 151 of the CPC is extraordinary in its nature and is to be exercised to do real and substantial justice, for which the Courts exist. Article 227 of the Constitution confers on the High Court the power of superintendence over the subordinate Courts. The paramount consideration behind vesting such wide power of superintendence in the High Court is to keep the path of justice clear of

obstructions which would impede it. It is the salutary duty of the Court to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process. Keeping in mind the above object the High Court of Delhi in ***M/s. Bhandari Engineers & Builders Pvt. Limited v. M/S Maharia Raj Joint Venture & Ors., (Ex. P. 275/2012 and Ex. APPL. (OS) 221/2018 dated 05.12.2019)*** directed to follow the following guidelines to expedite the execution of money decrees which may be observed by the Executing Courts while dealing with the execution matters:-

(i) In execution proceedings, the Executing Court shall direct the judgment-debtor, at the first instance i.e. first date of filing, to file the affidavit of assets on the date of cause of action, date of the decree/award as well as on the date of the swearing of the affidavit in Form 16A of Appendix E under Order XXI Rule 41(2) of the CPC within thirty days. The oral prayer/application of the decree-holder for issuance of such direction shall be sufficient compliance of Order XXI Rule 41(2) of the CPC.

(ii) The Executing Court is empowered, at the initial stage itself, to restrain the judgment-debtor from transferring, alienating or disposing of or otherwise parting with the possession of any assets to the tune of the decretal/award amount except in the ordinary course of business such as payment of salary and statutory dues. The Executing Court shall restrain the judgment-debtor from discharging any financial liability, other than the liabilities of Banks/financial institutions, without the permission of the Executing Court.

(iii) If the judgment-debtor fails to appear before the Court upon service of notice, the Executing Court shall ensure his presence initially by issuing bailable warrants and thereafter, by issuing non-bailable warrants as per law.

(iv) In the event of the default of the judgment-debtor to file the aforesaid affidavit within the stipulated time, the Executing Court shall consider detention of the judgment-debtor in civil prison for the term not exceeding three months under Order XXI Rule 41(3) of the CPC by directing the decree-holder to deposit the subsistence allowance with the Executing Court for detention of the judgment-debtor. Upon deposit of the subsistence allowance, the Executing Court shall issue non-bailable warrants against the judgment-debtor for his detention.

(v) Execution of decrees should receive the same attention from the Courts as original civil work and should be methodically and regularly dealt with, as expeditiously as possible. Where parties have to be heard or evidence recorded in the course of execution proceedings, notice should be given, processes issued and dates fixed as in the case of original suits.

(vi) As a rule one day during the week should be reserved for execution works so as to ensure proper attention being paid to it; sometimes two days are necessary. District Judges are responsible for seeing that proper arrangements are made for execution work by all courts subordinate to them.

(vii) District Judges should record standing orders regulating the distribution of applications for the execution of decrees among the Courts subordinate to them, providing for the disposal of cases in which decrees were passed by officers who have ceased to be attached to the district, and for carrying on the execution proceedings already pending before such officers at the time of their ceasing to be employed therein. In framing such orders, every Court should be required as far as possible, to execute all decrees passed by itself; but, where this is not possible and it is necessary to send the decree to another Court for execution, care should be taken to see that it is a Court of competent jurisdiction [Section 39(2) C.P.C.].

(viii) District Judge to see that Execution work is not neglected in Lower Courts. Close supervision and control should be exercised by District Judges over the execution of decree business pending in all Courts subordinate to them; and where any officer is found habitually to neglect this branch of work or to dispose of it in a perfunctory manner, he should be reported to the High Court.

In the case of ***Ghanshyam Das Gupta v. Annat Kumar Sinha, AIR 1991 SC 2251*** the Supreme Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the Court must not allow the judgment debtor or any person instigated or raising frivolous claim to delay the execution of the decree.

As far as delay in execution of decree of possession is concerned, this topic again caught the attention of Hon'ble the Supreme Court in the recent case of ***Rahul S. Shah v. Jinendra Kumar Gandhi and ors., AIR 2021 SC 2161 (Three Judge Bench)***, the Supreme Court vide judgment dated 22.04.2021 observed that "remedies provided for preventing injustice are actually being misused to cause injustice by preventing a timely implementation of orders and execution of decrees and present situation portray the troubles of the decree holder in not being able to enjoy the fruits of litigation on account of inordinate delay caused during the process of execution of decree and some remedial measures must be taken to reduce the delay in disposal of execution petitions."

To do the complete justice and to reduce delays in the execution proceedings, and in larger public interest to sub-serve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law, Hon'ble the Supreme Court has directed all Courts dealing with suits and execution proceedings to mandatorily follow the below mentioned directions:-

(i) In suits relating to delivery of possession, the court must examine the parties to the suit under Order X in relation to third party interest and further exercise the power under Order XI Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third party interest in such properties.

(ii) In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the Court, the Court may appoint Commissioner to assess the accurate description and status of the property.

(iii) After examination of parties under Order X or production of documents under Order XI or receipt of commission report, the Court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

(iv) Under Order XL Rule 1 of CPC, a Court Receiver can be appointed to monitor the status of the property in question as ***custodia legis*** for proper adjudication of the matter.

(v) The Court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

(vi) In a money suit, the Court must invariably resort to Order XXI Rule 11, ensuring immediate execution of decree for payment of money on oral application.

(vii) In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The Court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

(viii) The Court exercising jurisdiction under Section 47 or under Order XXI of CPC, must not issue notice on an application of third-party claiming rights in a mechanical manner. Further, the Court should refrain from entertaining any such application(s) that has already been considered by the Court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

(ix) The Court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

(x) The Court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to Sub-rule (2) of Rule 98 of Order XXI as well as grant compensatory costs in accordance with Section 35A.

(xi) Under section 60 of CPC the term "…in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property."

(xii) The Executing Court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

(xiii) The Executing Court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the concerned Police Station to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the Court, the same must be dealt stringently in accordance with law.

Hon'ble Supreme Court has been pleased to direct all High Courts to reconsider and update all Rules relating to execution of decrees within one year of the date of order, i.e., by 21st April, 2022. It has been further ordered that until such time these Rules are brought into existence, the above directions shall remain enforceable. Therefore, these directions must be followed by all Courts dealing with execution proceedings, till appropriate Rules are notified by the High Court of Madhya Pradesh.

CONCLUSION

It is clear that from now onwards much attention has to be paid towards execution cases by the Judges of the District Judiciary and disposal of execution cases according to law should be expedited by following the above mentioned guidelines. By our best and honest efforts, we will be able to convert the field of execution from our most favorite neglected subject to one of our most favorite subject.

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न्यायालय फीस की वापसी

जयंत शर्मा
संकाय सदस्य (कनिष्ठ)
मध्यप्रदेश राज्य न्यायिक अकादमी

न्यायालय में वाद या आवेदन प्रस्तुत किया जाता है तब वाद की विषय वस्तु और वांछित अनुतोष को दृष्टिगत रखते हुए वाद मूल्यांकन अधिनियम, 1887 के प्रावधानों के अंतर्गत मूल्यांकन कर ऐसे वाद या आवेदन पर न्यायालय फीस अधिनियम, 1870 के प्रावधानों के अनुसार न्यायालय फीस देय होती है। अर्थात निर्धारित न्यायालय फीस का भुगतान पूर्ववर्ती शर्त है। यदि एक बार न्यायालय फीस का भुगतान कर दिया गया है तो क्या कोई ऐसी परिस्थितियाँ है जिनमें उक्त फीस को वापस किया जा सकता है? न्यायालय फीस अधिनियम के अंतर्गत धारा 13, 14, 15 एवं 16 तथा विधिक सेवा प्राधिकरण अधिनियम, 1987 के अंतर्गत धारा 21 में न्यायालय फीस वापसी से संबंधित उपबंध हैं। न्यायालय फीस अधिनियम में न्यायालय फीस की वापसी संबंधी प्रावधान रखने का उद्देश्य यह है कि यदि पक्षकार की त्रुटि अथवा अन्य किसी कारण से अधिक न्यायालय फीस का भुगतान हो गया है अथवा विवाद का निराकरण आपसी सहमति से हो गया है तो न्यायालय को उस पक्षकार को न्यायालय फीस वापस करने का आदेश देना चाहिए। लेकिन इसका यह कतई तात्पर्य नहीं है कि न्यायालय अप्रत्यक्ष रूप से न्यायालय फीस अधिनियम के धारा 6 के अन्तर्गत प्रावधानों को नजर अंदाज करे। विधिक सेवा प्राधिकरण अधिनियम में न्यायालय फीस वापसी का उपबंध आपसी सुलह व समझौते के आधार पर मामलों के निराकरण को प्रोत्साहित करना है। इस लेख में इन्हीं महत्वपूर्ण पहलुओं को स्पष्ट करने का प्रयास किया जा रहा है।

1. न्यायालय फीस अधिनियम, 1870 के अन्तर्गत प्रावधान

धारा 13. अपील के ज्ञापन पर संदत्त फीस की वापसी – यदि ऐसी किसी अपील या वाद पत्र को जो सिविल प्रक्रिया संहिता में वर्णित आधारों में से किसी आधार पर निचले न्यायालय द्वारा नामंजूर कर दिया गया है, ग्रहण कर लिए जाने का आदेश दिया जाता है या यदि अपील में कोई वाद निचले न्यायालय द्वारा दोबारा विनिश्चय के लिए उसी संहिता की धारा 351 (वर्तमान संहिता का आदेश 41 नियम 23) में वर्णित आधारों में से किसी आधार पर प्रतिप्रेषित किया जाता है तो अपील न्यायालय अपीलार्थी को एक प्रमाण–पत्र अनुदत्त करेगा, जो अपील के ज्ञापन पर संदत्त फीस की पूरी रकम कलेक्टर से वापस पाने के लिए उसे प्राधिकृत करेगा।

परन्तु यदि अपील में प्रतिप्रेषण की दशा में प्रतिप्रेषण का आदेश वाद की संपूर्ण विषय–वस्तु के लिये नहीं है तो इस प्रकार अनुदत्त प्रमाण–पत्र अपीलार्थी को विषय–वस्तु के उस भाग या उन भागों पर जिनके बारे में वाद प्रतिप्रेषित किया गया है, मूलतः संदेय फीस से अधिक फीस वापस पाने के लिए प्राधिकृत नहीं करेगा।

न्यायालय फीस अधिनियम में यह प्रावधान इस तथ्य को दृष्टिगत रखते हुए समाहित किया गया है कि यदि अपील न्यायालय द्वारा पुनर्विचारण का आदेश करते हुए प्रकरण विचारण न्यायालय को प्रतिप्रेषित किया जाता है तो अपील प्रस्तुत करते समय पक्षकार द्वारा भुगतान की गई न्यायालय फीस

पक्षकार के ऊपर शास्ति ना बन जावे इसका कारण यह है कि यदि पुनः पक्षकार विचारण न्यायालय के निर्णय से व्यथित होकर अपील प्रस्तुत करता है तो उसे अपील मेमो पर निर्धारित फीस भुगतान करना होगा। इस प्रकार यदि पुनर्विचारण हेतु अपील प्रकरण के प्रतिप्रेषण पर न्यायालय फीस वापस नहीं की गई तो यह पक्षकार पर दोहरी शास्ति के अधिरोपण के समान होगा।

आदेश 41 नियम 23 सीपीसी मामले का अपील न्यायालय द्वारा प्रतिप्रेषण से संबंधित है जिसके अनुसार यदि वाद का निपटारा किसी प्रारंभिक बात पर कर दिया गया है और डिक्री अपील में उलट दी गई है वहां अपील न्यायालय प्रतिप्रेषण करते हुए विचारण न्यायालय को वाद के पुनर्विचारण का निर्देश देता है। आदेश 41 सीपीसी में शब्द ''प्रारंभिक बात'' का अर्थ यह है कि ऐसा विधि अथवा तथ्य का प्रश्न जिसका निराकरण कर दिये जाने पर शेष प्रश्नों का निराकरण करना आवश्यक नहीं रह जाता है और अकेले उक्त बिन्दु पर सम्पूर्ण वाद का निराकरण हो जाता है। आदेश 41 नियम 23ए अन्य मामलों में प्रतिप्रेषण से संबंधित है जिसके अनुसार अपील न्यायालय द्वारा मामले का निपटारा किसी प्रारंभिक बात पर करने से अन्यथा कर दिया है और डिक्री अपील में उलट दी गई है और पुनर्विचारण आवश्यक समझा गया है वहां अपील न्यायालय प्रतिप्रेषण करते हुए विचारण न्यायालय को वाद के पुनर्विचारण का निर्देश देता है।

उत्तर प्रदेश राज्य विरूद्ध चन्द्रभूषण मिश्रा, एआईआर 1980 एससी 591 के मामले में सर्वोच्च न्यायालय द्वारा अपील प्रकरण को पुनर्विचारण हेतु प्रतिप्रेषित किये जाने पर न्यायालय फीस वापस किये जाने के संबंध में मत व्यक्त किया है जिसका अवलम्ब लेते हुये मध्यप्रदेश उच्च न्यायालय द्वारा ***सुरेश कुमार चौकसे विरूद्ध मध्यप्रदेश राज्य, एआईआर 1986 एमपी 130*** के मामले में आदेश 41 नियम 23ए सीपीसी के अन्तर्गत मामले के प्रतिप्रेषण पर न्यायालय फीस वापस करने के निर्देश दिये गये हैं किन्तु मध्यप्रदेश उच्च न्यायालय की युगलपीठ द्वारा ***मेसर्स किरण इलेक्ट्रीकल्स विरुद्ध स्टेट बैंक ऑफ इंदौर, एआईआर 1983 एमपी 110*** के मामले में मत व्यक्त किया कि यदि प्रतिप्रेषण आदेश 41 नियम 23ए के अन्तर्गत किया गया है तब न्यायालय फीस वापस नहीं होगी। यदि अपील न्यायालय द्वारा प्रतिप्रेषण का आदेश 41 नियम 23ए सीपीसी के अन्तर्गत किया गया है वहां न्यायालय धारा 151 सीपीसी के अंतर्गत प्राप्त अन्तर्निहित शक्तियों का प्रयोग करके भी न्यायालय फीस वापस नहीं कर सकता है। मध्यप्रदेश उच्च न्यायालय द्वारा ***राधाकिशन विरूद्ध मोहन लाल, एआईआर 1989 एमपी 240*** के मामले में सर्वोच्च न्यायालय द्वारा उत्तर प्रदेश राज्य विरूद्ध ***चन्द्रभूषण मिश्रा*** (पूर्वोक्त) में दिये मत को इस आधार पर विभेदित करते हुये सर्वोच्च न्यायालय का निर्णय उच्च न्यायालय इलाहाबाद द्वारा नियम 23 में न्याय के हित में प्रतिप्रेषण की आवश्यकता पर क्रेन्द्रित था तथा ***मेसर्स किरण इलेक्ट्रीकल्स विरुद्ध स्टेट बैंक ऑफ इंदौर*** (पूर्वोक्त) का अवलम्ब लेते हुये मत व्यक्त किया कि यदि प्रतिप्रेषण आदेश 41 नियम 23ए के अन्तर्गत किया गया है तब न्यायालय फीस वापस नहीं होगी।

धारा 13 में वाद शब्द के अन्तर्गत अपील भी सम्मिलित है। यदि द्वितीय अपील में प्रथम अपीलीय न्यायालय को प्रकरण प्रतिप्रेषित किया जाता है तो पक्षकार को द्वितीय अपील में भुगतान किए गए न्यायालय फीस को वापस किया जाएगा। धारा 13 के लिए यह ध्यान रखने योग्य है कि जो फीस वापिस की जाना है वह अपील न्यायालय में भुगतान की गई फीस है।

जहाँ आदेश 41 नियम 23 सीपीसी के अन्तर्गत प्रतिप्रेषण के आदेश में न्यायालय फीस वापसी का आदेश नहीं किया गया है तब इस हेतु पृथक से आवेदन प्रस्तुत किया जा सकता है ऐसा आवेदन विचारण न्यायालय में भी दिया जा सकता है। न्यायालय फीस वापसी हेतु प्रस्तुत आवेदन पर फीस देय नहीं है। ऐसे आवेदन को धारा 19 (xx) में न्यायालय फीस के भुगतान से छूट प्राप्त है।

> **धारा 14. निर्णय के पुनर्विलोकन के लिए आवेदन फीस की वापसी** – जहाँ निर्णय के पुनर्विलोकन के लिए कोई आवेदन डिक्री की तारीख से तीसवें दिन या उसके पश्चात् उपस्थापित किया जाता है, वहाँ न्यायालय उस दशा में जबकि विलम्ब आवेदक की गफलत से कारित न हुआ हो, स्वविवेकानुसार आवेदक को ऐसे प्रमाण–पत्र अनुदत्त कर सकेगा, जो उसे इस बावत् के लिए प्राधिकृत करता हो कि वह उस आवेदन बावत् संदत्त की गई फीस की, जो कि उस दशा में देय होती, जबकि वह आवेदन ऐसे दिन के पूर्व उपस्थापित किया जाता, मात्रा से आगे बढ़ा हुआ है, कलेक्टर से वापस प्राप्त कर ले।
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> **धारा 15. जहाँ न्यायालय अपना पूर्व विनिश्चय भूल के आधार पर उलट देता है या उपांतरित कर देता है, वहाँ फीस की वापसी** – जहाँ निर्णय के पुनर्विलोकन के लिए आवेदन ग्रहण कर लिया जाता है और जहाँ पुनः सुनवाई पर न्यायालय अपने पूर्व विनिश्चय को विधि या तथ्य की भूल के आधार पर उलट देता है या उपांतरित कर देता है, वहाँ आवेदक न्यायालय से एक प्रमाण–पत्र पाने का हकदार होगा, जो उसे आवेदन पर संदत्त फीस में से उतनी फीस कलेक्टर से वापस पाने के लिए प्राधिकृत करेगा, जितनी उस फीस से अधिक है, जो ऐसे न्यायालय में दिए गए किसी अन्य आवेदन पर इस अधिनियम के द्वितीय अनुसूची के संख्यांक 1 के खंड (ख) या खंड (घ) के अधीन संदेय होती।
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> किन्तु इस धारा के पूर्ववर्ती भाग की कोई भी बात आवेदक को ऐसे प्रमाण–पत्र का हकदार नहीं बनाएगी, यदि वह उलटना या उपांतरण पूर्णतः या भागतः ऐसे नए साक्ष्य के कारण होता है, जो आरंभिक सुनवाई में पेश किया जा सकता था।

धारा 14 तथा 15 पुनर्विलोकन के आवेदन पर देय न्यायालय फीस की वापसी से संबंधित हैं। धारा 14 एवं 15 के प्रावधान के पूर्व पुनर्विलोकन हेतु देय न्यायालय फीस के प्रावधान को भी विचार में लेना आवश्यक है। न्यायालय फीस अधिनियम की प्रथम अनुसूची का संख्यांक 4 एवं 5 महत्वपूर्ण है जिसके अनुसार पुनर्विलोकन का आवेदन यदि डिक्री की तारीख से तीसवें दिन या उसके पश्चात् प्रस्तुत किया जाता है तो जो न्यायालय फीस वाद पत्र या अपील के ज्ञापन पर देय होती उतनी फीस आवेदन पर देय होगी किन्तु यदि ऐसा आवेदन डिक्री की तारीख से तीसवें दिन के पूर्व प्रस्तुत किया जाता है तो जो न्यायालय फीस वाद पत्र या अपील में ज्ञापन पर देय होती उसकी आधी फीस देय होगी। धारा 14 के अनुसार यदि ऐसा आवेदन अनुसूची के संख्यांक 4 के अन्तर्गत प्रस्तुत किया गया

है अर्थात डिक्री की तारीख के तीसवें दिन या उसके पश्चात् तब नियमानुसार वाद पत्र या अपील के ज्ञापन पर निर्धारित फीस देय होगी किन्तु यदि ऐसा विलम्ब आवेदक की गफलत से हुआ हो तो न्यायालय उस विलम्ब से प्रस्तुत आवेदन को अपना विवेकाधिकार का प्रयोग करके तीसवें दिन से पूर्व प्रस्तुत किया हुआ मानते हुए आधी फीस वापसी का आदेश कर सकता है।

धारा 15 का उद्देश्य ऐसे न्यायालय फीस के भुगतान से सुरक्षा है जो न्यायालय की त्रुटि से पक्षकार को पुनर्विलोकन का आवेदन प्रस्तुत करने के कारण करना पड़ रहा है। यदि ऐसा आवेदन स्वीकार किया जाता है और निर्णय उलट दिया जाता है या संशोधित किया जाता है तो पुनर्विलोकन के आवेदन पर देय न्यायालय फीस आवेदक वापस प्राप्त करने का हकदार होता है। धारा 15 के प्रावधान लागू करने के लिए एक आवेदन निर्णय के पुनर्विलोकन के लिए प्रस्तुत किया जाना, उक्त आवेदन का स्वीकार किया जाना, न्यायालय द्वारा पूर्व निर्णय को विधि अथवा तथ्य की भूल के कारण उलटा या संशोधित किया जाना आवश्यक है और सबसे महत्पूर्ण यह है कि ऐसा संशोधन या उलटा जाना किसी नवीन साक्ष्य के कारण नहीं होना चाहिए।

> **धारा 16. फीस का प्रतिदाय** – जहाँ न्यायालय वाद के पक्षकारों को सिविल प्रक्रिया संहिता, 1908 (1908 का 5) की धारा 89 में निर्दिष्ट विवाद के निपटारे के ढंगो में से कोई ढंग निर्देशित करता है, वहाँ वादी न्यायालय से ऐसा प्रमाण–पत्र प्राप्त करने का हकदार होगा, जिसमें कलेक्टर से ऐसे वाद के संबंध में संदत्त फीस की पूरी रकम वापस प्राप्त करने के लिए प्राधिकृत किया गया हो।

इस धारा के प्रावधानों का उद्देश्य आपसी समझौते के आधार पर प्रकरणों के निराकरण को बढ़ावा देना है। यदि पक्षकारों के मध्य न्यायालय के बाहर विवाद का निपटारा धारा 89 सीपीसी में उल्लेखित माध्यम में से किसी के द्वारा हो जाता है अर्थात समझौता माध्यस्थम, सुलह, लोक अदालत अथवा बीच बचाव के माध्यम से हो जाता है तो पक्षकार भुगतान की गई सम्पूर्ण न्यायालय फीस वापस प्राप्त करने का अधिकारी है। इस संबंध में ***रमेश चन्द्र विरूद्ध मध्यप्रदेश राज्य, 2012 (3) एमपीएलजे 641*** अवलोकनीय है।

वल्लभदास गुप्ता विरुद्ध श्रीमती गीता बाई, 2004 (3) एमपीएचटी 89 के मामले में मत दिया गया कि अपील, वाद की निरंतरता है अतः यदि अपील प्रकरण का निराकरण धारा 89 सीपीसी में वर्णित किसी माध्यम से होता है तब भी पक्षकार न्यायालय फीस वापस प्राप्त करने का अधिकारी है।

केसरी लाल विरुद्ध धनराज, 2010 (3) एमपीडब्ल्यूएन 54 के मामले में अपील प्रकरण में समझौते के आधार पर आवेदन प्रस्तुत करते हुए अपील वापस लेने की प्रार्थना की गई थी। मध्यप्रदेश उच्च न्यायालय द्वारा प्रकरण को लोक अदालत को संदर्भित करने में होने वाले विलंब को दृष्टिगत रखते हुए धारा 16 न्यायालय फीस अधिनियम तथा धारा 89 सीपीसी के प्रावधानों के अंतर्गत अपीलार्थी द्वारा अपील मेमो पर संदत्त न्यायालय फीस वापस करने का निर्देश दिया। ***हाईकोर्ट ऑफ मद्रास विरुद्ध एम. सी. सुब्रमण्यम, (2021) 3 एससीसी 560*** के मामले में सर्वोच्च न्यायालय द्वारा धारा 89 सीपीसी को व्यापक प्रभाव देते हुये मत व्यक्त किया कि न्यायालय द्वारा धारा 89 सीपीसी में उल्लेखित किसी माध्यम के अन्तर्गत प्रकरण संदर्भित किये बिना यदि पक्षकारों के मध्य न्यायालय के बाहर समझौता हो

जाता है तब भी वे न्यायालय फीस वापस प्राप्त करने के अधिकारी हैं। यह नहीं कहा जा सकता कि समझौता कराने में न्यायालय की भूमिका होगी तभी न्यायालय फीस वापस होगी।

हिमेश विरूद्ध कैलास चंद, एफ.ए.क्र.1289/2018 आदेश दिनांक 08.12.2018 के मामले में अपील के लंबित रहते हुए लोक अदालत में समझौता होने पर मध्यप्रदेश उच्च न्यायालय द्वारा वाद पत्र के साथ प्रस्तुत न्यायालय फीस वापस करने से इंकार करते हुये आदेश दिया कि केवल अपील मेमो पर संदत्त न्यायालय फीस वापस होगी। इस प्रकार यहां यह ध्यान रखने योग्य है कि यदि समझौता अपील न्यायालय के समक्ष होता है तो पक्षकार केवल वह न्यायालय फीस प्राप्त कर सकेगा जो अपील मेमो पर दी गई है। विचारण न्यायालय के समक्ष वाद पत्र के साथ दी गई न्यायालय फीस वापस नहीं होगी।

2. वाद पत्र का नामंजूर किया जाना

आदेश 7 नियम 11 सीपीसी अधिनियम के अन्तर्गत वाद पत्र के नामंजूर किए जाने पर न्यायालय फीस वापसी का कोई प्रावधान नहीं है किन्तु यदि मध्यप्रदेश सिविल न्यायालय नियम, 1961 के नियम 431 का अवलोकन करें तो यह दर्शित होता है कि यदि प्रतिवादी को शमन से पहले वाद पत्र किसी तकनीकी आधार पर अस्वीकृत कर दिया जाता है और वादी उसी प्रकरण को दूसरे रूप में उसी प्रतिवादी या प्रतिवादियों के विरूद्ध अभियोजित करने को स्वतंत्र रहता है तब वाद पत्र पर चुकाई गई न्यायालय फीस वापिस होगी। इस परिस्थिति के अतिरिक्त वाद पत्र के नामंजूर किये जाने की दशा में न्यायालय फीस वापसी का कोई प्रावधान नहीं है।

3. वाद पत्र का लौटाया जाना

आदेश 7 नियम 10 सीपीसी अधिनियम के अन्तर्गत वाद पत्र के लौटाये जाने पर न्यायालय फीस वापसी के संबंध में भी कोई प्रावधान नहीं है किन्तु न्यायदृष्टांत ***सुभाष चंद तलवार विरूद्ध टी. चोइथराम एवं अन्य, एसएलपी (सी) क्र. 18102/2013*** आदेश दिनांक 25.10.2019 में सर्वोच्च न्यायालय द्वारा मत दिया गया कि जहां वाद पत्र इस स्वतंत्रता के साथ वापस किया जाता है कि उसे पुनः सक्षम अधिकारिता वाले न्यायालय में पेश किया जावेगा तब वादी को उस वाद पत्र पर दी गई न्यायालय फीस वापस किया जाना चाहिए ताकि वह उस वाद के संबंध में अदा कर सके जो संस्थित किया जाने वाला है।

4. वाद का प्रत्याहरण एवं समझौता

आदेश 23 नियम 1 सीपीसी के अनुसार वादी वाद संस्थित किए जाने के पश्चात् किसी भी समय अपने वाद का प्रत्याहरण कर सकता है। ***वल्लभदास गुप्ता*** (पूर्वोक्त) के अनुसार अपील, वाद की निरंतरता है अतः वाद की तरह ही अपील का भी प्रत्याहरण किया जा सकता है। सामान्य रूप से वाद अथवा अपील के प्रत्याहरण पर वादी/अपीलार्थी न्यायालय फीस वापस प्राप्त करने का अधिकारी नहीं है। किन्तु ***हाईकोर्ट ऑफ मद्रास विरुद्ध एम. सी. सुब्रमण्यम*** (पूर्वोक्त) में माननीय सर्वोच्च न्यायालय द्वारा अपीलार्थी द्वारा पक्षकारों के मध्य न्यायालय के बाहर समझौता होना व्यक्त करते हुये अपील को प्रत्याहरित करने तथा न्यायालय फीस वापस करने की अनुमति देते हुये मत व्यक्त किया कि यह आवश्यक नहीं है कि न्यायालय द्वारा धारा 89 सीपीसी में उल्लेखित किसी माध्यम के अन्तर्गत प्रकरण संदर्भित करेगा तभी न्यायालय फीस वापस होगी। यदि पक्षकारों के मध्य न्यायालय के बाहर समझौता

हो जाता है तब भी वे न्यायालय फीस वापस प्राप्त करने के अधिकारी हैं। यद्यपि सर्वोच्च न्यायालय ने इस हेतु पक्षकारों के आचरण तथा विचारण की अवधि को भी विचार में रखने के निर्देश दिये हैं।

इस प्रकार यह स्पष्ट है कि यदि प्रकरण का निराकरण धारा 89 सीपीसी में उल्लेखित माध्यम द्वारा होता है तो पक्षकार न्यायालय फीस वापस प्राप्त करने का अधिकारी है। सामान्य रूप से वाद अथवा अपील के प्रत्याहरण पर वादी/अपीलार्थी न्यायालय फीस वापस प्राप्त करने का अधिकारी नहीं है किन्तु यदि पक्षकार न्यायालय के बाहर समझौता होना व्यक्त करते हुये प्रकरण का प्रत्याहरण करते है तो न्यायालय पक्षकारों के आचरण तथा विचारण की अवधि को दृष्टिगत रखते हुये न्यायालय फीस वापस करने का आदेश कर सकता है।

5. धारा 138 परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत समझौता

न्यायालय फीस अधिनियम की द्वितीय अनुसूची के संख्यांक 1ख में चेक अनादरण के मामलों में धारा 138 परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत अपराध का परिवाद प्रस्तुत करने के लिए अनादरित चेक की रकम के अनुसार न्यायालय फीस निर्धारित की गई है। धारा 147 में परक्राम्य लिखत अधिनियम के अन्तर्गत दण्डनीय प्रत्येक अपराध शमनीय बनाया गया है और यही कारण है कि इन मामलों का निराकरण लोक अदालत के माध्यम से अधिक से अधिक करने का प्रयास किया जाता है। यद्यपि धारा 89 सीपीसी में निराकरण का एक माध्यम लोक अदालत भी है किन्तु आपराधिक प्रकरणों (शमन योग्य) के लोक अदालत में निराकरण के संबंध में न्यायालय फीस अधिनियम, 1870 की धारा 35 द्वारा प्रदत्त शक्तियों के अन्तर्गत राज्य सरकार द्वारा आपराधिक प्रकरण का लोक अदालत के माध्यम से शमन होने पर पूर्व से संदत्त न्यायालय फीस वापस करने संबंधी अधिसूचना फा.क्र. 9–1–86–ब–इक्कीस, दिनांक 10.04.1987 जारी की गई है। इस प्रकार धारा 138 परक्राम्य लिखत अधिनियम के अन्तर्गत अपराध का परिवाद प्रस्तुत करने के लिए प्रस्तुत न्यायालय फीस लोक अदालत में अथवा मीडिएशन में शमन/समझौता होने पर पूर्णतः वापस की जाती है। कभी–कभी न्यायालय के बाहर समझौता हो जाने पर परिवादी प्रकरण को लोक अदालत में प्रत्याहरण करना चाहता है ऐसी स्थिति में ***हाईकोर्ट ऑफ मद्रास विरुद्ध एम. सी. सुब्रमण्यम*** (पूर्वोक्त) का अवलम्ब लेकर न्यायालय का फीस वापसी का आदेश किया जा सकता है।

6. अन्तर्निहित शक्ति के तहत् न्यायालय फीस की वापसी

वर्तमान में न्यायालय फीस का भुगतान ऑनलाइन भी हो रहा है। ऐसे में इस बात की संभावना है कि पक्षकार द्वारा इस कारण या अन्य कारण से वांछित फीस से अधिक फीस भुगतान गलती से कर दिया जावे। तो ऐसे मामले ***अर्जुन गोविन्दा विरूद्ध अमृता केशिबा, एआईआर 1956 नागपुर 281*** में मध्यप्रदेश उच्च न्यायालय द्वारा यह मत व्यक्त किया गया कि ऐसे मामले जो धाराएं 13, 14 एवं 15 के अधीन नहीं आते वहां न्यायालय धारा 151 सीपीसी के अन्तर्गत प्रदत्त अन्तर्निहित शक्ति के तहत गलती से या भूल से अथवा भ्रम के कारण भुगतान की गई आधिक्य की राशि को वापस करने का आदेश कर सकता है। ***मध्यप्रदेश राज्य विरुद्ध महाराष्ट्र राज्य, एआईआर 1977 एससी 1466*** के मामले में सर्वोच्च न्यायालय द्वारा मत व्यक्त किया गया कि न्यायालय फीस वापसी की शक्ति केवल उन मामलों तक सीमित है जहां फीस अवैधानिक रूप से या त्रटिपूर्ण रूप से निर्धारित या प्राप्त की गई है। वह ऐसे मामलों में लागू नहीं होगी जहां अधिनियम के प्रावधानों के आलोक में फीस का भुगतान

किया गया है। ***ओमप्रकाश गुप्ता विरूद्ध उत्तर प्रदेश राज्य, एआईआर 1955 एससी 600*** के मामले में सर्वोच्च न्यायालय द्वारा मत व्यक्त किया गया कि जहां एक बार अनुतोष का मूल्यांकन करके न्यायालय फीस का भुगतान कर दिया है और पश्चात्वर्ती प्रक्रम पर कोई अनुतोष संशोधन के माध्यम से कम कर दिया जाता है वहां पक्षकार उक्त कम दिये गये अनुतोष के सम्बंध में प्रदत्त न्यायालय फीस वापस प्राप्त करने के हकदार नहीं है क्योंकि जब वाद प्रस्तुत किया गया था तब न्यायालय फीस नियमानुसार दी गई थी।

7. वापसी की प्रक्रिया

न्यायालय फीस अधिनियम की धारा 30 स्टाम्प के रद्द किये जाने से संबंधित है जिसके अनुसार जैसे ही न्यायालय फीस के स्टाम्प न्यायालय में प्रस्तुत किये जाते है न्यायालय का यह कर्तव्य है कि तुरन्त उसका रद्दकरण करे और जब तक स्टाम्प रद्द नहीं की जाती तब तक न्यायालय द्वारा उस पर कोई कार्यवाही नहीं की जावेगी। इसका तात्पर्य यह है कि न्यायालय को फीस संबंधी स्टाम्प प्राप्त होते ही उसे रद्द करना चाहिए। अब यदि स्टाम्प रद्द किए जाने के उपरांत न्यायालय द्वारा फीस वापसी का आदेश किया जाता है तो यह प्रश्न उत्पन्न होगा कि फीस किस प्रकार वापस होगी। इस संबंध में न्यायालय फीस वापसी से संबंधित प्रावधानों के अवलोकन से स्पष्ट है कि न्यायालय फीस वापसी का दावा करने वाले पक्षकार के पक्ष में एक प्रमाण पत्र जारी करता है जो उस पक्षकार को कलेक्टर से संपूर्ण फीस वापस प्राप्त किये जाने के लिए प्राधिकृत करता है। इस प्रकार पक्षकार न्यायालय फीस वापसी का प्रमाण पत्र प्राप्त करके कलेक्टर के यहां आवेदन करता है जिस पर कलेक्टर द्वारा आदेश किए जाने पर पक्षकार को कोषालय के माध्यम से भुगतान प्राप्त होता है।

कभी–कभी ऐसी स्थिति भी निर्मित हो सकती है कि वाद पत्र के अभिवचन फीस के स्टाम्प पर ही टाईप करके प्रस्तुत किये जाते है ऐसी स्थिति में यदि वाद पत्र को पुनः सक्षम अधिकारिता वाले न्यायालय में प्रस्तुत करने हेतु लौटाया जाना हो तो ऐसा वाद–पत्र मय स्टाम्प लौटाया जाता है। यदि ऐसी स्थिति निर्मित हो तब न्यायदृष्टांत ***मूरामल विरूद्ध इम्पीरियल फ्लोर मिल्स, एआईआर 1959 पंजाब 629*** के अनुसार जिस न्यायालय में ऐसा स्टाम्पयुक्त वाद पत्र पुनः संस्थित किया जाता है उसे न्यायशुल्क का उतना समायोजन देना चाहिए जितना पूर्व न्यायालय में भुगतान किया जा चुका है। इसी प्रकार जब न्यायालय फीस का ऑनलाइन भुगतान किया जाता है तब पक्षकार अभिलेख पर भुगतान की रसीद प्रस्तुत करता है ऐसे मामलों में यदि वाद पत्र को पुनः सक्षम अधिकारिता वाले न्यायालय में प्रस्तुत करने हेतु लौटाया जाना हो तो ऐसा वाद–पत्र मय रसीद लौटाया जा सकता है ताकि पक्षकार को न्यायालय फीस के संबंध में समायोजन का लाभ प्राप्त हो सके।

कभी–कभी पक्षकारों द्वारा न्यायालय के समक्ष यह आपत्ति की जाती है कि कलेक्टर के यहां से उन्हें समय पर भुगतान नहीं होता है ऐसी स्थिति में न्यायालय को प्रमाण पत्र की एक प्रति सहित एक पत्र संबंधित कलेक्टर को भुगतान उपरांत न्यायालय को सूचित करने हेतु लिख देना चाहिए ताकि वापसी की प्रक्रिया शीघ्रता से हो सके। यहां यह भी उल्लेख किया जाना आवश्यक है कि यदि न्यायालय फीस वापसी का प्रमाण पत्र खो गया है तो इस संबंध में आवेदन किये जाने पर प्रमाण पत्र की द्वितीय प्रति जारी की जा सकती है।

निष्कर्ष :–

- यदि अपील का प्रतिप्रेषण आदेश 41 नियम 23 सीपीसी के अन्तर्गत किया गया है तब अपीलार्थी न्यायालय फीस वापस प्राप्त करने का अधिकारी है किन्तु यह बात आदेश 41 नियम 23ए सीपीसी के अन्तर्गत प्रतिप्रेषण पर लागू नहीं होती।
- यदि प्रकरण का निराकरण धारा 89 सीपीसी में उल्लेखित माध्यम द्वारा होता है तो पक्षकार न्यायालय फीस वापस प्राप्त करने का अधिकारी है।
- सामान्य रूप से वाद अथवा अपील के प्रत्याहरण पर वादी/अपीलार्थी न्यायालय फीस वापस प्राप्त करने का अधिकारी नहीं है किन्तु यदि पक्षकार न्यायालय के बाहर समझौता होना व्यक्त करते हुये प्रकरण का प्रत्याहरण करते हैं तो न्यायालय पक्षकारों के आचरण तथा विचारण की अवधि को दृष्टिगत रखते हुये न्यायालय फीस वापस करने का आदेश कर सकता है।
- यदि प्रतिवादी को समन से पहले वाद पत्र किसी तकनीकी आधार पर अस्वीकृत कर दिया जाता है तब वाद पत्र पर भुगतान की गई न्यायालय फीस वापस होगी। इस परिस्थिति के अतिरिक्त वाद पत्र के नामंजूर किये जाने की दशा में न्यायालय फीस वापसी का कोई प्रावधान नहीं है।
- जहां वाद पत्र इस स्वतंत्रता के साथ वापस किया जाता है कि उसे पुनः सक्षम अधिकारिता वाले न्यायालय में पेश किया जावेगा तब वादी को उस वाद पत्र पर भुगतान की गई न्यायालय फीस वापस किया जाना चाहिए।
- धारा 138, परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत अपराध का परिवाद प्रस्तुत करने के लिए प्रस्तुत न्यायालय फीस लोक अदालत में अथवा मीडिएशन में शमन/समझौता होने पर पूर्णतः वापस की जाती है।
- कभी–कभी न्यायालय के बाहर समझौता होना व्यक्त करते हुये परिवादी प्रकरण को लोक अदालत में रखवाकर प्रत्याहरण करना चाहता है ऐसी स्थिति में ***हाईकोर्ट ऑफ मद्रास विरुद्ध एम. सी. सुब्रमण्यम*** (पूर्वोक्त) का अवलंब लेकर न्यायालय का फीस वापसी का आदेश किया जा सकता है।
- न्यायालय धारा 151 सीपीसी के अन्तर्गत प्रदत्त अन्तर्निहित शक्ति के तहत गलती से या भूल से अथवा भ्रम के कारण भुगतान की गई आधिक्य की राशि को वापस करने का आदेश कर सकता है।
- जहां वाद पत्र के अभिवचन फीस के स्टाम्प पर ही टाईप करके प्रस्तुत किये जाते है या ऑनलाइन फीस का भुगतान किया गया है तब ऐसी स्थिति में यदि वाद पत्र को पुनः सक्षम अधिकारिता वाले न्यायालय में प्रस्तुत करने हेतु लौटाया जाना हो तो ऐसा वाद–पत्र मय स्टाम्प/रसीद लौटाया जा सकता है ताकि पक्षकार को न्यायालय फीस के संबंध में समायोजन का लाभ प्राप्त हो सके।
- न्यायालय फीस की वापसी प्रमाण पत्र के माध्यम से की जाती है यदि न्यायालय फीस वापसी का प्रमाण पत्र खो गया है तो इस संबंध में आवेदन किये जाने पर प्रमाण पत्र की द्वितीय प्रति जारी की जा सकती है।

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REGISTRATION OF DECREES & ORDERS OF COURT: AN ANALYSIS

Yashpal Singh
Deputy Director, MPSJA

SYNOPSIS:

1. Introduction
2. Relevant Provisions
3. General rule of registration of decrees and orders
4. Exception
5. Test to determine whether decree or order is compulsorily registrable
6. Some instances
7. Compulsorily registrable decree not registered – Effect
8. Conclusion

INTRODUCTION

Compulsory registration of decrees or orders passed by courts in compromise petitions is one of the questions which is most often posed before a trial court judge. Similar question is also involved in the case of consent decrees where claim of plaintiff is admitted by defendant in written statement. Divergent judicial pronouncements and complex set of facts of each case further amplify the problem. The question whether a decree or order of a court requires compulsory registration has two aspects. Firstly, at the time of execution or compliance of such decree or order and secondly, at the time of tendering such decree or order in evidence in subsequent judicial proceedings. This article is an attempt to analyze the law on this subject and to suggest a pragmatic output.

RELEVANT PROVISIONS

The relevant provision is contained u/s 17 of the Registration Act, 1908, which is as follows:

> **"17. Documents of which registration is compulsory -**
>
> (1) The following documents shall be registered, if the property to which they relate is situated in a district in which, and if they have been executed on or after the date on which, Act No.16 of 1864 or the Registration Act, 1866, or the Registration Act, 1871, or the Registration Act, 1877, or this Act came or comes into force, namely:-
>
> (a) .....
>
> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest,

whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

...

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to-

...

(vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or

..."

GENERAL RULE OF REGISTRATION OF DECREES AND ORDERS

A comparison of clauses (b) and (c) of section 17(1) with clause (vi) of section 17(2) makes it clear that "any decree or order of a court" which is otherwise registrable under clause (b) or clause (c) of section 17(1) because of the reason that it purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property or which acknowledge the receipt or payment of any consideration therefor, is exempted from registration.

In simple terms, it can be said that generally, a decree of order of court is not compulsorily registrable.

All decrees and orders, not exempted :

Clause (vi) and as a matter of fact, all the clauses of section 17(2), provide for exemption from registration of those documents which are otherwise compulsorily registrable under clauses (b) or (c) of section 17(1) and decrees and orders of court falling under other clauses of section 17(1) are not exempted by clause (vi) of section 17(2).

For example, clause (vi) does not apply to gifts or leases, the registration of which is governed by clauses (a) and (d) respectively of section 17(1). As such, a lease created by a compromise decree is not exempted from registration under clause (vi) of section 17(2), as was held in ***Sachindra Mohan v. Ramjash, AIR 1932 Pat 97*** and ***Vadaserri v. Vadia, (1956) 2 MLJ 533***.

EXCEPTION

There is an exception to the above general rule. If a decree or order of court passed on a compromise comprises of any immovable property other than

that which is the subject-matter of suit or proceeding, then it will not be exempted from registration if the same is otherwise required to be compulsorily registered under clause (b) or clause (c) of section 17(1).

Whether a compromise decree needs registration or not is a vexed problem. 'Yes' or 'No' are the answers coming from judicial pronouncements, of course depending on the facts of each. The controversy arose almost a century ago when the Privy Council in its judgment in ***Rani Hemant Kumar Devi v. Midnapur Zamindari Co. Ltd., AIR 1919 PC 79*** held that the decree in question was not required to be registered because the compromise was accepted to be "an agreement to lease", and also covered properties not litigated which was not the subject-matter of the suit or the proceeding. Sub-section (vi) of section 17(2) until then read: "(vi) Any decree or order of a Court and any award". The judgment was followed by amendment of section 17(2)(vi) by the Transfer of Property (Amendment) Act, 1929, and the words "and any award" were substituted by the words "…….. except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding".

Consent decree and compromise decree :

There is some difference between a consent decree and a compromise decree, although in either case there is settlement of a disputed claim by mutual concession. Either party to a suit may at the trial admit the claim or defence of his adversary, and in consequence thereof not only a particular issue but even the suit may be decreed on consent. In such a case the judgment is given on consent of the parties. A suit is decreed on compromise where an arrangement is made by both the parties, either in court or out of court, for settling a dispute upon what appears to the parties to be equitable terms. The terms of settlement arrived at are embodied in a document, which is commonly known as compromise petition. In the case where the court passes a decree on consent of the parties, no extraneous matter can find place in the decree. In other words, the decree must be confined to the subject-matter of the suit and the prayers sought for in the plaint. But when a compromise petition is filed in the court with a prayer to make the compromise petition a part of the decree, the parties quite often include extraneous matters in the said petition. That is why the question of registration of the compromise petition do arise.

Recently, in ***Khushi Ram v. Nawal Singh, AIR 2021 SC 1117***, the Supreme Court has held that a consent decree comprising property which is the subject matter of suit does not require registration.

TEST TO DETERMINE WHETHER DECREE OR ORDER IS COMPULSORILY REGISTRABLE

A lot of cases of compromise petitions arose before courts wherein after institution of suit, both the parties enter into a compromise to obtain decree or

order of court for declaration of title to avoid stamp duty. There were divergent opinions of different High Courts on the question whether decrees and orders passed on such compromise petitions are compulsorily registrable.

Ultimately, the question arose before the Supreme Court in ***Bhoop Singh v. Ram Singh, AIR 1996 SC 196***. The Apex Court considered the problem of attempt to evade stamp duty in the garb of decree or order of court and observed that :

> "We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of ₹ 100 or upwards. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.
>
> It would, therefore, be the duty of the court to examine in each case whether the parties have pre-existing right to the immovable property, or whether under the order or decree of the court one party having right, title or interest therein agreed or suffered to extinguish the same and created right, title or interest in praesenti in immovable property of the value of ₹ 100 or upwards in favour of the other party for the first time. If latter be the position the document in compulsorily registrable."

After discussing the law in detail the Apex Court summarized the legal position in following points :

(1) Compromise decree bona fide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of ₹ 100 or upwards in favour of any party to the suit, the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of section 17, as was the position in the Privy Council (***Rani Hemanta Kumari Debi v. Midnapur Zamindari Co. Ltd., AIR 1919 PC 79***) and this Court's cases (***Mangan Lal Deoshi v. Mohammad Moinul Haque, AIR 1951 SC 11***), it is apparent that the decree would not require registration.

(4) If the decree were not to embody the terms of compromise, as was the position in Lahore case (***Fazal Rasul Khan v. Mohd-ul-Nisa, AIR 1944 Lahore 394***), benefit from the terms of compromise cannot be

derived, even if a suit were to be disposed of because of the compromise in question.

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

Inconsistency between *Bhoop Singh* (supra) and *K. Raghunandan v. Ali Hussain (2008) 13 SCC 102*:

As regard the scope of the exception appearing in section 17(2)(vi), the Supreme Court in ***Phool Patti v. Ram Singh, (2009) 13 SCC 22***, pointed out the inconsistency between ***Bhoop Singh*** (supra) and ***K. Raghunandan*** (supra) and observed:

> "In our opinion there seems to be inconsistency between the decisions of this Court in ***Bhoop Singh*** (supra) and ***K. Raghunandan*** (supra) insofar as the interpretation to the exception in clause (vi) of section 17(2) of the Registration Act is concerned. *Prima facie* it seems to us that the decision in ***Bhoop Singh*** (supra) does not lay down the correct law since section 17(2) (vi) on its plain reading has nothing to do with any pre-existing right. All that seems to have been stated therein is that if a decree is passed regarding some immovable property which is not a subject-matter of the suit then it will require registration."

The matter was referred to a larger Bench for interpreting the exception in clause (vi) of section 17(2) of the Registration Act. The Three Judge Bench by a short order disposed of the matter in ***Phool Patti v Ram Singh, (2015) 3 SCC 465*** by holding that there is no inconsistency between the judgments delivered in ***Bhoop Singh*** (supra) and ***K. Raghunandan*** (supra).

Therefore, the law laid down in ***Bhoop Singh*** (supra), as discussed above still holds the field and is a binding precedent.

Decree on the basis of unregistered partition, whether requires registration :

In ***Tek Bahadur v. Devi Singh, AIR 1966 SC 292***, the Constitution Bench of Supreme Court considered the validity of the family arrangement and the question was whether it requires to be compulsorily registered u/s 17. While upholding oral family arrangement, it was held that registration would be necessary only if the terms of the family arrangements are reduced into writing. A distinction should be made between the document containing the terms and recitals of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of

record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the mischief of section 17(2) of the Registration Act. It was held that a memorandum of family arrangement made earlier which was filed in the court for its information was held not compulsorily registrable and therefore it can be used in evidence for collateral purpose, namely, for the proof of family arrangement which was final and binds the parties.

In ***Roshan Singh v. Zile Singh, AIR 1988 SC 881***, the Apex Court held that it is well-settled that while an instrument of partition which operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration u/s 17(1)(b) of the Registration Act, a writing which merely recites that there has in time past been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration. The essence of the matter is whether the deed is a part of the partition transaction or contains merely an incidental recital of a previously completed transaction.

The same view was reiterated in ***Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836***, wherein it was held that the family arrangement will need registration only if it creates any interest in immovable property in present time in favour of the parties mentioned therein. In case where no such interest is created the document will be valid, despite it being non-registered, and will not be hit by section 17 of the Act.

Therefore, the requirement of registration of a decree or order of Court on the basis of unregistered partition deed is a matter which cannot be decided as an abstract proposition of law. This has to be decided on the basis of facts which may come on record. If title is being conferred for the first time by a deed, it would require registration. If it is a record of past proceedings, then this would not require registration.

Compromise in execution proceedings :

There is no difference in principle between a compromise petition filed in a pending suit or proceeding and one filed in execution proceeding. A compromise petition filed in an execution proceeding affecting immovable property of the value of ₹ 100 or more which has been recorded by the executing court is exempt from registration, but if the compromise petition purports or operates to affect an immovable property of the value of ₹ 100 or more, which was not the subject-matter of the original suit, it is not exempt from registration though recorded by the court.

SOME INSTANCES

(1) Adverse possession as a pre-existing right :

H filed a suit for declaration and injunction on the basis of adverse possession. The suit was filed for 7 biswa area of Survey No. 203, which was attached in east with the land of H. Survey No. 203 was recorded in the names of A & B. A compromise decree was passed in the suit dated 04.10.1985 declaring

the right of H on 7 biswa area and it was declared that remaining land of Survey No. 203 belonged to A & B. In a subsequent suit filed by heirs of A & B against the sons of H, defendants tried to exhibit the decree dated 04.10.1985 passed in previous suit, which was objected to by the plaintiffs on the ground that decree being not registered cannot be accepted in evidence as the suit was based on the plea of adverse possession reflects that H had no pre-existing title in the suit property in previous suit.

Supreme Court relied upon the judgment of ***Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729*** and held that once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner. Therefore, a person claiming adverse possession does have a pre-existing right over the suit property and in the event of decree passed on compromise petition, it cannot be said that any new right is created in favour of such person.

(Mohammade Yusuf v. Rajkumar, (2020) 10 SCC 264)

(2) Family settlement as a pre-existing right :

One Bhajan Singh was owner of suit land. Bhajan Singh was married with Gurmail Kaur. Two daughters were born to Bhajan Singh with Gurmail Kaur. Bhajan Singh divorced Gurmail Kaur on 15.09.1973. Gurmail Kaur also took along with her both the daughters who were minors at that time. Bhajan Singh resided with the appellants who looked after him.

A civil suit was filed in 1994 by the appellants impleading Bhajan Singh as the sole defendant praying for declaration to the effect that the plaintiffs are the owners and in possession of the suit land on the ground that the defendant effected a family settlement on 15.06.1994 in which suit property was given to the appellants in equal share. In the suit, a written statement was filed by Bhajan Singh where he admitted the plaint allegations and also prayed that decree be passed in favour of the plaintiffs. The suit was decreed in 1995 on the basis of admission by the defendant of the claim of the plaintiffs.

After death of Bhajan Singh his daughters filed another Civil Suit in 1998 against appellants praying for declaration to the effect that decree and judgment in previous Civil Suit of 1994 in respect of the suit property is wrong, without jurisdiction, illegal, null and void. It was submitted that since for the first time right, title and interest in the suit property was being created in favour of the appellants, it required registration.

Supreme Court held that in the suit of 1994 filed by the appellants against Bhajan Singh, decree was passed only with regard to suit properties. The decree was, thus, expressly covered by the expression "any decree or order of a court involving only subject matter of suit". Further, pursuant to a family settlement dated 15-6-1994 Bhajan Singh decided to allot plaintiffs in equal share and relinquished all his rights in the suit property. Sequence of events clearly indicates that Bhajan Singh of his own volition wanted to give the entire property to the

defendants. Therefore, decree of 1995 was not required to be compulsorily registered.

(Gurcharan Singh v. Angrez Kaur, (2020) 10 SCC 250)

(3) Acquisition through relinquishment as a pre-existing right :

The plaintiffs were the descendants of Jeeta. Sheo Ram, the defendant in that suit, was the descendant of Deepa. Deepa and Jeeta were children of Mauji. The property descended from Mauji and one half of the entire property came to the plaintiffs and the other half descended to Phusa Ram, grandfather of Sheo Ram the defendant through his mother. A half share was relinquished by Sheo Ram in favour of the present plaintiff and his brother. The plaintiffs could not take possession of the property since Phusa Ram was alive at the relevant time. After the death of Phusa Ram the plaintiffs filed the earlier suit for establishment of their right on the basis of the arrangement came to with Sheo Ram even during the life time of Phusa Ram.

It was pleaded that the relinquishment or surrender by Sheo Ram was by way of a family arrangement in view of the close relationship enjoyed by the plaintiffs on the one hand and Sheo Ram on the other, who was actually their nephew. Suit was decreed.

Supreme Court held that the decree did not create, declare, assign, limit or extinguish any right in the suit property. It merely recognized the right put forward by the plaintiffs in that suit based on an earlier relinquishment by the defendant in and on the basis that the defendant in that suit had admitted such relinquishment. Therefore, the decree did not create any title for the first time in the present plaintiff and his brother. Such a decree did not require registration in view of clause (vi) of section 17(2) of the Registration Act, though it was a decree based on admission.

(Som Dev v. Rati Ram, (2006) 10 SCC 788)

(4) Family arrangement by woman in favour of her brother's sons – is valid :

One Badlu, who was the tenure-holder of suit property, had two sons Bali Ram and Sher Singh. Sher Singh died in the year 1953 issueless leaving his widow Smt. Jagno. Plaintiffs are descendents of Bali Ram. After death of Sher Singh, his widow inherited his share of suit property. Smt. Jagno resided with sons of her brother.

A Civil Suit was filed by Nawal Singh and others against Smt. Jagno claiming decree of declaration as owners in possession of the suit property to the extent of half share of Sher Singh. The plaintiffs' claim was that Smt. Jagno, who was sharer of the half share, has in a family settlement settled the land in favour of the plaintiffs, who were the brother's sons of Smt. Jagno. Smt. Jagno filed a written statement in the suit admitting the claim of the plaintiffs'. The trial court passed the consent decree in favour of the plaintiff.

Descendants of Bali Ram filed another Civil Suit praying for declaration that the decree passed in suit of Nawal Singh is illegal, invalid and without legal

necessity on the ground that there was no existing right in the previous suit, hence the decree required registration u/s 17(1)(b) since decree created right in favour of Nawal Singh. It was argued that Nawal Singh belong to family of Smt. Jagno being brother's son of Smt. Jagno, i.e. nephew, hence, they belong to different family and no family arrangement could have been entered with them.

Supreme Court considered the contours of "family settlement" and held that a perusal of Section 15(1)(d) of Hindu Succession Act, 1956 indicates that heirs of the father are covered in the heirs, who could succeed. When heirs of father of a female are included as person who can possibly succeed, it cannot be held that they are strangers and not the members of the family qua the female. Therefore, family settlement of Smt. Jugno with Nawal Singh was valid.

(Khushi Ram v. Nawal Singh, AIR 2021 SC 1117)

(5) Property not included in plaint may also be subject matter of suit or proceeding :

A bank instituted a suit for recovery of the amount due from G, certain properties were appended to the plaint. Not only these properties but certain other properties were also attached before the judgment under Order 38 Rule 6 C.P.C. Thereafter a compromise decree was passed empowering the decree-holder to have the scheduled as well as the additional properties, which were mentioned in a separate application. All the properties were subsequently sold in execution and the sale was also confirmed. G subsequently brought a suit seeking a declaration that the sale of the additional properties pursuant to the compromise decree was not valid and binding on him as these properties were not the subject-matter of the suit filed by the bank and, therefore, the decree was required to be registered.

Supreme Court held that the additional properties mentioned in the separate application, which were the subject-matter of the attachment before judgment became part of the decree and also the order of the court in the proceeding under Order 38 Rule 6 C.P.C. Hench the properties, whose sale was impugned, were not properties other than the subject-matter of the suit or proceeding. Consequently, Supreme Court held the decree or order was not required to be compulsorily registered.

(S. Noordeen v. V.S. Thiru Venkita Reddiar, (1996) 3 SCC 289)

COMPULSORILY REGISTRABLE DECREE NOT REGISTERED – EFFECT

A suit was filed with respect to properties situated at Bhadohi. Compromise application was filed by both the parties and a shop situated at Mumbai was also included in compromise. Compromise decree was passed which was not registered. In spite of that the executing court executed decree and dispossessed the judgment-debtor. In ***Ramapathi v. Brahmadeo, 2000 LawSuit (Bom) 515,*** Bombay High Court held that the executing court exceeded jurisdiction and its order was illegal. In the context the court observed:

> "From the above discussion the conclusion is inevitable that the Bhadohi Decree in which the Bombay Shop was not the subject-matter of the suit and the same not been registered under the Registration Act is not an executable or enforceable document qua the Bombay Shop to the extent of 1/2 share of the defendant in the Shop. The executing court had no jurisdiction and power to execute such an unregistered decree as against the defendant."

In ***Atul Krishna Bose v. Zahed Mondal, AIR 1941 Cal 102***, Calcutta High Court has held that the compromise decree being compulsorily registrable u/s 17 of the Registration Act, and not having been registered, it cannot affect the immovable property comprised therein or be received as evidence of any transaction affecting such property. This is the effect of Section 49 of the Registration Act.

CONCLUSION

The upshot of above discourse may be summarized in following points :

- A decree or order of court which is covered by clauses (b) and (c) of section 17(1) of the Registration Act, generally, does not require registration.
- Other decrees or orders of court which fall under clauses (a), (d) or (e) of section 17(1) of the Registration Act require registration.
- A decree or order of court which is covered by clauses (b) and (c) of section 17(1) of the Registration Act, will require registration if it is passed on a compromise and comprises any immovable property other than that which is the subject-matter of suit or proceeding.
- Property not included in plaint may also be subject-matter of suit or proceeding.
- If the compromise decree creates for the first time right, title or interest in immovable property of the value of ₹ 100 or upwards in favour of any party to the suit, the decree or order would require registration.
- If the compromise decree declares or recognizes any pre-existing right, title or interest in immovable property of any value in favour of any party to the suit, the decree or order would not require registration.
- Decree in a suit based on adverse possession, previous family settlement or previous relinquishment of property is recognition of pre-existing right in immovable property.
- If the decree were not to attract any of the clauses of sub-section (1) of section 17, that decree would not require registration.
- If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.
- A compulsorily registrable compromise decree, if not registered, doesn't affect the immovable property comprised therein nor be received as evidence of any transaction affecting such property. Such a decree is not executable.

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विधिक समस्यायें एवं समाधान

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

1. क्या समन की तामीली व्हाट्सएप के माध्यम से की जा सकती है?

माननीय उच्चतम न्यायालय द्वारा *Suo Moto Writ Petition No.03 of 2020* में पारित आदेश दिनांक 10.7.2020 में लॉकडाउन के समय पोस्ट ऑफिस तक जाने में आने वाली कठिनाई को दृष्टिगत रखते हुए समन का निर्वाह ई–मेल, फैक्स, व्हाट्सएप एवं टेलीग्राम आदि के माध्यम से करने के संबंध में निर्देश जारी किए थे किन्तु इसका यह तात्पर्य नहीं है कि अकेले व्हाट्सएप से समन भेजना पर्याप्त होगा। उच्चतम न्यायालय द्वारा अतिरिक्त रूप से ई–मेल से भी समन भेजना निर्देशित किया गया है। इसके अतिरिक्त ई–मेल तथा फैक्स से सूचना–पत्र की तामीली के सम्बंध में उच्चतम न्यायालय का न्यायदृष्टांत ***मे. सिल इम्पोर्ट विरुद्ध मे. एक्सिम एड्स सिल्क एक्सपोर्टर, एआईआर 1999 एससी 1609*** भी अवलोकनीय है।

इस प्रकार स्पष्ट है कि समन/सूचना–पत्र व्हाट्सएप के माध्यम से भेजा तो जा सकता है किन्तु अतिरिक्त रूप से उसी दस्तावेज को ई–मेल के माध्यम से भी भेजना चाहिए।

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2. क्या धारा 138 परक्राम्य लिखत अधिनियम, 1881 के प्रकरणों में अंतरिम प्रतिकर दिलाया जाना प्रत्येक मामले में आवश्यक है? यदि हाँ, तो क्या अभियुक्त को आवेदन पर सुना जाना आवश्यक है?

धारा 143क परक्राम्य लिखत अधिनियम, 1881 के अन्तर्गत ''आदेश दे सकेगा'' शब्द प्रयोग किया गया है। ऐसी स्थिति में इस प्रावधान को आज्ञापक नहीं माना जा सकता है। अंतरिम प्रतिकर को परिपाटी की तरह प्रदान किया जाना अपेक्षित नहीं है यह न्यायालय का विवेकाधिकार है जिसका प्रयोग न्यायिकतः एवं विद्वतापूर्वक किया जाना अपेक्षित है। न्यायदृष्टांत ***जी. जे. राजा विरुद्ध तेजराज सुराना, एआईआर 2019 एससी 3817*** में उच्चतम न्यायालय द्वारा धारा 143क के प्रावधान भूतलक्षी नहीं होने के संबंध में मार्गदर्शन दिया गया है। अतः यह स्पष्ट है कि प्रत्येक मामले में अंतरिम प्रतिकर का आदेश किया जाना आवश्यक नहीं है। यदि अंतरिम प्रतिकर के लिए आवेदन पत्र प्रस्तुत किया जाता है तब आवेदन पर अभियुक्त को सुना जाना आवश्यक नहीं है। इस सम्बंध में न्यायदृष्टांत ***पद्मेश एवं अन्य विरुद्ध तिरुपति नेचुरल रिसोर्स, 2019 लॉसूट एमपी 330*** अवलोकनीय है।

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3. क्या किसी जमानतदार अथवा अभियुक्त के द्वारा प्रस्तुत क्रमशः प्रतिभूति–पत्र अथवा बंधपत्र का समपहरण होने पर न्यायालय द्वारा अधिरोपित शास्ति की राशि का पश्चात्वर्ती प्रक्रम पर परिहार किया जा सकता है?

प्रायः आपराधिक मामलों में जमानत की शर्त के व्यतिक्रम में अभियुक्त के अनुपस्थित हो जाने पर न्यायालय द्वारा उसके बंधपत्र एवं जमानतदार के प्रतिभूति–पत्र समपहृत कर लिए जाते हैं एवं बंधपत्र व प्रतिभूति–पत्र में उल्लेखित राशि की शास्ति स्वरूप वसूली प्रारंभ की जाती है। इस विविध कार्यवाही में अभियुक्त/जमानतदार कई बार दण्ड प्रक्रिया संहिता की धारा 446(1) के अधीन जारी सूचना–पत्र के निर्वाह उपरांत भी कारण दर्शित करने न्यायालय में उपस्थित नहीं होते हैं और न्यायालय द्वारा बंधपत्र/प्रतिभूति–पत्र में उल्लेखित संपूर्ण राशि शास्ति स्वरूप वसूल करने का आदेश दे दिया जाता है। तदोपरांत, न्यायालय द्वारा जारी वसूली वारण्ट की जानकारी होने पर अभियुक्त/जमानतदार न्यायालय में उपस्थित होकर इस राशि को कम करने का निवेदन करते हैं।

सामान्य धारणा यह है कि न्यायालय ऐसी शास्ति को कम नहीं कर सकते हैं क्योंकि यह आपराधिक मामलों में आदेश का पुनर्विलोकन करना होगा। परन्तु माननीय मध्यप्रदेश उच्च न्यायालय द्वारा न्याय दृष्टांत ***रामप्रसाद विरूद्ध मध्यप्रदेश राज्य, 1983 (2) क्राइम्स (हाई कोर्ट) 145*** में यह प्रतिपादित किया गया है कि दण्ड प्रक्रिया संहिता की धारा 446 (3) के अंतर्गत शास्ति की राशि का परिहार किसी भी प्रक्रम पर किया जा सकता है। अतः न्यायालय द्वारा एक बार बंधपत्र/प्रतिभूति–पत्र में उल्लेखित राशि की शास्ति स्वरूप वसूली का आदेश देने के उपरांत भी उक्त राशि को कम करते हुए शेष राशि की वसूली की जा सकती है।

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Perform your obligatory duty, because action is indeed better than inaction.

– Bhagavad Gita

PART - II

NOTES ON IMPORTANT JUDGMENTS

110. ADVOCATES ACT, 1961 – Sections 24, 30 and 49 (1) (ah)
ALL INDIA BAR EXAMINATION RULES, 2010 – Rule 9
Advocate – Eligibility for practice – Bar examination shall be mandatory for all law students graduating from academic year 2009-2010 and onwards and enrolled as advocates u/s 24 of the Advocates Act, 1961 – Sections 24 and 30 of the Advocates Act, 1961 cannot be said to be *ultra vires*.

अधिवक्ता अधिनियम, 1961 – धाराएं 24, 30 एवं 49 (1) (कज)
अखिल भारतीय बार परीक्षा नियम, 2010 – नियम 9
अधिवक्ता – वकालत के लिए पात्रता – सभी विधि शिक्षार्थी जो शैक्षणिक वर्ष 2009–10 एवं उसके बाद स्नातक हुए हैं और अधिवक्ता अधिनियम, 1961 की धारा 24 के अंतर्गत नामांकित हुए हैं, के लिए बार की परीक्षा आज्ञापक है – अधिवक्ता अधिनियम, 1961 की धारा 24 एवं 30 को अधिकारातीत नहीं कहा जा सकता।

Chanchal Tiwari and ors. v. Union of India and ors.
Order dated 14.10.2020 passed by the High Court of Madhya Pradesh in Writ Petition No. 14013 of 2020, reported in AIR 2020 MP 182

Relevant extracts from the order:

When the impugned Rule 9 of the All India Bar Examination Rules, 2010, which envisages "No Advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such Advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all Law students graduating from academic year 2009-2010 and onwards and enrolled as Advocates under Section 24 of the Advocates Act, 1961", is tested on the anvil of above analysis, the same cannot be said to be ultra vires Sections 24 and 30 of the Advocates Act, 1961 as would warrant an interference. Consequently, challenge to validity of Rule 9 is negatived.

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***111. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 8, 11, 17 and 34**
TRANSFER OF PROPERTY ACT, 1882 – Sections 114 and 114-A
Dispute relating to tenancy and eviction – Arbitrability of – Held, where the tenant enjoys statutory protection under special law, the dispute is non-arbitrable – But where tenancy is governed under TP Act and not under special law, the dispute is arbitrable – Protection available under sections 114 and 114-A TP Act is equitable in nature and not in the nature of statutory protection.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धाराएं 8, 11, 17 एवं 34
संपत्ति अंतरण अधिनियम, 1882 – धाराएं 114 एवं 114–क

किराएदारी और निष्कासन का विवाद – माध्यस्थम योग्य होना – अभिनिर्धारित, जहां किराएदार को विशेष विधि के अधीन वैधानिक संरक्षण प्राप्त हो, वहां विवाद माध्यस्थम योग्य नहीं होगा – परन्तु जहां किराएदारी संपत्ति अंतरण अधिनियम से शासित हो न कि विशेष विधि के अधीन, विवाद माध्यस्थम योग्य होगा – संपत्ति अंतरण अधिनियम की धारा 114 और 114–क के अधीन उपलब्ध संरक्षण की प्रकृति वैधानिक संरक्षण की नहीं है अपितु साम्यिक है।

Suresh Shah v. Hipad Technology India Pvt. Ltd.
Judgment dated 18.12.2020 passed by the Supreme Court in Arbitration Petition (C) No. 8 of 2020, reported in (2021) 1 SCC 529

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112. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 8, 11 and 34
TRANSFER OF PROPERTY ACT, 1882 – Section 107

(i) Non-arbitrability of disputes – How to determine? Four-fold test propounded – Insolvency or intra-company disputes, grant and issue of patents and registration of trademarks, criminal cases, matrimonial disputes, probate and testamentary matters, held, are not arbitrable.

(ii) Landlord tenant disputes – Whether arbitrable? Such disputes, if governed by TP Act, are arbitrable – But where such disputes are governed by rent control legislation, the dispute is non-arbitrable.

[*Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706* overruled]

(iii) Non-arbitrability of disputes – Who can decide? Discussed in detail – Scope of interference by Courts explained.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धाराएं 8, 11 एवं 34
संपत्ति अंतरण अधिनियम, 1882 – धारा 107

(i) विवादों का गैर–माध्यस्थम योग्य होना – कैसे निर्धारित करें? चार सूत्रीय परीक्षण प्रतिपादित – दिवाला, कंपनी के आंतरिक विवाद, पेटेंट जारी करने और ट्रेडमार्क के पंजीकरण, आपराधिक मामले, वैवाहिक विवाद, प्रोबेट और वसीयत संबंधी मामले, अभिनिर्धारित, माध्यस्थम योग्य नहीं हैं।

(ii) भवनस्वामी व किराएदार का विवाद – क्या माध्यस्थम योग्य है? ऐसे विवाद, यदि संपत्ति अंतरण अधिनियम द्वारा शासित होते हैं तो माध्यस्थम योग्य होते हैं – परन्तु जहां ऐसे विवाद स्थान नियंत्रण विधि द्वारा शासित होते हैं, वहां गैर–माध्यस्थम योग्य होते हैं।

[*हिमांगनी एंटरप्राइजेज वि. कमलजीत सिंह अहलूवालिया, (2017) 10 एससीसी 706* उलट दिया गया]

(iii) विवादों का गैर–माध्यस्थम योग्य होना – कौन निर्धारित कर सकता है? विस्तार में चर्चा की गई – न्यायालयों द्वारा हस्तक्षेप का विस्तार समझाया गया।

Vidya Drolia and ors. v. Durga Trading Corporation
Judgment dated 14.12.2020 passed by the Supreme Court in Civil Appeal No. 2402 of 2019, reported in (2021) 2 SCC 1 (Three Judge Bench)

Relevant extracts from the judgment:

In view of the discussion, we would like to propound a fourfold test for determining when the subject-matter of a dispute in an arbitration agreement is not arbitrable:

(1) When cause of action and subject-matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.

(2) When cause of action and subject-matter of the dispute affects third-party rights; have erga omnes effect; require centralised adjudication, and mutual adjudication would not be appropriate and enforceable.

(3) When cause of action and subject-matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable.

(4) When the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

These tests are not watertight compartments; they dovetail and overlap, albeit when applied holistically and pragmatically will help and assist in determining and ascertaining with great degree of certainty when as per law in India, a dispute or subject-matter is non-arbitrable. Only when the answer is affirmative that the subject-matter of the dispute would be non-arbitrable.

Applying the above principles to determine non-arbitrability, it is apparent that insolvency or intracompany disputes have to be addressed by a centralised forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also actions in rem. Similarly, grant and issue of patents and registration of trade marks are exclusive matters falling within the sovereign or government functions and have *erga omnes* effect. Such grants confer monopoly rights. They are non-arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offences against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights, etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have *erga omnes* effect. Matters relating to probate, testamentary matter, etc. are actions in rem and are a declaration to the world at large and hence are non-arbitrable.

x x x

Landlord-tenant disputes governed by the Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem. Such actions normally would not affect third-party rights or have *erga omnes* effect or require centralised adjudication. An award passed deciding landlord-tenant disputes can be executed and enforced like a decree of the civil court. Landlord-tenant disputes do not relate to inalienable and sovereign functions of the State. The provisions of the Transfer of Property Act do not expressly or by necessary implication bar arbitration. The Transfer of Property Act, like all other Acts, has a public purpose, that is, to regulate landlord-tenant relationships and the arbitrator would be bound by the provisions, including provisions which enure and protect the tenants.

In view of the aforesaid, we overrule the ratio laid down in ***Himangni Enterprises v. Kamaljeet Singh Ahluwalia, (2017) 10 SCC 706*** and hold that landlord-tenant disputes are arbitrable as the Transfer of Property Act does not forbid or foreclose arbitration. However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations. Such rights and obligations can only be adjudicated and enforced by the specified court/forum, and not through arbitration.

x x x

Issue of non-arbitrability can be raised at three stages. First, before the court on an application for reference under Section 11 or for stay of pending judicial proceedings and reference under Section 8 of the Arbitration Act; secondly, before the Arbitral Tribunal during the course of the arbitration proceedings; or thirdly, before the court at the stage of the challenge to the award or its enforcement. Therefore, the question — "Who decides non-arbitrability?" and, in particular, the jurisdiction of the court at the first look stage, that is, the referral stage.

Discussion under the heading **"Who Decides Arbitrability?"** can be crystallised as under:

1. Ratio of the decision in ***SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618*** on the scope of judicial review by the court while deciding an application under Sections 8 or 11 of the Arbitration Act, post the amendments by Act 3 of 2016 (with retrospective effect from 23-10-2015) and even post the amendments vide Act 33 of 2019 (with effect from 9-8-2019), is no longer applicable.
2. Scope of judicial review and jurisdiction of the court under Sections 8 and 11 of the Arbitration Act is identical but extremely limited and restricted.
3. The general rule and principle, in view of the legislative mandate clear from Act 3 of 2016 and Act 33 of 2019, and the principle of severability and competence-competence, is that the Arbitral Tribunal is the

preferred first authority to determine and decide all questions of non-arbitrability. The court has been conferred power of "second look" on aspects of non-arbitrability post the award in terms of sub-clauses (i), (ii) or (iv) of Section 34(2)(a) or sub-clause (i) of Section 34(2)(b) of the Arbitration Act.

4. Rarely as a demurrer the court may interfere at Section 8 or 11 stage when it is manifestly and ex facie certain that the arbitration agreement is non-existent, invalid or the disputes are non-arbitrable, though the nature and facet of non-arbitrability would, to some extent, determine the level and nature of judicial scrutiny. The restricted and limited review is to check and protect parties from being forced to arbitrate when the matter is demonstrably "non-arbitrable" and to cut off the deadwood. The court by default would refer the matter when contentions relating to non-arbitrability are plainly arguable; when consideration in summary proceedings would be insufficient and inconclusive; when facts are contested; when the party opposing arbitration adopts delaying tactics or impairs conduct of arbitration proceedings. This is not the stage for the court to enter into a mini trial or elaborate review so as to usurp the jurisdiction of the Arbitral Tribunal but to affirm and uphold integrity and efficacy of arbitration as an alternative dispute resolution mechanism.

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113. ARBITRATION AND CONCILIATION ACT, 1996 – Section 11

Parties had entered into an agreement and there was consensus *ad idem* to the terms and conditions contained therein – In that condition, it would not be appropriate for the applicant to invoke clause 7 of the purchase order more particularly when the arbitration clause contained in the agreement dated 31.03.2018 has been invoked.

माध्यस्थम् और सुलह अधिनियम, 1996 – धारा 11

पक्षकारों ने अनुबंध किया और उसमें निहित नियम एवं शर्तों पर परस्पर सहमति थी – तब ऐसी स्थिति में आवेदक के लिए यह युक्तियुक्त नहीं होगा कि वह क्रय आदेश की कंडिका 7 का अवलंब ले विशिष्ट रूप से तब जबकि दिनाँक 31.03.2018 के अनुबंध के माध्यस्थम खण्ड का अवलंब लिया जा चुका हो।

Balasore Alloys Limited v. Medima LLC

Judgment dated 16.09.2020 passed by the Supreme Court in Arbitration Petition (Civil) No. 15 of 2020, reported in AIR 2020 SC 5127 (Three Judge Bench)

Relevant extracts from the judgment:

When both, the purchase order as also the Pricing Agreement subsists and both the said documents contain the arbitration clauses which are not similar

to one another, in order to determine the nature of the arbitral proceedings the said two documents will have to be read in harmony or reconciled so as to take note of the nature of the dispute that had arisen between the parties which would require resolution through arbitration and thereafter arrive at the conclusion as to whether the instant application filed Under Section 11 of the Act, 1996 would be sustainable so as to appoint an arbitrator by invoking Clause-7 of the purchase order; more particularly in a situation where the Arbitral Tribunal has already been constituted in terms of Clause¬ 23 of the agreement dated 31.03.2018.

In that view of the matter, when admittedly the parties had entered into the agreement dated 31.03.2018 and there was consensus ad-idem to the terms and conditions contained therein which is comprehensive and encompassing all terms of the transaction and such agreement also contains an arbitration clause which is different from the arbitration clause provided in the purchase order which is for the limited purpose of supply of the produce with more specific details which arises out of Agreement dated 31.03.2018; the arbitration clause contained in Clause¬23 in the main agreement dated 31.03.2018 would govern the parties insofar as the present nature of dispute that has been raised by them with regard to the price and the terms of payment including recovery etc. In that view, it would not be appropriate for the applicant to invoke Clause-7 of the purchase orders more particularly when the arbitration Clause contained in the Agreement dated 31.03.2018 has been invoked and the Arbitral Tribunal comprising of Mr. Jonathan Jacob Gass, Mr. Gourab Banerji and Ms. Lucy Greenwood has already been appointed on 22.06.2020.

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114. ARBITRATION AND CONCILIATION ACT, 1996 – Sections 34 and 37 (i) (c) Whether an appeal u/s 37 (1) (c) of the Act would be maintainable against an order refusing to condone delay in filing an application u/s 34 of the Act to set aside an award? Held, yes.

माध्यस्थम एवं सुलह अधिनियम, 1996 – धाराएं 34 एवं 37 (1) (ग)

क्या अधिनियम की धारा 34 के अन्तर्गत अवार्ड को अपास्त करने हेतु आवेदन प्रस्तुत करने में हुये विलम्ब को क्षमा करने से इंकार करने के आदेश के विरूद्ध अधिनियम की धारा 37 (1) (ग) के अन्तर्गत अपील प्रचलनशील है? अभिनिर्धारित, हाँ।

Chintels India Ltd. v. Bhayana Builders Pvt. Ltd.

Judgment dated 11.02.2021 passed by the Supreme Court of India in Civil Appeal No. 4028 of 2020, reported in AIR 2021 SC 1014 (Three Judge Bench)

Relevant extracts from the judgment:

A reading of section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the

limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that Section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned – see ***State of Himachal Pradesh v. Himachal Techno Engineers and anr., (2010) 12 SCC 210*** at paragraph 5.

We now come to section 37 (1)(c). It is important to note that the expression "setting aside or refusing to set aside an arbitral award" does not stand by itself. The expression has to be read with the expression that follows - "under section 34". Section 34 is not limited to grounds being made out under section 34(2). Obviously, therefore, a literal reading of the provision would show that a refusal to set aside an arbitral award as delay has not been condoned under sub-section (3) of section 34 would certainly fall within section 37 (1)(c). The aforesaid reasoning is strengthened by the fact that under section 37 (2)(a), an appeal lies when a plea referred to in sub-section (2) or (3)of section 16 is accepted. This would show that the Legislature, when it wished to refer to part of a section, as opposed to the entire section, did so. Contrasted with the language of section 37 (1)(c), where the expression "under section 34" refers to the entire section and not to section 34(2) only, the fact that an arbitral award can be refused to be set aside for refusal to condone delay under section 34(3) gets further strengthened.

In point of fact, the "effect doctrine" referred to in ***Essar Constructions v. N. P. Rama Krishna Reddy, (2000) 6 SCC 94*** is statutorily inbuilt in section 37 of the Arbitration Act, 1996 itself. For this purpose, it is necessary to refer to sections 37(1)(a) and 37 (2)(a). So far as section 37 (1)(a) is concerned, where a party is referred to arbitration under section 8, no appeal lies. This is for the reason that the effect of such order is that the parties must go to arbitration, it being left to the learned Arbitrator to decide preliminary points under section 16 of the Act, which then become the subject matter of appeal under section 37 (2)(a) or the subject matter of grounds to set aside under section 34 an arbitral award ultimately made, depending upon whether the preliminary points are accepted or rejected by the arbitrator. It is also important to note that an order refusing to refer parties to arbitration under section 8 may be made on a prima facie finding that no valid arbitration agreement exists, or on the ground that the original arbitration agreement, or a duly certified copy thereof is not annexed to the application under section 8. In either case, i.e. whether the preliminary ground for moving the court under section 8 is not made out either by not annexing the original arbitration agreement, or a duly certified copy, or on merits – the court finding that *prima facie* no valid agreement exists – an appeal lies under section 37 (1)(a).

Consequently, the question of law is answered by stating that an appeal under section 37 (1)(c) of the Arbitration Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under section 34 of the Arbitration Act, 1996 to set aside an award.

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115. CIVIL PROCEDURE CODE, 1908 – Section 9
LAND REVENUE CODE, 1959 (M.P.) – Section 131
Jurisdiction of Civil Court – Boundary dispute – Suit for injunction simpliciter based on possession of property – Jurisdiction of Civil Courts is not barred in respect of boundary disputes – Such suits can be decided only by Civil Courts as there is no mechanism in Land Revenue Code for granting injunction in disputes relating to possession.

सिविल प्रक्रिया संहिता, 1908 – धारा 9

भू–राजस्व संहिता, 1959 (म.प्र.) – धारा 131

सिविल न्यायालय की अधिकारिता – सीमा विवाद – संपत्ति पर आधिपत्य के आधार पर मात्र निषेधाज्ञा का वाद – सीमा विवाद के संबंध में सिविल न्यायालयों की अधिकारिता बाधित नहीं है – ऐसे वाद मात्र सिविल न्यायालयों द्वारा ही निराकृत किए जा सकते हैं क्योंकि भू–राजस्व संहिता आधिपत्य संबंधी विवादों में निषेधाज्ञा जारी करने का कोई प्रावधान नहीं करती है।

Kirpa Ram (deceased) through LRs. and ors. v. Surendra Deo Gaur and ors.

Judgment dated 16.11.2020 passed by the Supreme Court in Civil Appeal No. 8971 of 2010, reported in 2021 (2) MPLJ 77 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

The Land Revenue Act does not expressly bar the jurisdiction of the Civil Court in respect of boundary disputes. The boundary disputes are between two revenue estates and does not include the demarcation of the land of the parties.

Still further, the suit is simpliciter for injunction based upon possession of the property. The said suit could be decided only by the Civil Court as there is no mechanism prescribed under the Land Revenue Act for grant of injunction in respect of disputes relating to possession. The Civil Court has plenary jurisdiction to entertain all disputes except in cases where the jurisdiction of the Civil Court is either expressly or impliedly barred in terms of Section 9 of the Code.

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116. CIVIL PROCEDURE CODE, 1908 – Section 114 and Order 47 Rule 1
Power of review; nature of – Explained – Power of review is neither an inherent power nor appeal in disguise – It is a creation of statute – There is neither any condition precedent nor any prohibition on

the court for excercising its power of review – However, an order can be reviewed only on the prescribed grounds under Order 47 Rule 1 CPC.

सिविल प्रक्रिया संहिता, 1908 – धारा 114 एवं आदेश 47 नियम 1

पुनर्विलोकन की शक्ति की प्रकृति – व्याख्या की गई – पुनर्विलोकन की शक्ति न तो अंतर्निहित शक्ति है और न ही अपीलीय – यह विधि द्वारा सृजित है – न्यायालय पर पुनर्विलोकन की शक्ति का उपयोग करने के लिए न तो कोई पूर्व शर्त है और न ही कोई निषेध है – तथापि, आदेश 47 नियम 1 सि.प्र.सं. के द्वारा निर्धारित आधारों पर ही किसी आदेश का पुनर्विलोकन किया जा सकता है।

Ram Sahu (dead) Through LRs. v. Vinod Kumar Rawat and ors.
Judgment dated 03.11.2020 passed by the Supreme Court in Civil Appeal No. 3601 of 2020, reported in 2021 (2) MPLJ 55

Relevant extracts from the judgment:

The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In the case of ***Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844***, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20.

It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2 and on appreciation of the evidence, the High Court found that the plaintiff is in actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be noted that even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 – respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions.

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

(i) Rejection of plaint – Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint.

(ii) Power of attorney – In a suit based on an agreement executed through a power of attorney, it is open to the court to read the terms of the power of attorney along with the plaint in the same manner as document appended to the plaint which form part of the plaint.

सिविल प्रक्रिया संहिता, 1908 – आदेश 7 नियम 11

(i) वादपत्र का नामंजूर किया जाना – न्यायालय को देखना चाहिए कि वाद के विधि द्वारा वर्जित होने को कुटिल एवं चतुराई पूर्ण आलेखन द्वारा छुपाया न गया हो।

(ii) मुख्तारनामा – मुख्तार द्वारा निष्पादित करार आधारित वाद में न्यायालय मुख्तारनामा की शर्तों को भी उसी तरह पढ़ सकता है जिस तरह वादपत्र के साथ प्रस्तुत दस्तावेज को उसके भाग के रूप में पढ़ा जाता है।

K. Akbar Ali v. K. Umar Khan and ors.

Judgment dated 12.02.2021 passed by the Supreme Court in SLP (Civil) No. 31844 of 2018, reported in AIR 2021 SC 1114

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***118. CIVIL PROCEDURE CODE, 1908 – Order 41 Rule 3A**
LIMITATION ACT, 1963 – Section 5
First appeal – Condonation of delay – Before deciding appeal on merits, Appellate Court is required to decide first the application for condonation of delay in favour of the appellant.

सिविल प्रक्रिया संहिता, 1908 – आदेश 41 नियम 3क

परिसीमा अधिनियम, 1963 – धारा 5

प्रथम अपील – विलम्ब का क्षमा किया जाना – अपीलीय न्यायालय द्वारा अपील का गुणदोष पर निराकरण करने से पूर्व अपीलार्थी के पक्ष में विलम्ब को क्षमा करने हेतु प्रस्तुत आवेदन का निराकरण किया जाना आवश्यक है।

Ramesh and ors. v. Laxmi Bai
Order dated 01.03.2021 passed by the High Court of Madhya Pradesh (Bench Indore) in M.P. No. 3930 of 2019, reported in AIR 2021 MP 56

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119. CONSTITUTION OF INDIA – Articles 226 and 227
CIVIL PROCEDURE CODE, 1908 – Section 151
CRIMINAL PROCEDURE CODE, 1973 – Section 483
CIVIL PRACTICE:
CRIMINAL PRACTICE:
Steep rise in Covid cases – Noticing the difficulties faced by litigants in approaching courts, all kinds of interim orders, directions, interim protection, interim bail etc. passed by all kinds of courts or tribunals ordered to be extended till 15th June, 2021.

भारत का संविधान – अनुच्छेद 226 एवं 227

सिविल प्रक्रिया संहिता, 1908 – धारा 151

दण्ड प्रक्रिया संहिता, 1973 – धारा 483

सिविल प्रथाः

आपराधिक प्रथाः

कोविड मामलों में तेजी से वृद्धि – पक्षकारों को न्यायालय तक पहुंचने में आने वाली कठिनाइयों को देखते हुए सभी प्रकार के न्यायालयों अथवा न्यायाधिकरणों द्वारा पारित सभी प्रकार के अंतरिम आदेश, निर्देश, अंतरिम सुरक्षा, अंतरिम जमानत आदि को 15 जून, 2021 तक विस्तारित करने संबंधी आदेश किया गया।

In Reference (Suo Motu) v. Union of India and ors.
Order dated 23.04.2021 passed by the High Court of Madhya Pradesh in Writ Petition No. 8820 of 2021, unreported (DB)

Relevant extracts from the order:

Therefore, with a view to ensuring that the citizens of the State in general

and the litigants before the Courts in particular, do not suffer on account of their inability to approach the Courts of law, this Court proposes to invoke its extraordinary power under Article 226 and its power of superintendence under Article 227 of the Constitution of India and also inherent power over the criminal matters under Section 482 of the Code of Criminal Procedure, power of superintendence over Criminal Courts under Section 483 of the Code of Criminal Procedure and inherent power over the civil matters under Section 151 of the Code of Civil Procedure and issue the following directions to remain operative in the first phase till 15th June, 2021:

(i) that all the interim orders/directions issued or protection granted including any order requiring any compliance by the parties to such proceedings, passed by this Court or any other Court sub-ordinate to it or any Family Court or Labour Court or any Tribunal or any other Judicial or Quasi Judicial forum in the State of Madhya Pradesh, over which this Court has power of superintendence, which were subsisting as on 10th March, 2021, shall stand extended till 15th June, 2021;

(ii) that it is further directed that the interim orders or directions of this Court or any Court sub-ordinate to this Court in the State, which are not of a limited duration and were meant to operate till further orders, shall continue to remain in force until modified/altered/vacated by specific order of the Court concerned in a particular case;

(iii) that the time for filing of written-statement or return in any Suit or proceeding pending before any Civil Court or any other forum, unless specifically directed, shall stand extended till 15th of June, 2021. It is however clarified that this will not preclude the parties from filing such written-statement or return before 15th June, 2021;

(iv) that it is further directed that the orders of eviction, dispossession, demolition, etc. passed by this Court or any Court subordinate to it or any Tribunal or Judicial or Quasi Judicial forum, which have so far remained unexecuted, shall remain in abeyance till 15th of June 2021;

(v) that interim protection given in the anticipatory bail applications by the High Court or Court of Sessions for a limited period, which has expired or is likely to expire on any date after 10th March, 2021, shall stand extended till 15th of June, 2021. However, any party aggrieved by the conduct of the accused on such interim protection, may move the Court in seisin over the matter for discontinuation of such interim protection, if any prejudice is caused to him/her, in which event, the Court concerned shall be entitled to take independent view of the matter;

(vi) that all the interim bail granted under Section 439, Cr.P.C. by the High Court or Courts of Sessions, limited by time-frame specifying an expiry on any date after 10th March 2021, shall stand extended till 15th

June, 2021, subject to the accused not abusing such liberty or else it may be cancelled at the instance of the State or the complainant, on application with adequate proof of the abuse of the liberty so granted by the Court concerned;

(vii) that parole granted to a person anytime after 9th March, 2021 by order passed by a Court exercising the criminal jurisdiction and limited by time-frame specifying an expiry date, shall stand extended till 15th of June, 2021, subject to the condition specified in Point No. (vi) above;

(viii) that unless there is necessity of arrest for maintenance of law and order situation, in a cognizable offence prescribing sentence up to seven years imprisonment, the police shall desist from arresting the accused up to 15th of June, 2021, without complying with the provision of Section 41A, Cr.P.C. This however may not be understood as an interdict on the power of the police to arrest, but should only be considered mere advisory in the face of the ongoing crisis following second wave of Corona virus;

(ix) that the State Government or any of its Department or any Municipal Corporation/ Council/ Board or any Gram Panchayat or any other local body or any other agency and instrumentality of the State shall not take any action for eviction and demolition in respect of any property, over which any citizen or person or party or any Body Corporate, has physical or symbolic possession as on today till 15th June, 2021;

(x) that it is further directed that, any Bank or Financial Institution shall not take action for auction in respect of any property of any citizen or person or party or any Body Corporate till 15th June, 2021;

(xi) that if the Government of Madhya Pradesh and/ or any of its department and/ or functionaries, Central Government and/ or its departments or functionaries or any Public Sector Undertakings or any Public or Private Companies or any firm or any individual or person is/ are, by the order of this Court or any Court subordinate to it or the Tribunals, required to do a particular thing or carry out certain direction in a particular manner, in a time frame, which has expired after 10th March, or is going to expire at any time from now up to 15th June, 2021, the time for compliance of such order shall stand extended up to 15th June, 2021, unless specifically directed otherwise by the Court concerned;

(xii) that in order to dispel any ambiguity, it is clarified that:-

(a) those interim orders / directions, which are not for a limited duration and are to operate until further orders, shall by this order remain unaffected;

(b) that, in case extension of interim order(s) as per the present order passed by this Court, causes any undue hardship and

prejudice of any extreme nature, to any of the parties to such proceeding(s), such parties would beat liberty to seek appropriate relief by moving appropriate application(s) before the Competent Court(s), Tribunal, Judicial or Quasi-Judicial Forum, and these directions shall not be taken as a bar for such Courts/Forums to consider such application(s) filed by the aggrieved party, on its own merit, after due notice and providing opportunity of hearing to the other side;

(c) that the directions enumerated above shall not preclude the State from moving appropriate application for vacation/modification of such order in any particular case for reason of overriding public interest;

(d) that all Courts, Tribunals, Judicial and Quasi-judicial authorities are directed to abide by these directions, and the parties seeking relief(s) covered by these directions can file hard copy or soft copy of this order before the competent court/forum, which shall be given due weightage.

Note : Vide order dated 15.06.2021, the above interive protections have been extended upto 15.07.2021 except point no.9 which is modified to the effect that after due notice and resetlement to a safer location of the decelers, building in dilapidated condition may be demolished.

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120. CONSTITUTION OF INDIA – Article 233

Appointment to the post of District Judge (Entry Level) – Suitability – Appellant found unsuitable on the basis of criminal case pending against him – Mere fact that subsequently he has been acquitted cannot be a ground to turn the clock backward.

भारत का संविधान – अनुच्छेद 233

जिला न्यायाधीश (प्रवेश–स्तर) के पद पर नियुक्ति – योग्यता – अपीलार्थी के विरुद्ध दांडिक प्रकरण लंबित होने के आधार पर अयोग्य पाया गया – केवल यह तथ्य कि बाद में उसे दोषमुक्त कर दिया गया हो समय चक्र को पीछे की ओर घुमाने का आधार नहीं हो सकता।

Anil Bhardwaj v. Hon'ble High Court of Madhya Pradesh and ors.
Judgment dated 13.10.2020 passed by the Supreme Court in Civil Appeal No. 3419 of 2020, reported in AIR 2020 SC 4971

Relevant extracts from the judgment:

There can be no dispute to the above preposition. But there can be other valid reasons for not sustaining the decision of Screening Committee/ Selection Committee apart from the ground of mala fide. Any arbitrary decision taken by the Selection Committee can very well be interfered by the Constitutional Courts in exercise of Judicial Review Jurisdiction.

Reverting to the facts of the present case, the decision of Examination-cum-Selection and Appointment Committee for holding the appellant unsuitable was based on the relevant consideration, i.e., a criminal case against the appellant under Section 498A/406/34 IPC was pending consideration which was registered on a complaint filed by the wife of the Appellant. Such decision of the Committee was well within the jurisdiction and power of the Committee and cannot be said to be unsustainable. The mere fact that subsequently after more than a year when the person whose candidature has been cancelled has been acquitted cannot be a ground to turn the clock backward.

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121. CRIMINAL PROCEDURE CODE, 1973 – Sections 41, 41-A, 167 and 437

(i) Arrest – Offences punishable with imprisonment of seven years or less – Held, recording of satisfaction by police as mandated by Section 41 is condition precedent for arrest – Magistrate must also satisfy himself before authorizing judicial remand that such provisions are complied with and arrest is made in accordance with law.

(ii) Arrest – Non-compliance of Sections 41 and 41-A CrPC – Effect of – Held, Judicial Magistrate shall refuse to authorize further detention of accused and shall direct his immediate release – Further held, accused would be entitled to apply for regular bail on this ground alone.

[*Arnesh Kumar v. State of Bihar and anr., (2014) 8 SCC 273* followed]

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 41, 41–क, 167 एवं 437

(i) गिरफ्तारी – सात वर्ष अथवा उससे कम के कारावास से दण्डनीय अपराध – अभिनिर्धारित, पुलिस द्वारा धारा 41 द्वारा प्राविधित संतुष्टि लेखबद्ध किया जाना गिरफ्तारी के लिए पुरोभाव्य शर्त है – मजिस्ट्रेट को न्यायिक रिमांड अधिकृत करने के पूर्व स्वयं को संतुष्ट करना चाहिए कि उक्त प्रावधानों का पालन किया गया है और गिरफ्तारी विधि अनुसार ही की गई है।

(ii) गिरफ्तारी – धारा 41 और 41–क द.प्र.सं. का पालन न करने का प्रभाव – अभिनिर्धारित, न्यायिक मजिस्ट्रेट अभियुक्त का आगामी निरोध अस्वीकार करते हुए उसे तत्काल मुक्त करने का निर्देश देंगे – आगे अभिनिर्धारित, अभियुक्त मात्र इसी आधार पर नियमित जमानत का आवेदन करने का अधिकारी होगा।

[*अर्नेश कुमार वि. बिहार राज्य व अन्य, (2014) 8 एससीसी 273* अनुसरित]

In Reference (Suo Motu) v. The State of M.P. and ors.

Order dated 17.05.2021 passed by the High Court of Madhya Pradesh in Writ Petition No. 9320 of 2021, unreported (DB)

Relevant extracts from the order:

The Supreme Court in ***Arnesh Kumar v. State of Bihar and anr., (2014) 8 SCC 273*** categorically observed that the law mandates that the police officer, before

making arrest of an accused, against whom a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, should record his satisfaction as mandated by Section 41 of the Code of Criminal Procedure (for short the "Code") that his arrest is necessary (i) to prevent such person from committing any further offence; (ii) for proper investigation of the offence; (iii) to prevent such person from causing the evidence of the offence to disappear or tampering with evidence; (iv) to prevent such person from making any inducement, threat or promise to any witness from disclosing facts to the court or to the police officer & (v) and that unless such person is arrested, his presence in the court when required cannot be secured. The Supreme Court therefore observed that before a Magistrate authorizes detention under Section 167 of the Code, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested have been safeguarded. If in his opinion, the arrest does not satisfy the requirements of Section 41 of the Code, the Magistrate is duty-bound not to authorize his further detention and release the accused after recording his own satisfaction which shall never be based on the ipse dixit of the police officer. The Supreme Court further highlighted the importance of Section 41-A of the Code which was inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (No.5 of 2009) providing that in all cases where the arrest of a person is not required as per Section 41(1) of the Code, the police officer is required to issue notice directing the accused person to appear before him at specific place and time. If such accused complies with the terms of notice, the law further mandates that he shall not be arrested, unless the reasons are recorded by the police officer that the arrest is necessary. At this stage also the condition precedent for causing arrest,as envisaged in Section 41 of the Code,has to be complied with, which shall be subject to the same scrutiny by the Magistrate as aforesaid. The Supreme Court deprecated the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41ofthe Code for effecting arrest. The Supreme Court observed that it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code and is persisting with its colonial approach despite six decades of independence, as the power of arrest is being used as a tool of harassment and oppression of the citizen, which is "one of the lucrative sources of police corruption". All these directions issued by the Supreme Court were intended to put a check on the arbitrary power of police in mechanically arresting a citizen accused of committing offences of rather lesser gravity, either without adequate sensitivity or with oblique motive.

In view of what has been noticed above, we direct the Director General of Police to immediately issue fresh direction to all the Police Stations in the State to adhere to the guidelines issued by the Supreme Court in ***Arnesh Kumar*** (supra) in letter and spirit. We also direct that all the Judicial Magistrates, upon the accused being produced before them by the police for authorizing further detention, shall mandatorily examine whether or not stipulations contained in

both Sections 41 and 41A of the Code, have been followed and if, for reasons to be recorded in writing, the Judicial Magistrate concerned is satisfied that mandate of both or any of those provisions, has not been complied with by the police, he/she shall refuse to authorize further detention of the accused and shall direct immediate release of the accused. Even otherwise, if any arrest has been made without adherence to the aforesaid guidelines, the accused concerned would be entitled to directly apply to the court of competent jurisdiction for his regular bail on this ground alone.

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122. CRIMINAL PROCEDURE CODE, 1973 – Sections 41, 41-A and 437

(i) Arrest; necessity of – Offence punishable for imprisonment of seven years or less – Fresh directions issued to the Police Officers and Judicial Magistrates to scruplously implement the directions given by the Supreme Court in *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273* – Non-compliance of these directions from 01.07.2021 would entail policemen for contempt of court and Judicial Magistrates for action on administrative side.

(ii) Bail – Importance of role of District Judiciary while exercising bail jurisdiction explained – Factors to be considered while deciding bail application delineated.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 41, 41–क एवं 437

(i) गिरफ्तारी की आवश्यकता – सात वर्ष तक अथवा उससे कम अवधि के कारावास से दण्डनीय अपराध – *अर्नेश कुमार वि. बिहार राज्य, (2014) 8 एससीसी 273* में सर्वोच्च न्यायालय द्वारा दिए गए निर्देशों का कठोरता से पालन करने के लिए पुलिस अधिकारियों और न्यायिक मजिस्ट्रेटों को नवीन निर्देश जारी किए गए – दिनांक 01.07.2021 से इन निर्देशों का अनुपालन न करने पर पुलिसकर्मी न्यायालय की अवमानना और न्यायिक मजिस्ट्रेट प्रशासनिक कार्रवाई के लिए उत्तरदायी होंगे।

(ii) जमानत – जमानत के क्षेत्राधिकार का प्रयोग करने में जिला न्यायपालिका की भूमिका का महत्व समझाया गया – जमानत आवेदन निराकृत करते समय विचार में लिए जाने वाले कारक रेखांकित किए गए।

Zarina Begum v. State of Madhya Pradesh through P.S. E.O.W.
Order dated 13.05.2021 passed by the High Court of Madhya Pradesh in M.Cr.C. No. 30933/2020, reported in 2021 Law Suit (MP) 265

Relevant extracts from the order:

Case after case this court has observed that the District Judiciary is extremely tight-fisted when it comes to granting bail. Applications are routinely dismissed on cyclostyled grounds that the offence alleged is serious or that the investigation is still in progress or that the accused may influence the witnesses. Hardly ever does the court below examine the requirement for continued

incarceration of the accused as an under trial, but for the routine reasons given above. Resultantly, the High Court suffers a deluge of bail cases and its precious time is lost in deciding bail applications instead of deciding civil and criminal appeals.

The "grundnorm" of bail jurisprudence i.e., "bail and not jail" [***State of Rajasthan v. Balchand, (1977) 4 SCC 308***] appears to have been forgotten. Bail should not be denied by the District Judiciary only for the purpose of ingratiating the raucous blood lust of a society existing on social media, or to pander to public perception. The courts must remember that the presumption is always of innocence and that the denial of bail must be for exceptional reasons, justifiable on the facts and circumstances of the case before it.

In order to ensure that the directions passed by the Supreme Court in Arnesh Kumar's case is scrupulously implemented and followed by the police and the Judicial Magistrates in Madhya Pradesh, this court considers it essential to pass certain directions.

DIRECTIONS TO THE POLICE

1. Where for an offence, the maximum imprisonment provided is up to 7 years, the accused shall not be arrested by the police as an ordinary course of action. Unless it is a special statute mandating such an arrest.

2. Before effecting an arrest in such a case, the police would have to record its reasons that the arrest was essential to prevent such person from committing any further offence, or for a proper investigation of the case, or to prevent the accused from causing the disappearance of evidence or on the basis of credible apprehension that the accused would tamper with evidence or prevent a witness from disclosing such facts to the court or to the police which thereby necessitates the arrest of the accused.

3. The State Police is directed to format and prepare a check list of pre-conditions fulfilled by the police under section 41(1)(b)(ii) of the Cr.P.C, while arresting an accused for offences bearing a maximum punishment up to 7 years. It is mandatory to supply a copy of the check list along with the remand application, to the Magistrate authorised to further remand the accused to police or judicial custody.

4. Where decision is taken not to arrest the accused, the police shall forward an intimation to the Magistrate within two weeks of the registration of the FIR. This period may be extended by the Superintendent of Police of the district concerned with reasons to be recorded in writing.

5. Where interrogation of the accused is required, notice in terms of section 41A Cr.P.C or s. 160 Cr.P.C be served on the accused within two weeks from the date of registration of the FIR which may be extended by the Superintendent of Police of the district concerned for reasons to be recorded in writing.

6. Where the police does not arrest the accused and upon notice u/s. 41A or 160 Cr.P.C, the accused appears before the police and assists the police in

the course of investigation, in such a situation, the police are not to arrest the accused unless, there exists compelling reasons which must be recorded, as given in paragraph 31.2.

7. If the police does not perform as required of them as hereinabove, it would constitute contempt of the order passed by this court in addition to such other action, which may be taken against the erring officer on the administrative side.

DIRECTIONS TO THE JUDICIAL MAGISTRATES:-

1. The Magistrate, while exercising powers of remand, shall ascertain if the arrest effected by the police satisfies the requirements of section 41 of the CRPC as provided in paragraph 11.2 of Arnesh Kumar's case (see paragraph 17 supra).

2. The Magistrate shall ascertain the availability of the check list as ordered by the Supreme Court in paragraph 11.3 of Arnesh Kumar's case.

3. If there is non-compliance of paragraph 11.2 and/or 11.3 of Arnesh Kumar's case, the Magistrate shall not authorise the further detention of the accused and shall release forthwith as the arrest itself is unlawful and therefore, his detention would also be rendered unlawful on account of the police not having fulfilled the requirements of section 41 of CRPC.

4. It is mandatory for the Magistrate authorising detention to record his independent satisfaction and also ensure in his order of remand that his satisfaction for further remand of the accused stands satisfied in compliance of paragraph 11.4 of Arnesh Kumar's judgement.

5. The Magistrate shall also satisfy himself whether specific reasons have been recorded for the arrest of the accused and whether those reasons are relevant, raising a reasonable conclusion that one of the conditions for further detention of the accused as an under trial is satisfied.

6. Failure on the part of the Magistrate to perform as directed hereinabove, my see the initiation of proceedings against such Magistrate on the administrative side.

x x x

As regards the grant of bail in offences involving punishment of more than seven years imprisonment, there can be no universal rule of thumb. It would defeat the very purpose of bail law, if bail were to be rejected only on account of the offence being heinous in nature. Weather an offence is heinous in nature is a matter of perception but, it would be reasonable to include in its ambit and scope such offences, which shock the conscience of a reasonable person. Again, bail cannot be denied merely because the allegations relate to the commission of a heinous offence. The nature of the evidence, the antecedents of the offender, the circumstances in which the offence was committed etc., are also to be considered. However, what the Courts must consciously exclude is the

cacophony of hyper opinionated and unmoderated voices on social, print and electronic media. Public perception must never be a factor while deciding a bail application. At the same time, prudent reasons ought to be briefly given to reflect the mind of the Court while deciding the application for bail.

While considering an application for bail, the following may be kept in mind;

A. Whether, granting bail to the under-trial would result in him attempting to overawe and influence the witness or influence the course of investigation, either by threat of dire consequences or by monetary inducement?

B. Whether, the probability of the under-trial, upon his release, committing another crime while on bail, would be germane while considering grant of bail to recidivists or repeat offenders?

C. Whether, there is a probability upon the release of the accused on bail that he would fall victim of any vengeful action by the Complainant?

D. Whether, the release of the accused on bail would raise a reasonable apprehension of breach of peace, and social or civil unrest, on account of the nature of the offence alleged against him?

E. Whether, the accused would destroy the evidence yet to be collected during investigation, upon his release on bail?

F. Whether, the overwhelming nature of prima facie evidence against the accused is such that he may be tempted to abscond and evade the process of justice all together if he is enlarged on bail?

The above considerations should be applied in a reasonable and judicious manner based upon the material on record. They, however, must not be applied in a pedantic manner only to deny the benefit of bail to the accused. Also, it must be borne in mind that the said considerations are not glossed over in order to grant the benefit of bail. Whichever way the application is decided, unless it is withdrawn, reasons ought to be given to reflect the prima facie appreciation of the material for or against the accused.

The above notwithstanding, no undertrial ought to be kept in judicial custody, inordinately. There may be several factors delaying the trial which may not be attributable to the accused. The production and examination of prosecution witnesses is where the delay is maximum. In such cases, even if there is a perceived handicap in releasing the accused on bail, it may still be considered by placing stringent condition like higher quantum of personal bond and surety, to appearing before the Police periodically and registering his presence and in extreme cases, even asking the under trial to remove himself from the municipal limits of the district where the trial is taking place and the witnesses are situated. Of course, no rule of thumb can ever be laid down as an indelible proposition which must be followed in every case of bail and the discretion must be left to the Court.

The District Judiciary must create an environment where bail applications can be decided at the first tier of the justice system itself. There is no legislative provision that mandates the disposal of a bail application within a fixed period of time. However, the ends of justice do demand that it be so done in the shortest possible time. However, it must also be borne in mind that many a litigant may not have the wherewithal of approaching the next forum available within the shortest possible time. This Court has seen applications for bail in offences triable by the Court of Magistrate, coming for the first time after the accused has completed more than half the period of the total sentence.

Therefore, the District Judiciary must instil confidence in the bar and the litigants alike in bail matters. Where, the Court is unable to grant bail because the investigation is still in process, the applicant can be asked if he wants to withdraw the application with liberty to file afresh after the charge sheet is filed. In some cases, certain documents may be necessary to effectively decide the application, it may be better to adjourn the proceeding giving short dates, rather than dismiss the application on merits forcing the applicant approach the High Court for bail. In other words, the endeavour must be to see that justice is done at the level of the District Court itself. The applicant may only be too willing to try his luck a second time before the District Courts itself as along as his application is not dismissed on merits. Such an option must be given to the applicant.

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123. CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156 and 200
M.P. POLICE REGULATIONS – Regulation 634
Information/complaint of offences to police – How should be proceeded with? Directions issued.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154, 156 एवं 200
म.प्र. पुलिस विनियमन – विनियम 634
पुलिस को अपराधों की सूचना/शिकायत – कैसे कार्यवाही की जानी चाहिए? निर्देश जारी किए गए।

Rajendra Singh Pawar and ors. v. State of M.P. and ors.
Order dated 24.12.2020 passed by the High Court of Madhya Pradesh in Writ Petition No. 18878 of 2020, reported in 2021 (2) MPLJ 100

Relevant extracts from the order:

In instant case aforesaid directions and law are not followed by Station House Officer/Investigating Officer after receiving complaint. Complainant is not informed about result of preliminary inquiry/scrutiny done by the Investigating Officer. If such result is informed to the complainant, then he can resort to remedy available to him under the law, but the complaint filed by a person remains unattended. To weed out the problem which is being faced by complainant/informant in respect of economic offences at the police station following directions are reiterated:–

(i) Whenever a complaint is filed at police station, concerned Police Officer shall examine the complaint and if required preliminary inquiry be done to ascertain whether information reveals any cognizable offence.

(ii) Investigating Officer shall either register First Information Report if complaint/information discloses cognizable offence or proceed under Section 155 of the Code of Criminal Procedure, if no cognizable offence is disclosed or if no offence is made out then complainant shall be informed that his compliant has been filed. Police Officer shall process all complaints received within a period of 15 days. If due to some reasons, it is not possible for concerned Police Officer to process the complaint and take action on it within said time, he shall take aforesaid action within maximum period of 42 days after receiving of complaint.

(iii) Every complaint which is received by Investigating Officer shall be entered into General Diary, as per M.P. Police Regulation 634 maintained at the Police Station and a number on which said complaint is entered in General Diary shall be given to the complainant. Superintendent of Police shall keep a check that such complaints are decided within the stipulated time mentioned above as per the directions of Apex Court. If complaints remain pending for more than 42 days then Superintendent of Police shall initiate Departmental Enquiry against delinquent Police Officer.

(iv) It is observed that in offences of cheating and fraud, Investigating Officer/Station House Officer is taking a long time to register an offence under Indian Penal Code or to dispose off complaint in accordance with law. Principal Secretary, Home/Director General of Police shall issue directions to Superintendent of Police to sensitize all Police Officers on filed when offence of cheating is made out and when only a civil wrong is made out so that concerned Police Officer can process the complaints/applications made in case of economic offence of cheating and fraud expeditiously.

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124. CRIMINAL PROCEDURE CODE, 1973 – Sections 154 and 438
INDIAN PENAL CODE, 1860 – Section 153-A

(i) Second FIR – Maintainability of – In the instant case, the second FIR is not lodged as counter-complaint by a rival party – Thus, *prima facie* it appears that second FIR is not maintainable.

(ii) Anticipatory bail – As a rule of thumb, it cannot be said that an absconder against whom a proclamation u/s 82 of CrPC is not issued, is not entitled to get anticipatory bail.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154 एवं 438

भारतीय दण्ड संहिता, 1860 – धारा 153–क

(i) द्वितीय एफ.आई.आर. – प्रचलनशीलता – प्रस्तुत प्रकरण में द्वितीय एफ.आई.आर. प्रतिद्वंदी पक्षकारों के द्वारा प्रति परिवाद के रूप में दायर नहीं की गई है – अतः प्रथम दृष्ट्या यह दर्शित होता है कि द्वितीय एफ.आई.आर. प्रचलन योग्य नहीं है।

(ii) अग्रिम जमानत – अनुभवसिद्ध नियम के रूप में यह नहीं कहा जा सकता कि एक फरार अभियुक्त जिसके विरूद्ध द.प्र.सं. की धारा 82 के अंतर्गत उद्घोषणा जारी नहीं की गई, अग्रिम जमानत प्राप्त करने का अधिकारी नहीं है।

Arif Masood v. State of M.P.

Judgment dated 27.11.2020 passed by the High Court of Madhya Pradesh in Miscellaneous Criminal Case No. 45501 of 2020, reported in 2021 CriLJ 504 (DB)

Relevant extracts from the judgment:

In view of stand of the learned counsel for the respondent, it is crystal clear that the underlined portion of first FIR (reproduced in Para 5) does not find place in the transcript. Thus, it is clear that this part of FIR is indisputably contains a false text. Since both the FIRs are founded upon the same incident of 29.10.2020, the question is whether second FIR could have been lodged. Parties have taken a diametrically opposite stand on this aspect. In order to examine this aspect, it is apt to refer the judgments on which reliance is placed.

In the instant case, the second FIR is not lodged as counter complaint by a rival party. This exception carved out in the case of ***P. Sreekumar v. State of Kerala and ors., (2018) 4 SCC 579*** is not applicable in the instant case. Thus, *prima facie* it appears that second FIR is not maintainable. Similarly, the distinction drawn by learned AG for distinguishing the judgment of Full Bench in ***Nirbhay Singh v. State of M.P., 1995 MPLJ 296*** does not impress us. The principle laid down for grant of anticipatory bail in the said case will be equally applicable where application is arising out of an FIR.

In the case of ***State of M.P. v. Pradeep Sharma, (2014) 2 SCC 171***, the principle laid down in ***Lavesh v. State, (2012) 8 SCC 730*** was followed. In the said case, it was brought to the notice of Supreme Court that a proclamation under Section 82 of Code was already issued on 29.11.2012. We are unable to persuade ourselves with the argument of the learned counsel for the respondent that in ***Pradeep Sharma*** (supra), the Apex Court has taken a different view than the view taken in ***Lavesh*** (supra). In other words, it is not the *ratio decidendi* of ***Pradeep Sharma*** (supra) that anticipatory bail is not available to an absconder against whom a proclamation under Section 82 of the Code has not been issued. In MCRC. No. 9567/14, this Court declined anticipatory bail in the peculiar facts of the said case and by taking note of the fact that in spite of direction issued by High Court under Section 438(1-B) of the Code, the applicant remained absent, which shows lack of bonafides on his part. Similarly, in MCRC. No. 13420/14, in

the peculiar factual backdrops of the said case, anticipatory bail was declined. In ***Muna Singh v. State of M.P., order dated 25.04.2016*** passed in M.Cr.C. No.6405/2016, although learned Single Judge held that judgment of Supreme Court made it clear that an absconder against whom proceeding under Section 82 of the Code has been instituted is not eligible for the grace of the Court under Section 438 of Cr.P.C., we are unable to agree with this view taken by learned Single Judge. At the cost of repetition, in ***Lavesh*** (supra) and ***Pradeep Sharma*** (supra), it was made clear that when the accused is absconding and also declared as a 'proclaimed offender', question of granting anticipatory bail does not arise. As a rule of thumb, it cannot be said that an absconder against whom a proclamation under Section 82 of Cr.P.C. is not issued, is not entitled to get anticipatory bail.

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125. CRIMINAL PROCEDURE CODE, 1973 – Sections 156, 169 and 173
CONSTITUTION OF INDIA – Articles 14 and 21
Investigation – Direction by Court – Whether amounts to interference? A fair investigation is a necessary concomitant of Articles 14 and 21 of the Constitution of India – If the court gives any direction to ensure that the investigation is conducted within the contours of the law, it cannot amount to interference with investigation.

दण्ड प्रक्रिया संहिता, 1973 – धाराएं 156, 169 एवं 173
भारत का संविधान – अनुच्छेद 14 एवं 21
अन्वेषण – न्यायालय द्वारा निर्देश – क्या हस्तक्षेप करना है? निष्पक्ष अन्वेषण भारत के संविधान के अनुच्छेद 14 एवं 21 की आवश्यक अपेक्षा है – यदि न्यायालय इसके लिए कोई निर्देश देता है कि अन्वेषण विधि के अनुसार संचालित हो तो इसे अन्वेषण में हस्तक्षेप के समान नहीं माना जा सकता।

Amar Nath Chaubey v. Union of India and ors.
Judgment dated 14.12.2020 passed by the Supreme Court in Special Leave Petition (Crl.) 6951 of 2018, reported in 2021 CriLJ 709 (Three Judge Bench)

Relevant extracts from the judgment:

The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. If the court gives any

directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.

The trial is stated to have commenced against the charge sheeted accused, and the informant summoned to give evidence. In the facts of the case, we direct that further trial shall remain stayed. The closure reports dated 02.09.2018, 17.12.2018 culminating in the report dated 30.01.2019 are partly set aside insofar as the non-charge sheeted accused are concerned only. Those already charge sheeted, calls for no interference.

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126. CRIMINAL PROCEDURE CODE, 1973 – Section 319

Summon to a person as an additional accused – Accused can be summoned on the basis of even examination-in-chief of witness and court need not wait till his cross-examination.

दण्ड प्रक्रिया संहिता, 1973 – धारा 319

अतिरिक्त अभियुक्त के रूप में व्यक्ति को समन – अभियुक्त को मात्र मुख्य परीक्षण के आधार पर भी समन किया जा सकता है और न्यायालय को प्रतिपरीक्षण तक इंतजार करना आवश्यक नहीं है।

Sartaj Singh v. State of Haryana and anr. etc.

Judgment dated 15.03.2021 passed by the Supreme Court in Criminal Appeal No. 298 of 2021, reported in AIR 2021 SC 1513 (Three Judge Bench)

Relevant extract from the judgment:

Applying the law laid down by this Court in the decisions of ***Hardeep Singh v. State of Punjab, (2009)16 SCC 785, S. Mohammed Ispahani v. Yogendra Chandak AIR 2017 SC 4994*** and ***Rajesh v. State of Haryana, AIR 2019 SC 2168*** to the case of the accused on hand, we are of the opinion that learned Trial Court was justified in summoning the private respondents herein to face the trial as accused on the basis of the deposition of the appellant – injured eye witness. As held by this Court in the aforesaid decisions, the accused can be summoned on the basis of even examination- in-chief of the witness and the Court need not wait till his cross-examination. If on the basis of the examination-in-chief of the witness the Court is satisfied that there is a *prima facie* case against the proposed accused, the Court may in exercise of powers under Section 319 CrPC array such a personas accused and summon him to face the trial. At this stage, it is required to be noted that right from the beginning the appellant herein – injured eye witness, who was the first informant, disclosed the names of private respondents herein and specifically named them in the FIR. But on the basis of some enquiry by the DSP they were not charge-sheeted. What will be the evidentiary value of the enquiry report submitted by the DSP is another question. It is not that the investigating officer did not find

the case against the private respondents herein and therefore they were not charge-sheeted. In any case, in the examination-in-chief of the appellant-injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination-in-chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein – injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial. (pg no. 1527 para 7)

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127. CRIMINAL PROCEDURE CODE, 1973 – Section 320

Compromise between parties – Non-compoundable offences – Effect of – Held, fact of amicable settlement and compromise can be a relevant factor for the purpose of reduction in the quantum of sentence.

दण्ड प्रक्रिया संहिता, 1973 – धारा 320

पक्षकारों के मध्य समझौता – अशमनीय अपराध – प्रभाव – अभिनिर्धारित, सौहार्दपूर्ण सम्मति एवं समझौते का तथ्य दण्ड की मात्रा में कमी के लिए एक सुसंगत कारक हो सकता है।

Murali v. State Represented by Inspector of Police

Order dated 05.01.2021 passed by the Supreme Court in Criminal Appeal No. 24 of 2021, reported in (2021) 1 SCC 726 (Three Judge Bench)

Relevant extracts from the order:

There can be no doubt that Section 320 of the Criminal Procedure Code, 1973 ("CrPC") does not encapsulate Sections 324 and 307 IPC under its list of compoundable offences. Given the unequivocal language of Section 320(9) CrPC which explicitly prohibits any compounding except as permitted under the said provision, it would not be possible to compound the appellants' offences. Notwithstanding thereto, it appears to us that the fact of amicable settlement can be a relevant factor for the purpose of reduction in the quantum of sentence.

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***128. CRIMINAL PROCEDURE CODE, 1973 – Sections 437, 438 and 439**

Bail – Jurisdiction of courts to impose conditions while allowing bail application – Held, a criminal court exercising bail jurisdiction is not expected to act a recovery agent to realize the dues of the complainant – Condition to deposit ₹ 41 lakh before trial court while allowing anticipatory bail application set aside.

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

जमानत – जमानत आवेदन स्वीकार करते समय शर्तें अधिरोपित करने की न्यायालय की अधिकारिता – अभिनिर्धारित, जमानत की अधिकारिता का प्रयोग करने वाले न्यायालय से परिवादी के बकाया की वसूली अभिकर्ता के रूप में करने की अपेक्षा नहीं की जाती है – अग्रिम जमानत स्वीकार करने पर अधिरोपित विचारण न्यायालय में ₹ 41 लाख जमा करने की शर्त अपास्त की गई।

Dilip Singh v. State of M.P. and Anr.

Order dated 19.01.2021 passed by the Supreme Court in Criminal Appeal No. 53 of 2021, reported in (2021) 2 SCC 779

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129. CRIMINAL PROCEDURE CODE, 1973 – Section 438

MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 – Sections 3, 4 and 7

(i) Offence of pronouncement of triple talaq under the Act of 2019 – Applicability of – Held, such offence can only be committed by Muslim husband.

(ii) Anticipatory bail – Whether anticipatory bail can be granted for offence punishable under the Act of 2019? Held, yes – Section 7 of Act of 2019 does not create an absolute bar on grant of bail – But such an order can be made only after hearing the complainant; Muslim married woman.

दण्ड प्रक्रिया संहिता, 1973 – धारा 438

मुस्लिम महिला (विवाह पर अधिकारों का संरक्षण) अधिनियम, 2019 – धाराएं 3, 4 एवं 7

(i) 2019 के अधिनियम के अधीन तीन तलाक की घोषणा का अपराध – प्रयोज्यता – अभिनिर्धारित, ऐसा अपराध मात्र एक मुस्लिम पति द्वारा ही कारित किया जा सकता है।

(ii) अग्रिम जमानत – क्या 2019 के अधिनियम के अधीन दण्डनीय अपराध में अग्रिम जमानत दी जा सकती है? अभिनिर्धारित, हाँ – 2019 के अधिनियम की धारा 7 जमानत देने पर पूर्ण रोक नहीं लगाती है – लेकिन ऐसा आदेश परिवादी मुस्लिम विवाहित महिला को सुनने के पश्चात ही किया जा सकता है।

Rahna Jalal v. State of Kerala and anr.

Judgment dated 17.12.2020 passed by the Supreme Court in Criminal Appeal No. 833 of 2020, reported in (2021) 1 SCC 733 (Three Judge Bench)

Relevant extracts from the judgment:

The provisions of Section 7 (c) apply to the Muslim husband. The offence which is created by Section 3 is on the pronouncement of a talaq by a Muslim

husband upon his wife. Section 3 renders the pronouncement of talaq void and illegal. Section 4 makes the Act of the Muslim husband punishable with imprisonment. Thus, on a preliminary analysis, it is clear that the appellant as the mother-in-law of the second respondent cannot be accused of the offence of pronouncement of triple talaq under the Act as the offence can only be committed by a Muslim man.

Having said that, we shall now deal with the contention that Section 7(c) of the Act bars the power of the court to grant anticipatory bail under Section 438 CrPC. Under clause (c) of Section 7, Parliament has provided that no person who is accused of an offence punishable under the Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom the talaq is pronounced, is satisfied that there are reasonable grounds for granting bail.

Section 7 begins with a non obstante clause, which operates "notwithstanding anything contained" in the CrPC. However, it is equally necessary to emphasise that the non obstante clause operates only in the area covered by clauses (a), (b) and (c). ..... Facially, clause (c) begins with the words "no person accused of an offence punishable under this Act shall be released on bail". But what follows is equally important, because it conditions what precedes it. Two conditions follow. One of them is in the realm of procedure while the second is substantive. The former requires a hearing to be given to the married Muslim woman upon whom talaq has been pronounced. The latter requires the court to be "satisfied that there are reasonable grounds for granting bail to such person". This substantive condition is only a recognition of something which is implicit in the judicial power to grant bail. No court will grant bail unless there are reasonable grounds to grant bail. All judicial discretion has to be exercised on reasonable grounds. Hence, the substantive condition in clause (c) does not deprive the court of its power to grant bail. Parliament has not overridden the provisions of Section 438 CrPC. There is no specific provision in Section 7(c), or elsewhere in the Act, making Section 438 inapplicable to an offence punishable under the Act. The power of the court to grant bail is a recognition of the presumption of innocence (where a trial and conviction is yet to take place) and of the value of personal liberty in all cases. Liberty can, of course, be regulated by a law which is substantively and procedurally fair, just and reasonable under Article 21.

The statutory text indicates that Section 7(c) does not impose an absolute bar to the grant of bail. On the contrary, the Magistrate may grant bail, if satisfied that "there are reasonable grounds for granting bail to such person" and upon complying with the requirement of hearing the married Muslim woman upon whom talaq is pronounced. Hence, though Section 7 begins with a non obstante clause which operates in relation to the CrPC, a plain construction of Section 7(c) would indicate that it does not impose a fetter on the power of the Magistrate to grant bail, save and except, for the stipulation that before doing so, the married Muslim

woman, upon whom talaq is pronounced, must be heard and there should be a satisfaction of the Magistrate of the existence of reasonable grounds for granting bail to the person. This implies that even while entertaining an application for grant of anticipatory bail for an offence under the Act, the competent court must hear the married Muslim woman who has made the complaint, as prescribed under Section 7(c) of the Act. Only after giving the married Muslim woman a hearing, can the competent court grant bail to the accused.

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130. EVIDENCE ACT, 1872 – Sections 3 and 137
MOTOR VEHICLES ACT, 1988 – Sections 166, 168 and 173

(i) Stranger witness – Reliability of – Stranger took the injured to hospital – Whether adverse inference can be drawn against him on the ground of non-lodging of FIR? Held, no – It is common for most of the people to be hesistant about being involved in legal proceedings – Further, a person who accompanied the injured to hospital could not have simultaneously gone to police station to lodge FIR.

(ii) Cross-examination of witness; importance of – Reiterated – Effect of failure to cross-examine witness – Held, failure to cross-examine a witness despite adequate opportunity leads to an inference of tacit admission.

(iii) Claim petition – Standard of proof – It is of preponderance of probabilities and not beyond reasonable doubt – Approach and role of courts while examining evidence in claim cases, explained.

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 137

मोटरयान अधिनियम, 1988 – धाराएं 166, 168 एवं 173

(i) अपरिचित साक्षी – विश्वसनीयता – एक अपरिचित व्यक्ति घायल को अस्पताल ले गया – क्या प्रथम सूचना रिपोर्ट लेख न कराने के आधार पर उसके विरुद्ध प्रतिकूल निष्कर्ष निकाला जा सकता है? अभिनिर्धारित, नहीं – सामान्यतया अधिकांश लोग कानूनी कार्यवाही में सम्मिलित होने से झिझकते हैं – इसके अतिरिक्त, एक व्यक्ति जो घायल के साथ अस्पताल गया था, उसी समय प्रथम सूचना रिपोर्ट लेख कराने के लिए पुलिस थाने नहीं जा सकता था।

(ii) साक्षी के प्रतिपरीक्षण का महत्व – पुनरोद्धरित – साक्षी का प्रतिपरीक्षण न करने का प्रभाव – अभिनिर्धारित, पर्याप्त अवसर के बावजूद साक्षी का प्रतिपरीक्षण करने में विफलता गर्भित स्वीकृति का अनुमान लगाने का आधार है।

(iii) दावा याचिका – प्रमाण के मानक – यह संभावनाओं की प्रबलता का है न कि युक्तियुक्त संदेह से परे – मोटर दावा मामलों में साक्ष्य का मूल्यांकन करते समय न्यायालयों का दृष्टिकोण और भूमिका, समझाई गई।

Anita Sharma and ors. v. New India Assurance Company Ltd. and anr.

Judgment dated 08.12.2020 passed by the Supreme Court in Civil Appeal No. 4010 of 2020, reported in (2021) 1 SCC 171

Relevant extracts from the judgment:

It is not in dispute that the accident took place near Ghazipur and that numerous people had assembled at the spot. Some bystander would obviously have informed the police also. While the contents of the FIR as well as the statement of Ritesh Pandey (AW 3) leave no room to doubt that the injured were taken to the hospital by private persons (and not by the police), it is quite natural that the police would also have reached the Government Hospital at Ghazipur and, therefore, it was mentioned that Sandeep Sharma was brought in by SI Sah Mohammed.

It is commonplace for most people to be hesitant about being involved in legal proceedings and they therefore do not volunteer to become witnesses. Hence, it is highly likely that the name of Ritesh Pandey or other persons who accompanied the injured to the hospital did not find mention in the medical record. There is nothing on record to suggest that the police reached the site of the accident or carried the injured to the hospital. The statement of AW 3, therefore, acquires significance as, according to him, he brought the injured in his car to the hospital. Ritesh Pandey (AW 3) acted as a good Samaritan and a responsible citizen, and the High Court ought not to have disbelieved his testimony based merely on a conjecture. It is necessary to reiterate the independence and benevolence of AW 3. Without any personal interest or motive, he assisted both the deceased by taking him to the hospital and later his family by expending time and effort to depose before the Tribunal.

It is quite natural that such a person who had accompanied the injured to the hospital for immediate medical aid, could not have simultaneously gone to the police station to lodge the FIR. The High Court ought not to have drawn any adverse inference against the witness for his failure to report the matter to the police. Further, as the police had themselves reached the hospital upon having received information about the accident, there was perhaps no occasion for AW 3 to lodge a report once again to the police at a later stage either.

x x x

The failure of the respondents to cross-examine the solitary eyewitness or confront him with their version, despite adequate opportunity, must lead to an inference of tacit admission on their part. They did not even suggest the witness that he was siding with the claimants. The High Court has failed to appreciate the legal effect of this absence of cross-examination of a crucial witness.

x x x

Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in

such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyse the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

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131. EVIDENCE ACT, 1872 – Section 32

Dying declaration – Evidentiary value of – A dying declaration alone can form the basis of conviction if it is proved to be voluntary and inspires confidence – There can be no rigid standard or yardstick for acceptance or rejection of dying declaration – Instantly, dying declaration had no statement of fitness of mind of deceased – Fitness was certified by resident junior doctor separately – Such junior doctor was not examined – Held, there is no evidence about fitness of mind of deceased to make dying declaration, thus veracity and truthfulness of dying declaration remains suspected.

साक्ष्य अधिनियम, 1872 – धारा 32

मृत्युकालिक कथन – साक्ष्यिक मूल्य – मृत्युकालिक कथन दोषसिद्धि का एकल आधार हो सकता है यदि यह स्वैच्छिक साबित कर दिया जाए और विश्वसनीय हो – मृत्युकालिक कथन की स्वीकृति या अस्वीकृति के लिए कोई कठोर मानक या मापदण्ड नहीं हो सकते हैं – हस्तगत मामले में, मृत्युकालिक कथन में मृतक की मानसिक स्थिरता का कोई उल्लेख नहीं था – रेजिडेंट जूनियर डॉक्टर द्वारा अलग से फिटनेस प्रमाणित की गई थी – ऐसे जूनियर डॉक्टर का परीक्षण नहीं कराया गया – अभिनिर्धारित, मृत्युकालिक कथन देने के लिए मृतक की मानसिक स्थिरता की कोई साक्ष्य नहीं है, अतः मृत्युकालिक कथन की सत्यता और सत्यवादिता संदिग्ध हो जाती है।

Naresh Kumar v. Kalawati and ors.

Judgment dated 25.03.2021 passed by the Supreme Court in Criminal Appeal No. 35 of 2013, reported in 2021 (1) ANJ (SC) 353

Relevant extracts from the judgment:

A dying declaration is admissible in evidence under Section 32 of the Indian Evidence Act, 1872. It alone can also form the basis for conviction if it has been made voluntarily and inspires confidence. If there are contradictions, variations, creating doubts about its truthfulness, affecting its veracity and credibility or if the dying declaration is suspect, or the accused is able to create a doubt not only with regard to the dying declaration but also with regard to the nature and manner of death, the benefit of doubt shall have to be given to the accused. Therefore much shall depend on the facts of a case. There can be no rigid standard or yardstick for acceptance or rejection of a dying declaration.

P.W. 25 who recorded the dying declaration does not state that the deceased was in a fit state of mind to make the statement. He states that the Doctor had certified fitness of mind of the deceased, when the dying declaration itself contains no such statement. In cross examination he acknowledges that the fitness of the deceased was certified by a resident junior doctor separately but whose signature and endorsement is not available on the dying declaration. At this stage it is relevant to notice the statement of P.W. 19 who acknowledges that Dr. Anant Sinha has not signed in his presence and that at times doctors would come and put their signatures in the record room.

In the facts and circumstances of the present case, considering that the statements of the deceased have vacillated, there is no evidence about the fitness of mind of the deceased to make the dying declaration including the presence of the Doctor, the veracity and truthfulness of the dying declaration remains suspect. It would not be safe to simply reject the probable defence of suicide, to reverse the acquittal and convict the respondents.

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***132. EVIDENCE ACT, 1872 – Sections 45 and 90**

(i) Expert opinion – Nature of – Plaintiff denying her signature on sale deed – Divergent opinions of experts produced by both the parties – Expert opinions are not a binding piece of evidence and have to be corroborated with other pieces of evidence.

(ii) Thirty years old document – Presumption of genuineness – Presumption in favour of 30 years old document is a rebuttable presumption – That can be rebutted by the plaintiff by leading appropriate evidence.

साक्ष्य अधिनियम, 1872 – धाराएं 45 एवं 90

(i) विशेषज्ञ की राय की प्रकृति – वादी ने विक्रय विलेख पर स्वयं का हस्ताक्षर अस्वीकार किया – दोनों पक्ष द्वारा विशेषज्ञ की भिन्न–भिन्न राय प्रस्तुत की गईं – विशेषज्ञ की राय आबद्धकर साक्ष्य नहीं है और उसका सम्पोषण अन्य साक्ष्य से किया जाना चाहिए।

(ii) तीस वर्ष पुराना दस्तावेज – असल होने की उपधारणा – तीस वर्ष पुराने दस्तावेज के पक्ष में उपधारणा एक खण्डनीय उपधारणा है जिसका खण्डन वादी द्वारा युक्तियुक्त साक्ष्य प्रस्तुत करके किया जा सकता है।

Rattan Singh and ors. v. Nirmal Gill and ors. etc.

Judgment dated 16.11.2020 passed by the Supreme Court in Civil Appeal No. 3681 of 2020, reported in AIR 2021 SC 899

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133. EVIDENCE ACT, 1872 – Sections 90, 106 and 114
SPECIFIC RELIEF ACT, 1963 – Section 38

(i) Permanent injunction to restrain defendants from interfering in possession – Defendants did not dispute the title over suit property – Possessory title of plaintiffs established – Held, plaintiffs entitled to permanent injunction.

(ii) Adverse inference – Defendant neitner appeared as witness nor cross-examined – No explanation was furnished for this default – Adverse inference must be drawn against defendant.

(iii) Photocopies of public documents more than 30 years old – Admissibility and reliability – Failure to produce original or certified copies properly explained – Attempt to procure certified copies was unsuccessful as records were not traceable in public office – Photocopies were marked exhibits without any objection – Defendants never questioned the genuineness thereof – Documents produced from proper custody of plaintiffs – Held, documents were admissible and must be presumed to be genuine in the light of Sections 90 and 114 (e) of the Evidence Act.

साक्ष्य अधिनियम, 1872 – धाराएं 90, 106 एवं 114
विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 38

(i) प्रतिवादीगण को कब्जे में हस्तक्षेप करने से रोकने के लिए शाश्वत व्यादेश – प्रतिवादीगण ने वादोक्त संपत्ति के स्वत्व पर विवाद नहीं किया – वादीगण का आधिपत्य के आधार पर स्वत्व स्थापित – अवधारित, वादीगण शाश्वत व्यादेश के अधिकारी हैं।

(ii) प्रतिकूल निष्कर्ष – प्रतिवादी न तो साक्षी के रूप में उपस्थित हुआ और न ही प्रतिपरीक्षित हुआ – इस व्यतिक्रम का कोई स्पष्टीकरण भी नहीं दिया गया – प्रतिवादी के विरुद्ध प्रतिकूल निष्कर्ष निकाला जाना चाहिए।

(iii) 30 वर्ष से अधिक पुराने लोक दस्तावेजों की छायाप्रतियाँ – ग्राह्यता एवं विश्वसनीयता – मूल एवं प्रमाणित प्रतिलिपि प्रस्तुत करने में विफलता को उचित रूप से स्पष्ट किया गया – प्रमाणित प्रतिलिपि प्राप्त करने का प्रयास असफल रहा क्योंकि अभिलेख लोक कार्यालय में नहीं मिले – छायाप्रति को बिना किसी आपत्ति के प्रदर्शित किया गया था – प्रतिवादीगण ने कभी उनकी सत्यता को चुनौती नहीं दी – दस्तावेज वादीगण की उचित अभिरक्षा से पेश किए गए – अभिनिर्धारित, साक्ष्य अधिनियम की धारा 90 और 114 (ई) के आलोक में दस्तावेज ग्राह्य थे और उनके सत्य होने की उपधारणा की जानी चाहिए।

Iqbal Basith and ors. v. N. Subbalakshmi and ors.
Judgment dated 14.12.2020 passed by the Supreme Court in Civil Appeal No. 1725 of 2010, reported in (2021) 2 SCC 718 (Three Judge Bench)

Relevant extracts from the judgment:

The present suit was instituted by the appellants in 1974 seeking permanent injunction as the respondents attempted to encroach on their property. The suit scheduled property was described as No. 44/6. The respondents in their written statement claimed ownership and possession of Property No. 42, acknowledging that other properties lay in between. A feeble vague objection was raised, but not pursued, questioning the title of the appellants. The respondents raised no genuine objection to the validity or genuineness of the government documents and the registered sale deeds produced by the appellants in support of their lawful possession of the suit property. The original Defendant 1 did not appear in person to depose, and be cross-examined in the suit. His younger brother deposed on the basis of a power of attorney, acknowledging that the latter had separated from his elder brother. No explanation was furnished why the original defendant did not appear in person to depose. We find no reason not to draw an adverse inference against Defendant 1 in the circumstances.

x x x

Both the courts then proceeded to consider the title of the appellants to decide lawful possession. The respondents had themselves produced a certified copy of Ext. D-1 dated 7-9-1946. The appellants produced photocopies of all other resolutions, government orders and sale deed in favour of their vendor O.A. Majid Khan by the Municipality. The failure to produce the originals or certified copies of other documents was properly explained as being untraceable after the death of the brother of PW 1 who looked after property matters. The attempt to procure certified copies from the Municipality was also unsuccessful as they were informed that the original files were not traceable. The photocopies were marked as exhibits without objection. The respondents never questioned the genuineness of the same. Despite the aforesaid, and the fact that these documents were more than 30 years old, were produced from the proper custody of the appellants along with an explanation for non-production of the originals, they were rejected without any valid reason holding that there could be no presumption that documents executed by a public authority had been issued in proper exercise of statutory powers. This finding in our opinion is clearly perverse in view of Section 114 Illustration (e) of the Evidence Act, 1872, which provides that there shall be a presumption that all official acts have been regularly performed. The onus lies on the person who disputes the same to prove otherwise.

The appellants were seeking the relief of permanent injunction only. Their title to the suit property was not disputed by the respondents. The respondents acknowledged that they were in ownership and possession of Plot No. 42, which had no concern with the suit property and was situated at a distance of 103 ft with other intervening properties. The two reports of the Pleader Commissioner also confirmed the possessory title of the appellants along with property tax registers and municipal tax receipts. The appellants had more than sufficiently established their lawful possession of the suit property.

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134. HINDU MARRIAGE ACT, 1955 – Section 13-B (2)

Divorce by mutual consent – Cooling period – Cooling period should not be waived unless and until there is a strong possibility of rehabilitation of parties.

हिन्दू विवाह अधिनियम, 1955 – धारा 13–ख (2)

पारस्परिक सहमति से विवाह विच्छेद – पुनर्विचार अवधि – जब तक पक्षकारों के पुनर्वास की ठोस सम्भावना विद्यमान हो पुनर्विचार अवधि का अधित्याग नहीं करना चाहिए।

Bharti Arya v. Rakesh Arya

Order dated 12.02.2021 passed by the High Court of Madhya Pradesh (Bench Gwalior) in M.P. No. 390 of 2021, reported in AIR 2021 MP 61

Relevant extracts from the order:

If the application filed by the petitioner under Section 151 of CPC (should have been under Section 13-B (2) of Hindu Marriage Act) is considered, then it is clear that the parties have a 12 years old daughter. Further, there is nothing in the application that there are chances of alternative rehabilitation. The basic purpose of provisions of Section 13-B (2) of the Hindu Marriage Act is to give an opportunity to the contesting parties to think over their decision to get separated. Although the provisions of Section 13-B (2) of the Hindu Marriage Act is not mandatory but is directory in nature, however, the cooling period should not be waived unless and until there is a strong possibility of rehabilitation of the parties. Every attempt should be made to save the married life. Further, there is nothing in the application that in case if the cooling period is not waived, then it would prolong the agony of the parties. Under these circumstances, this Court is of the considered opinion that the petitioner had failed to make out a strong case for waiver of the cooling period of six months provided under Section 13-B (2) of the Hindu Marriage Act. Accordingly, it is held that the trial court did not commit any mistake by rejecting the application filed u/s 151 of CPC.

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135. INDIAN PENAL CODE, 1860 – Sections 53 and 302

Sentence – Power of trial court – On conviction in a case of murder, the trial court has no power to impose imprisonment for remainder of natural life of accused – Such sentence can be imposed by only High Court or Supreme Court.

भारतीय दण्ड संहिता, 1860 – धाराएं 53 एवं 302

दण्डादेश – विचारण न्यायालय की शक्तियाँ – हत्या से सबंधित प्रकरण में दोषसिद्धि के पश्चात् विचारण न्यायालय को अभियुक्त पर उसके शेष प्राकृतिक जीवन तक का कारावास अधिरोपित करने की शक्ति प्राप्त नहीं है – ऐसा दण्डादेश मात्र उच्च न्यायालय या उच्चतम न्यायालय द्वारा अधिरोपित किया जा सकता है।

Gauri Shankar v. State of Punjab

Judgment dated 16.02.2021 passed by the Supreme Court in Criminal Appeal No. 135 of 2021, reported in (2021) 3 SCC 380

Relevant extracts from the judgment:

The learned counsel for the appellant at this stage submitted that while convicting the accused appellant for offence under Section 302 IPC, he has been sentenced with imprisonment for life which would mean a remainder of natural life which was not in the domain of the trial Court, and this could have been exercised only by the High Court or by this Court. In support of his submission, learned counsel has placed reliance on para 105 and 106 of the Constitution Bench judgment of this Court in ***Union of India v. V. Sriharan @ Murugan and ors., (2016) 7 SCC 1***, which is extracted hereunder:¬

> "105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court.
>
> 106. Viewed in that respect, we state that the ratio laid down in ***Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767*** that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in ***Sangeet v. State of Haryana, (2013) 2 SCC 452*** that the deprival of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same."

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136. INDIAN PENAL CODE, 1860 – Sections 149 and 302
EVIDENCE ACT, 1872 – Sections 45 and 65

(i) Photocopy of document – Admissibility as secondary evidence – Held, a photocopy can be treated as secondary evidence provided one of the conditions enumerated in Section 65 of Evidence Act is satisfied.

(ii) **Expert opinion; veracity of – Normally expert's opinion must be respected – However, expert opinion is not like a gospel truth which needs to be swallowed without examining its truthfulness and veracity – Instantly, medical expert assigned single reason of death i.e. cardio-vascular failure and stated no element of beating – Post mortem report specifically mentioned another reason of death i.e. injuries on person by hard and blunt object – Held, such expert opinion does not inspire confidence.**

भारतीय दण्ड संहिता, 1860 – धाराएं 149 एवं 302

साक्ष्य अधिनियम, 1872 – धाराएं 45 एवं 65

(i) दस्तावेज की छायाप्रति – द्वितीयक साक्ष्य के रूप में ग्राह्यता – अभिनिर्धारित, छायाप्रति द्वितीयक साक्ष्य के रूप में ग्राह्य की जा सकती है, बशर्ते कि धारा 65 साक्ष्य अधिनियम में उल्लिखित शर्तों में से एक पूरी होती हो।

(ii) विशेषज्ञ के अभिमत की विश्वसनीयता – सामान्यतया विशेषज्ञों के अभिमत का सम्मान किया जाना चाहिए – तथापि, विशेषज्ञ का अभिमत कोई वेदवाक्य नहीं है जिसे इसकी सत्यता और विश्वसनीयता का परीक्षण किए बिना स्वीकारना आवश्यक है – हस्तगत मामले में, चिकित्सा विशेषज्ञ ने मृत्यु का एकल कारण हृदयाघात बताया और मारपीट का कोई तत्व नहीं बताया – पोस्टमॉर्टम रिपोर्ट में विशेष रूप से मृत्यु का एक और कारण शरीर पर ठोस व भोथरी वस्तु से चोट आना उल्लेखित था – अभिनिर्धारित, ऐसी विशेषज्ञ साक्ष्य विश्वास उत्पन्न नहीं करती है।

Kuldeep Choudhary @ Kuldeep Yadav and anr. v. State of M.P.
Judgment dated 26.02.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 585 of 2014, reported in 2021 (1) ANJ (MP) 233 (DB)

Relevant extracts from the judgment:

The prosecution intended to establish on the basis of letter/application of Gauri Shankar (PW.4) - Ex.D/1 which is written to the police station regarding intimation of injuries on 29/10/2010. Admittedly, original of this document was not produced before the Court. As per appellants' contention, this is the only document by which prosecution intended to fill the gap and show that Omprakash promptly informed the police regarding beating and injury to deceased Omprakash. The Court below has committed an error in accepting this photocopy as secondary evidence despite objection and in absence of fulfilling the requirement of Section 65 of Evidence Act. We find substance in this contention. A photocopy can be treated as secondary evidence provided one of the clauses/ conditions enumerated in Section 65 of Evidence Act are satisfied. In absence thereof, a photocopy cannot be treated as secondary evidence. Either existence of original to which photocopy is produced must be established or in alternatively, any of other clauses of Section 65 must be satisfied. In the instant case,

prosecution has not satisfied the said requirement and, therefore, we have no hesitation to hold that Court below has erred in accepting the photocopy as secondary evidence.

x x x

So far second contention aforesaid is concerned, it is based on the opinion of a doctor/expert. We are not oblivious of legal position that normally the expert opinion's must be respected. It is equally settled that expert opinion is not like a gospel truth which needs to be swallowed without examining its truthfulness and veracity. Dr. Rajput (PW.29) in his Court statement assigned singular reason of death i.e. cardio vascular failure and went on stating that there was no element of beating by stick etc to Omprakash, otherwise he would have mentioned it in his court statement or in the PM report. When his court statement was tested on the anvil of postmortem report, we found that in his written opinion reduced in writing in PM report, he specifically mentioned another reason of death i.e. injuries on the person of Omprakash caused by hard and blunt object. Dr. Rajput did not mention about this reason in his court statement. Thus, his court statement could neither inspire confidence of Court below nor of this Court.

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137. INDIAN PENAL CODE, 1860 – Sections 153-A, 295-A and 505
CRIMINAL PROCEDURE CODE, 1973 – Sections 154, 156, 162 and 179

(i) Territorial jurisdiction – Place where consequence of act ensued – Alleged derogatory statement made during live debate of a TV show – Audience were located in different parts of India – Held, FIR can be lodged by persons affected by such statements at different places.

(ii) Multiple FIRs of the same incident – Validity of – Held, there can be no second FIR – In such cases, FIR registered first in point of time should be treated as main FIR and all others as statements u/s 162 CrPC.

(iii) "Hate speech" and "controversial speech" – Distinction between – Applicability of sections 153-A, 295-A and 505 (2) IPC – Analysed and explained.

भारतीय दण्ड संहिता, 1860 – धाराएं 153–क, 295–क एवं 505
दण्ड प्रक्रिया संहिता, 1973 – धाराएं 154, 156, 162 एवं 179

(i) प्रादेशिक क्षेत्राधिकार – वह स्थान जहां कृत्य का परिणाम उत्पन्न हुआ – कथित अपमानजनक कथन एक टीवी शो की लाइव बहस के दौरान दिया गया – दर्शक भारत के विभिन्न हिस्सों में थे – अभिनिर्धारित, इस प्रकार के बयानों से प्रभावित व्यक्तियों द्वारा विभिन्न स्थानों पर प्रथम सूचना रिपोर्ट लेखबद्ध कराई जा सकती है।

(ii) एक ही घटना की कई प्रथम सूचना रिपोर्ट – वैधता – अभिनिर्धारित, कोई दूसरी प्रथम सूचना रिपोर्ट नहीं हो सकती है – ऐसे मामलों में, पहले दर्ज की गई

प्रथम सूचना रिपोर्ट को मुख्य प्रथम सूचना रिपोर्ट और अन्य सभी को धारा 162 द.प्र.सं. के अधीन कथन माना जाना चाहिए।

(iii) ''घृणास्पद भाषण'' और ''विवादास्पद भाषण'' – विभेद – धारा 153–क, 295–क और 505 (2) भा.द.सं. की प्रयोज्यता – विश्लेषित एवं समझाई गई।

Amish Devgan v. Union of India and ors.

Judgment dated 07.12.2020 passed by the Supreme Court in Writ Petition (Crl.) No. 160 of 2020, reported in (2021) 1 SCC 1

Relevant extracts from the judgment:

We reject the contention of the petitioner that criminal proceedings arising from the impugned FIRs ought to be quashed as these FIRs were registered in places where no "cause of action" arose. Section 179 of the Criminal Procedure Code provides that an offence is triable at the place where an act is done or its consequence ensues.

The debate-show hosted by the petitioner was broadcast on a widely viewed television network. The audience, including the complainants, were located in different parts of India and were affected by the utterances of the petitioner; thus, the consequence of the words of the petitioner ensued in different places, including the places of registration of the impugned FIRs.

Further, sub-section (1) of Section 156 of the Criminal Procedure Code provides that any officer in charge of a police station may investigate any cognizable case which a court having jurisdiction over the local limits of such station would have the power to inquire into or try. Thus, a conjoint reading of Sections 179 and 156(1) of the Criminal Procedure Code make it clear that the impugned FIRs do not suffer from this jurisdictional defect.

x x x

It could be correct to say that Section 295-A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295-A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, sub-section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, caste, etc. feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

In ***Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431***, this Court had drawn a distinction between sub-section (2) of Section 505 and clause (a) of Section 153-A(1) of the Penal Code observing that publication is not necessary in the latter while it is sine qua non under sub-section (2) of Section 505. Sub-section (2) of Section 505 of the Penal Code cannot be interpreted disjunctively and the words "whosoever makes, publishes or circulates" are supplemented to each other. The intention of the legislature in providing two different sections on the same subject vide single amending Act would show that they cover two different fields of same colour.

In the context of "hate speech", including the offences related to promoting disharmony or feelings of enmity, hatred or ill-will, and insulting the religion or the religious beliefs, it would certainly require the actual utterance of words or something more than thought which would constitute the content. Without actual utterance, etc. it would be mere thought, and thoughts without overt act is not punishable. In the case of "publication", again a mere thought would not be actionable, albeit whether or not there is an attempt to "publish" would depend on facts. The impugned act should be more than mere preparation and reasonably proximate to the consummation of the offence, which has been interrupted. The question of intent would be relevant. On the question of the harm's element, same test and principle, as applicable in the case of "likely" would apply, except for the fact that for intervening reasons or grounds public disorder or violence may not have taken place.

x x x

We would now examine the second prayer of the petitioner viz. multiplicity of FIRs being registered in the States of Rajasthan, Maharashtra, Telangana, and Madhya Pradesh (now transferred to Uttar Pradesh) relating to the same broadcast. Fortunately, both the sides agree that the issue is covered by the decision of this Court in ***T.T. Antony v. State of Kerala, (2001) 6 SCC 181*** which is to the effect that the subsequent FIRs would be treated as statements under Section 162 of the Criminal Code.

This would be fair and just to the other complainants at whose behest the other FIRs were caused to be registered, for they would be in a position to file a protest petition in case a closure/final report is filed by the police. Upon filing of such protest petition, the magistrate would be obliged to consider their contention(s), and may even reject the closure/final report and take cognizance of the offence and issue summons to the accused. Otherwise, such complainants would face difficulty in contesting the closure report before the Magistrate, despite and even if there is enough material to make out a case of commission of an offence.

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138. INDIAN PENAL CODE, 1860 – Sections 153-A and 505

Promoting class hatred – Facebook post disapprobating governmental inaction cannot be branded as an attempt to promote hatred between different communities.

भारतीय दण्ड संहिता, 1860 – धाराएं 153–क एवं 505

वर्ग के प्रति घृणा को बढ़ावा देना – सरकारी निष्क्रियता की निंदा करने वाली फेसबुक पोस्ट को विभिन्न समुदायों के बीच घृणा को बढ़ावा देने के प्रयास के रूप में ब्रांडेड नहीं किया जा सकता है।

Patricia Mukhim v. The State of Meghalaya

Judgment dated 25.03.2021 passed by the Supreme Court in Criminal Appeal No. 141 of 2021, reported in 2021 (1) ANJ (SC) 299

Relevant extracts from the judgment:

A close scrutiny of the Facebook post would indicate that the agony of the appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The appellant referred to the attacks on nontribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against non-tribals in the State of Meghalaya. However, the appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the appellant to promote class/community hatred. As there is no attempt made by the appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153-A and 505 (1) (c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed.

Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. The sequitur of above analysis of the Facebook post made by the appellant is that no case is made out against the appellant for an offence under Section 153-A and 505 (1) (c) IPC.

●

139. INDIAN PENAL CODE, 1860 – Sections 300 Fourthly, 376 (2) and 376-A
PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 – Section 6
CRIMINAL LAW (AMENDMENT) ACT, 2013
CRIMINAL LAW (AMENDMENT) ORDINANCE, 2013
CONSTITUTION OF INDIA – Article 20 (1)

(i) Rape and murder – Applicability of section 300 Fourthly in cases of rape which involves death of victim – Held, intention to cause death is not necessary to attract section 300 Fourthly – Its applicability depends upon the knowledge that can be attributed to the accused – If the callousness towards the result and the risk taken is such that the knowledge is attributable to accused that the act is likely to cause death or such bodily injury as is likely to cause death, section 300 Fourthly will get attracted.

(ii) Rape and murder – Victim being child aged 2½ years – Considering the age of victim, accused must have known the consequence that his sexual assault will cause her death or such bodily injury as was likely to cause her death – Held, section 300 Fourthly is attracted.

(iii) Applicability of section 376 (2) and 376-A IPC as amended by 2013 Amendment Ordinance (from 03.03.2013 to 01.04.2013) and 2013 Amendment Act which received Presidential assent on 02.04.2013 but came into force retrospectively on 03.02.2013 – Held, section 376-A being identical in both Ordinance and Act of 2013, it is applicable from 03.02.2013 – However, section 376 (2) was amended by 2013 Amendment Act to include "imprisonment for the remainder of that person's natural life" in "life imprisonment", which was not there till 02.04.2013 – Therefore, section 376 (2) as amendment by 2013 Amendment Act is not applicable to offences committed between 03.02.2013 and 01.04.2013 being violative of Article 20 (1).

(iv) Death sentence – Imposition in cases based on circumstantial evidence – Held, not impermissible – The question of sentence is not to be determined on the basis of volume or character of evidence, but with reference to any extenuating circumstances which can be said to mitigate the enormity of the crime – Where death sentence is to be imposed on the basis of circumstantial evidence, the same must be of unimpeachable character and leads to an exceptional case.

(v) Theory of 'residual doubt' – Applicability in India – Held, such theory does not have any place in cases based on circumstantial evidence.

भारतीय दण्ड संहिता, 1860 – धाराएं 302 चतुर्थ, 376 (2) एवं 376–क
लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012 – धारा 6
आपराधिक विधि (संशोधन) अधिनियम, 2013
आपराधिक विधि (संशोधन) अध्यादेश, 2013
भारत का संविधान – अनुच्छेद 20 (1)

(i) बलात्कार और हत्या – बलात्कार के मामलों में जहां पीड़ित की मृत्यु हो जाती है, धारा 300 चतुर्थ का लागू होना – अभिनिर्धारित, धारा 300 चतुर्थ लागू होने के लिए मृत्यु कारित करने का आशय आवश्यक नहीं है – इसकी प्रयोज्यता उस ज्ञान पर निर्भर करती है जिससे अभियुक्त को संयोजित किया जा सकता है – यदि परिणाम के प्रति निष्ठुरता और उसके लिए लिया गया जोखिम ऐसा है कि अभियुक्त को ऐसे ज्ञान से संयोजित किया जा सके कि उसके कृत्य से मृत्यु या ऐसी शारीरिक क्षति की संभावना है जिससे मृत्यु होना संभाव्य हो, तो धारा 300 चतुर्थ आकर्षित होगी।

(ii) बलात्कार और हत्या – पीड़िता ढाई वर्षीय बच्ची थी – पीड़िता की आयु को देखते हुए अभियुक्त को यह परिणाम ज्ञात होना चाहिए था कि उसके यौन हमले से पीड़िता की मृत्यु हो जाएगी या ऐसी शारीरिक क्षति कारित होगी जिससे उसकी मृत्यु संभाव्य है – धारा 300 चतुर्थ आकर्षित होती है।

(iii) 2013 के संशोधन अध्यादेश (03.02.2013 से 01.04.2013 तक) एवं 2013 के संशोधन अधिनियम जिसे 02.04.2013 को राष्ट्रपति की स्वीकृति मिली परन्तु दिनांक 03.02.2013 को भूतलक्षी प्रभाव से लागू, द्वारा संशोधित भा.द.सं. की धारा 376 (2) और 376–क की प्रयोज्यता – अभिनिर्धारित, धारा 376–क 2013 के अध्यादेश और अधिनियम दोनों में समान है, यह 03.02.2013 से लागू है – वहीं, धारा 376 (2) को 2013 के संशोधन अधिनियम द्वारा संशोधित कर ''आजीवन कारावास'' में ''उस व्यक्ति के शेष प्राकृतिक जीवन का कारावास'' को सम्मिलित किया गया जो 02.04.2013 तक नहीं था – इसलिए, 2013 के संशोधन अधिनियम द्वारा संशोधित धारा 376 (2) अनुच्छेद 20 (1) का उल्लंघन करने के कारण दिनांक 03.02.2013 से 01.04.2013 के मध्य किए गए अपराधों पर लागू नहीं होगी।

(iv) परिस्थितिजन्य साक्ष्य पर आधारित मामलों में मृत्यु दण्ड की प्रयोज्यता – अभिनिर्धारित, इस पर कोई रोक नहीं है – दण्ड का प्रश्न साक्ष्य की मात्रा या चरित्र के आधार पर निर्धारित नहीं किया जाना है, अपितु किन्हीं गंभीरता कम करने वाली परिस्थितियों के संदर्भ में जिससे अपराध की भयावहता कम होती हो, किया जाना चाहिए – जहां परिस्थितिजन्य साक्ष्य के आधार पर मृत्यु दण्ड अधिरोपित किया जाना हो, वहां ऐसी साक्ष्य अभेद्य चरित्र की होते हुए एक असाधारण मामले को प्रकट करनी चाहिए।

(v) 'अवशिष्ट संदेह' का सिद्धांत – भारत में प्रयोज्यता – अभिनिर्धारित, इस सिद्धांत का परिस्थितिजन्य साक्ष्य पर आधारित मामलों में कोई स्थान नहीं है।

Shatrughna Baban Meshram v. State of Maharashtra
Judgment dated 02.11.2020 passed by the Supreme Court in Criminal Appeal No. 763 of 2016, reported in (2021) 1 SCC 596 (Three Judge Bench)

Relevant extracts from the judgment:

The guiding principles were summed up in ***State of M.P. v. Ram Prasad, (1968) 2 SCR 522*** to the effect that even if there be no intention to cause death, "if there is such callousness towards the result and the risk taken is such that it may be stated that the person knows that the act is likely to cause death or such bodily injury as is likely to cause death" clause Fourthly of Section 300 IPC will get attracted and that the offender must be taken to have known that he was running the risk of causing the death or such bodily injury as was likely to cause the death of the victim.

Considering the age of the victim in the present case, the accused must have known the consequence that his sexual assault on a child of 2½ years would cause death or such bodily injury as was likely to cause her death. The instant matter thus comes within the parameters of clause Fourthly to Section 300 IPC.

x x x

If the abovementioned provisions of IPC are considered in three compartments, that is to say,

(A) The situation obtaining before 3-2-2013;

(B) The situation in existence during 3-2-2013 to 2-4-2013; and,

(C) The situation obtaining after 2-4-2013;

following features emerge:

1. The offence under Section 375, as is clear from the definition of relevant provision in compartment (A), could be committed against a woman. The situation was sought to be changed and made gender neutral in compartment (B). However, the earlier position now stands restored as a result of provisions in compartment (C).

2. As a result of the Ordinance, the sentences for offences under Sections 376 (1) and 376 (2) were retained in the same fashion. However, a new provision in the form of Section 376-A was incorporated under which, if while committing an offence punishable under sub-section (1) or sub-section (2) of Section 376, a person "inflicts an injury which causes the death" of the victim, the accused could be punished with rigorous imprisonment for a term "which shall

not be less than 20 years but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life or with death". Thus, for the first time, death sentence could be imposed if a fatal injury was caused during the commission of offence under sub-section (1) or (2) of Section 376.

3. Though the provisions of the Amendment Act restored the original non gender-neutral position vis-à-vis the victim, it made certain changes in sub-section (2) of Section 376. Now, the punishment for the offence could be rigorous imprisonment for not less than ten years which could extend to imprisonment for life, "which shall mean imprisonment for the remainder of that person's natural life". It was, thus, statutorily made clear that the imprisonment for life would mean till the last breath of that person's natural life.

4. Similarly, by virtue of the Amendment Act, for the offence under Section 376-A, the punishment could not be less than 20 years which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

In the instant case, the offence was committed on 11-2-2013 when the provisions of the Ordinance were in force. However, the Amendment Act having been given retrospective effect from 3-2-2013, the question arises whether imposition of life sentence for the offence under Section 376 (2) could "mean imprisonment for the remainder of that person's natural life".

In the present case, since the victim was about two-and-a-half years of age at the time of incident and since it was the Ordinance which was holding the field, going by the provisions of the Ordinance, clauses (f), (h) and (l) of Section 376 (2) would get attracted. The comparable provisions of Section 376 (2) as amended by the Amendment Act would be, clauses (f), (i) and (m) respectively. As the substantive penal provisions under clauses (f), (h) and (l) as inserted by the Ordinance and clauses (f), (i) and (m) as inserted by the Amendment Act are identical, no difficulty on that count is presented. But the sentence prescribed by Section 376 (2) as amended by the Amendment Act, has now, for the first time provided that the imprisonment for life "shall mean imprisonment for the remainder of that person's natural life". This provision comes with retrospective effect and in a situation where such prescription was not available on the statute when the offence was committed, the question arises whether such ex-post facto prescription would be consistent with the provisions of clause (1) of Article 20 of the Constitution.

An imposition of life sentence simpliciter does not put any restraints on the power of the executive to grant remission and commutation in exercise of its statutory power, subject of course to Section 433-A of the Code. But, a statutory prescription that it "shall mean the remainder of that person's life" will certainly restrain the executive from exercising any such statutory power and to that extent

the provision concerned definitely prescribes a higher punishment ex-post facto. In the process, the protection afforded by Article 20(1) of the Constitution would stand negated. We must, therefore, declare that the punishment under Section 376 (2) IPC in the present case cannot come with stipulation that the life imprisonment "shall mean the remainder of that person's life". Similar prescription in Section 6 of the POCSO Act, which came by way of amendment in 2019, would not be applicable and the governing provision for punishment for the offence under the POCSO Act must be taken to be the pre-amendment position as noted hereinabove.

x x x

The question of sentence must be determined not with reference to the volume or character of the evidence on record but with reference to the circumstances which mitigate the enormity of the crime and that the nature of proof can have bearing upon the question of sentence and not with the question of punishment.

It can therefore be summed up:

1. It is not as if imposition of death penalty is impermissible to be awarded in circumstantial evidence cases.
2. If the circumstantial evidence is of an unimpeachable character in establishing the guilt of the accused and leads to an exceptional case or the evidence sufficiently convinces the judicial mind that the option of a sentence lesser than death penalty is foreclosed, the death penalty can be imposed.

x x x

When it comes to cases based on circumstantial evidence in our jurisprudence, the standard that is adopted in terms of law laid down by this Court as noticed in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116*** and subsequent decisions is that the circumstances must not only be individually proved or established, but they must form a consistent chain, so conclusive as to rule out the possibility of any other hypothesis except the guilt of the accused. On the strength of these principles, the burden in such cases is already of a greater magnitude. Once that burden is discharged, it is implicit that any other hypothesis or the innocence of the accused, already stands ruled out when the matter is taken up at the stage of sentence after returning the finding of guilt. So, theoretically the concept or theory of "residual doubt" does not have any place in a case based on circumstantial evidence. As a matter of fact, the theory of residual doubt was never accepted by the US Supreme Court as discussed earlier.

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140. INDIAN PENAL CODE, 1860 – Sections 300 Exception 4, 302 and 304 Part I

EVIDENCE ACT, 1872 – Section 3

When culpable homicide is not murder? There was a sudden quarrel with respect to money and the accused pushed the deceased and stood on the abdomen which resulted into internal injuries – Deceased was admitted to the hospital after 24 hours and thereafter, he died within three days due to septicaemia – Therefore, the case would fall under Exception 4 to Section 300 IPC – Conviction of accused modified to Section 304 Part-I.

भारतीय दण्ड संहिता, 1860 – धाराएं 300 अपवाद 4, 302 एवं 304 भाग एक

साक्ष्य अधिनियम, 1872 – धारा 3

आपराधिक मानववध कब हत्या नहीं है? पैसे को लेकर अचानक झगड़ा हुआ और अभियुक्त मृतक को धक्का देकर उसके पेट पर चढ़ गया जिसकी परिणिति आंतरिक चोटों के रूप में हुई, मृतक को 24 घंटों के बाद अस्पताल में भर्ती कराया गया और तीन दिवस के अंदर सेप्टिसीमिया के कारण उसकी मृत्यु हुई – इस प्रकार प्रकरण धारा 300 भा.द.सं. के चौथे अपवाद के अंतर्गत होगा – अभियुक्त की दोषसिद्धि धारा 304 भाग I में परिविर्तित की गई।

Khokan alias Khokhan Vishwas v. State of Chhattisgarh

Judgment dated 11.02.2021 passed by the Supreme Court in Criminal Appeal No. 121 of 2021, reported in 2021 CriLJ 1324

Relevant extracts from the judgment:

There is no evidence that there was any premeditation on the part of the Accused. Considering the case of the prosecution as it is and as observed hereinabove, there was a sudden quarrel with respect to money and the Accused pushed the deceased and stood on the abdomen in the heat of passion upon a sudden quarrel. Therefore, the case would fall under exception 4 to Section 300 IPC. As per explanation to exception 4 to Section 300 Indian Penal Code, it is immaterial in such cases which party offers the provocation or commits the first assault. Therefore, both the courts below have materially erred in holding the Appellant-Accused guilty for the offence punishable Under Section 302 Indian Penal Code. According to us, at the most, it can be said that the appellant-accused has committed the offence Under Section 304-I Indian Penal Code.

However, at the same time, it is also required to be noted that the deceased was admitted to the hospital after 24 hours and thereafter he died within three days due to septicaemia. If he was given the treatment immediately, the result might have been different. In any case, as observed hereinabove, there was no premeditation on the part of the accused; the accused did not carry any weapon;

quarrel started all of a sudden and that the accused pushed the deceased and stood on the abdomen and therefore, as observed hereinabove, the case would fall under exception 4 to Section 300 IPC and neither clause 3 of Section 300 nor clause 4 of Section 300 shall be attracted. Therefore, as observed hereinabove, at the most, the accused can be said to have committed the offence under Section 304-I, IPC.

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141. INDIAN PENAL CODE, 1860 – Sections 302, 304 and 498-A
EVIDENCE ACT, 1872 – Section 32

(i) Multiple dying declarations – Appreciation of – In the second dying declaration, the deceased has explained her first statement that at the time of giving first statement that it was a case of accident, she was given threats by the original accused that he will kill her children also – Second dying declaration is supported by circumstances, namely, injuries sustained by the deceased – Held, second dying declaration rightly belived.

(ii) Murder or culpable homicide not amounting to murder – Determination of – It emerges from the evidence on record that the accused not only poured kerosene on the deceased but also set her ablaze by matchstick – Merely because the accused poured water to extinguish the fire, will not reduce the offence of murder to culpable homicide not amounting to murder – The act of the accused falls in clause Fourthly of section 300 IPC – Accused rightly convicted for the offence u/s 302 of IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 302, 304 एवं 498–क
साक्ष्य अधिनियम, 1872 – धारा 32

(i) एक से अधिक मृत्युकालिक कथन – मूल्यांकन – द्वितीय मृत्युकालिक कथन में मृतका ने पूर्व कथन को स्पष्ट किया कि जब वह प्रथम कथन दे रही थी कि प्रकरण दुर्घटना से संबंधित, है उसे मुख्य अभियुक्त के द्वारा धमकी दी गई थी कि वह उसके बच्चों को भी मार देगा – द्वितीय मृत्युकालिक कथन परिस्थितियों, जिनमें मृतिका को कारित उपहतियाँ भी नामित हैं, से समर्थित था – अभिनिर्धारित, द्वितीय मृत्युकालिक कथन पर ठीक ही विश्वास किया गया।

(ii) हत्या या आपराधिक मानववध जो हत्या नहीं है – निर्धारण – अभिलेख पर उपलब्ध साक्ष्य से प्रकट होता है कि अभियुक्त ने न केवल मृतका के शरीर पर घासलेट उड़ेला अपितु माचिस से आग भी लगाई – इसके बाद अभियुक्त द्वारा आग बुझाने के लिये पानी डालने का कृत्य हत्या के अपराध को आपराधिक मानववध जो हत्या की श्रेणी में नहीं आता है, के रूप में लघुकृत नहीं करता है – अभियुक्त का कृत्य भा.द.सं. की धारा 300 के चतुर्थ खण्ड के अंतर्गत है – अभियुक्त को धारा 302 भा.द.सं. के तहत उचित रूप से दोषसिद्ध किया गया।

Nagabhushan v. State of Karnataka

Judgment dated 08.03.2021 passed by the Supreme Court in Criminal Appeal No. 443 of 2020, reported in 2021 CriLJ 1606

Relevant extracts from the judgment:

The High Court has taken note of the fact that in the second dying declaration, the deceased has explained her first statement that it was a case of accident and she categorically stated in the second dying declaration that at the time when she gave first statement that it was a case of accident, she was given threats by the Appellant herein-original Accused No. 1 that he will kill her children also. She also stated in the second dying declaration that after her parents came, she got the courage to tell the truth. Therefore, as such, the High Court rightly believed the second dying declaration - Exhibit P5.

The act of the accused falls in clause fourthly of Section 300 IPC. It emerges from the evidence on record that the accused poured kerosene on the deceased and not only poured kerosene but also set her ablaze by the matchstick. Merely because thereafter the A1 might have tried to extinguish the fire, that will not bring the case out of clause fourthly of Section 300 IPC.

When there is clear evidence as to the act of the Accused to set the deceased on fire, absence of premeditation will not reduce the offence of murder to culpable homicide not amounting to murder. Likewise, pouring of water will not mitigate the gravity of the offence.

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142. INDIAN PENAL CODE, 1860 – Sections 363 and 366

EVIDENCE ACT, 1872 – Section 3

Kidnapping – Consent of minor – Effect – It is suggested that victim was aware of the full purport of her actions or that she possessed the mental faculties and maturity to take care of herself – Held, the consent of the minor would be no defence to a charge of kidnapping – No fault can thus be found with the conviction of the appellant u/s 366 of IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 363 एवं 366

साक्ष्य अधिनियम, 1872 – धारा 3

अपहरण – अवयस्क की सहमति – प्रभाव – यह सुझाव दिया गया कि पीड़िता अपने कार्य के प्रति पूर्ण रूप से जागरुक थी अथवा वह स्वयं की देखरेख के लिए मानसिक रूप से सक्षम और परिपक्व थी – अभिनिर्धारित, अवयस्क की सहमति अपहरण के आरोप में कोई प्रतिरक्षा नहीं होगी – इस प्रकार अभियुक्त को धारा 366 भा.द.सं. के अंतर्गत दोषसिद्ध किए जाने में कोई भूल नहीं मानी जा सकती।

Anversinh alias Kiransinh Fatesinh Zala v. State of Gujarat
Judgment dated 12.01.2021 passed by the the Supreme Court in Criminal Appeal No. 1919 of 2010, reported in 2021 CriLJ 917 (Three Judge Bench)

Relevant extracts from the judgment:

Unfortunately, it has not been the appellant's case that he had no active role to play in the occurrence. Rather the eye¬witnesses have testified to the contrary which illustrates how the appellant had drawn the prosecutrix out of the custody of her parents. Even more crucially, there is little to suggest that she was aware of the full purport of her actions or that she possessed the mental acuities and maturity to take care of herself. In addition to being young, the prosecutrix was not much educated. Her support of the prosecution version and blanket denial of any voluntariness on her part, even if presumed to be under the influence of her parents as claimed by the appellant, at the very least indicates that she had not thought her actions through fully.

It is apparent that instead of being a valid defence, the appellant's vociferous arguments are merely a justification which although evokes our sympathy, but can't change the law. Since the relevant provisions of the IPC cannot be construed in any other manner and a plain and literal meaning thereof leaves no escape route for the appellant, the Courts below were seemingly right in observing that the consent of the minor would be no defence to a charge of kidnapping. No fault can thus be found with the conviction of the Appellant under Section 366 of Indian Penal Code.

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143. INDIAN PENAL CODE, 1860 – Sections 376 and 506
EVIDENCE ACT, 1872 – Sections 3 and 45
Sexual Assault – Mental sickness of victim – Effect – It has been established and proved that the victim was mentally retarded and she was not in a position to understand the good and bad aspect of sexual assault – The accused has taken advantage of the mental sickness and low IQ of the victim – Therefore, even if there might be some contradictions with respect to language known by the victim, in that case also, it cannot be said to be the major contradictions to disbelieve the entire medical evidence on the mental status of the victim – Case would fall u/s 375 IPC and accused is rightly convicted for the offence u/s 376 IPC.

भारतीय दण्ड संहिता, 1860 – धाराएं 376 एवं 506

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 45

लैंगिक हमला – पीड़िता की मानसिक रुग्णता – प्रभाव – यह स्थापित एवं प्रमाणित किया गया कि पीड़िता मानसिक रूप से निःशक्त थी और वह इस स्थिति में नहीं थी कि लैंगिक हमले के अच्छे एवं बुरे प्रभाव को समझ सके – अभियुक्त ने पीड़िता की

मानसिक रुग्णता एवं कम बौद्धिक स्तर का अनुचित लाभ लिया – अतः यदि पीड़िता द्वारा जानने योग्य भाषा को लेकर कुछ विरोधाभास हों तो भी यह नहीं कहा जा सकता कि वह इतने तात्विक विरोधाभास हैं जो पीड़िता की मानसिक अवस्था के संबंध में सम्पूर्ण चिकित्सकीय साक्ष्य को अविश्वसनीय बना देते हैं – प्रकरण भा.द.सं. की धारा 375 के अंतर्गत आयेगा और अभियुक्त को धारा 376 भा.द.सं. के तहत उचित ही दोषसिद्ध किया गया।

Chaman Lal v. State of Himachal Pradesh

Judgment dated 03.12.2020 passed by the Supreme Court in Criminal Appeal No. 1229 of 2017, reported in 2021 CriLJ 646 (Three Judge Bench)

Relevant extracts from the judgment:

So far as the merit of the appeal is concerned, on re-appreciation of the entire evidence on record, more particularly the deposition of doctors examined as PW11-Dr. Ramesh Kumar and PW22-Dr. Rama Malhotra, the High Court has specifically found that the IQ of the victim was 62 which was based on the history and mental state examination of the victim. The High Court has also come to the conclusion that the victim was not in a position to understand the good and bad aspect of the sexual assault. Merely because the victim was in a position to do some household works cannot discard the medical evidence that the victim had mild mental retardation and she was not in a position to understand the good and bad aspect of sexual assault. It appears that the Accused had taken advantage of the mental illness of the victim. It is required to be appreciated coupled with the fact that the Accused is found to be the biological father of the baby child delivered by the victim. Despite the above, in his 313 statement the case of the Accused was of a total denial. It was never the case of the Accused that it was a case of consent. Therefore, considering the evidence on record, more particularly the deposition of PW11 and PW22 and even the deposition of the other prosecution witnesses, the High Court has rightly observed that case would fall Under Section 375 Indian Penal Code and has rightly convicted the Accused for the offence Under Section 376 Indian Penal Code. Even as per Clause fifthly of Section 375 Indian Penal Code, “a man is said to commit rape”, if with her consent when, at the time of giving such consent, by reason of unsoundness of mind, is unable to understand the nature and consequences of that to which she gives consent. As observed hereinabove, even it is not the case on behalf of the Accused that it was a case of consent. On evidence, it has been established and proved that the victim was mentally retarded and her IQ was 62 and she was not in a position to understand the good and bad aspect of sexual assault. The Accused has taken advantage of the mental sickness and low IQ of the victim.

Now so far as the submission on behalf of the Accused that there are contradictions in the statement of PW11-Dr. Ramesh Kumar and PW22-Dr. Rama

Malhotra that she was not knowing 'Hindi' and that she was only knowing 'Phari' and therefore in view of such contradictions the benefit of doubt must go in favour of the Accused is concerned, the aforesaid aspect has been explained by PW22 in her cross-examination. In the cross-examination, PW22-Dr. Rama Malhotra has specifically stated that the language is not material in the tests because these are independent of language. From the medical evidence, it emerges that IQ 62 falls in the category of 'mild mental retardation'. It has also emerged that the mental status and IQ are determined on the basis of the injuries and activities. IQ of a person can be known on the basis of the questions, activities and the history of a patient. Therefore, even if there might be some contradictions with respect to language known by the victim, in that case also, it cannot be said to be the major contradictions to disbelieve the entire medical evidence on the mental status of the victim. Therefore, the High Court is justified in reversing the order of acquittal and convicting the Accused for the offences Under Sections 376 & 506 Indian Penal Code.

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144. INDIAN PENAL CODE, 1860 – Sections 376 (2) and 376-D
EVIDENCE ACT, 1872 – Section 114-A
CRIMINAL LAW (AMENDMENT) ACT, 2013
Presumption of absence of consent – Gang rape – Whether such presumption contained in section 114-A Evidence Act is applicable to the newly inserted section 376-D IPC relating to gang rape? Held, No – New provision of section 376 (2) IPC leaves out gang rape and new provision of section 376-D IPC has no mention in section 114-A Evidence Act – Thus, after 03.02.2013 section 114-A has no application to the offence of gang rape.

भारतीय दण्ड संहिता, 1860 – धाराएं 376 (2) एवं 376–घ
साक्ष्य अधिनियम, 1872 – धारा 114–क
आपराधिक विधि (संशोधन) अधिनियम, 2013
सहमति के अभाव की उपधारणा – सामूहिक दुष्कर्म – क्या साक्ष्य अधिनियम की धारा 114–क में निहित ऐसी उपधारणा सामूहिक दुष्कर्म से संबंधित नवीन धारा 376–घ भा.द.सं. पर लागू होती है? अभिनिर्धारित, नहीं – धारा 376 (2) भा.द.सं. के नवीन प्रावधान में सामूहिक दुष्कर्म शामिल नहीं है और धारा 376–घ भा.द.सं. के नए प्रावधान का धारा 114–क साक्ष्य अधिनियम में कोई उल्लेख नहीं है – इस प्रकार, दिनांक 03.02.2013 के पश्चात् धारा 114–क की कोई प्रयोज्यता सामूहिक दुष्कर्म के अपराध में नहीं है।

Ratanlal v. State of M.P.
Order dated 28.01.2021 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Appeal No. 333 of 2015, reported in 2021 (1) ANJ (MP) 248 (DB)

Relevant extracts from the order:

The new provision of section 376(2) of the IPC leaves out the offence of gang rape and the offence of gang rape has been mentioned separately under Section 376-D.

The aforesaid Section 376-D has also been in corporated by the Act 13 of 2013.

However, the presumption clause under Section 114-A of the Evidence Act is attracted only in case of offences reflected in Section 376 (2) of IPC which incidentally now does not contain gangrape. At the cost of repetition, in an offence of gang rape, the presumption clause under Section 114-A was attracted prior to 03.02.2013, but has ceased to apply in case of gang rape after 03.02.2013. It may be an oversight on the part of legislature in not mentioning the applicability of this presumption clause in an offence of gang rape which is much more serious offence than an offence under Section 376 simplicitor.

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***145. INTERPRETATION OF STATUTES:**

"Association of persons" – Meaning explained – It is necessary that persons band together with some business or commercial object in order to make income or profit.

संविधियों का निर्वचन

''व्यक्तियों का संघ'' – अर्थ समझाया गया – यह आवश्यक है कि व्यक्ति आय या लाभ कमाने के लिए किसी व्यवसाय अथवा वाणिज्यिक उद्देश्य के साथ जुड़ते हैं।

Bangalore Club v. Commissioner of Wealth Tax and anr.

Judgment dated 08.09.2020 passed by the Supreme Court in Civil Appeal No. 3964 of 2007, reported in 2021 (2) MPLJ 6 (Three Judge Bench)

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146. LIMITATION ACT, 1963 – Section 5

Steep rise in Covid-19 cases – Period of limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, have been extended till further orders – Further, periods of limitation for instituting proceedings under Arbitration and Conciliation Act, 1996, Commercial Courts Act, 2015 and Negotiable Instruments Act, 1881 as well as any other laws also extended from 14th March, 2021 till further orders.

परिसीमा अधिनियम, 1963 – धारा 5

कोविड–19 मामलों में तेजी से वृद्धि – सभी न्यायिक या अर्ध–न्यायिक कार्यवाईयों के संबंध में किसी भी सामान्य या विशेष विधि द्वारा निर्धारित परिसीमा काल, चाहे वह क्षमा करने योग्य हो अथवा नहीं, आगामी आदेश तक विस्तारित किया गया – इसके अतिरिक्त माध्यस्थम एवं सुलह अधिनियम, 1996, वाणिज्यिक न्यायालय अधिनियम, 2015 तथा परक्राम्य लिखत अधिनियम, 1881 के साथ–साथ किसी भी अन्य विधि के अधीन कार्यवाही प्रारंभ करने हेतु प्राविधित परिसीमा काल भी दिनांक 14 मार्च, 2021 से आगामी आदेश तक विस्तारित कर दिया गया है।

In Re Cognizance for Extention of Limitation

Order dated 27.04.2021 passed by the Supreme Court of India in Suo Motu Writ Petition (Civil) No. 3 of 2020, 2021 Law Suit SC 295 (Three Judge Bench)

Relevant extracts from the order:

The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant–public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

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147. MOTOR VEHICLES ACT, 1988 – Section 166

Compensation – Death of unborn child – For the loss of 7 month foetus in a road accident by the woman, at least ₹ 2,50,000/- should be awarded by the tribunal as compensation in such type of death.

मोटरयान अधिनियम, 1988 – धारा 166

प्रतिकर – अजन्मे बच्चे की मृत्यु – एक सड़क दुर्घटना में महिला को 7 माह के भ्रूण की हानि पर अधिकरण को कम से कम ₹ 2,50,000/– प्रतिकर के रूप में अधिनिर्णीत किया जाना चाहिए।

Radheshyam and another v. Rajendra and ors.

Judgment dated 17.02.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 1199 of 2019, reported in 2021 ACJ 808

Relevant extracts from the judgment:

Having heard the learned counsel for the parties and on perusal of the record it is noticed that the finding of the tribunal that in the accident 7 month's old child in the womb of appellant no.2 had died, is not in dispute. The only dispute is in respect of amount of compensation which is to be awarded in such a case.

Supreme court in the matter of ***National Insurance co. Ltd. v. Kusuma and anr., 2011 ACJ 2432*** in a case of death of unborn child when the woman was 30 weeks pregnant, had awarded the compensation of ₹ 1,80,000/-. This court also in the matter of ***Shraddha v. Badresh and ors., 2006 ACJ 2067*** in the case of death of 7 month's old child in the womb, has awarded the compensation of ₹ 2,50,000/-. Delhi High court in the matter of ***Prakash and others v. Arun Kumar Saini and ors. 2010 ACJ 2184*** in a case where the unborn child aged 5 months, has awarded compensation of ₹ 2,50,000/-

Having regard to the aforesaid judgments and also considering the fact that the case of present appellants stands on the same footing as that of judgment of this Court in the case of ***Shraddha*** (supra) and judgment of Delhi High court in the case of ***Prakash*** (supra), I am of the opinion that the compensation which has been awarded by the tribunal for the death of 7 months' unborn child is on the lower side and the same deserves to be enhanced.

●

148. MOTOR VEHICLES ACT, 1988 – Section 166

Notional income – Determination – In a case of labourer's death, daily wages shown in circular/notification issued by the Labour Officer of the concerned district for the relevant period i.e. the date of accident should be taken note by the tribunal for assessment of notional income.

मोटरयान अधिनियम, 1988 – धारा 166

काल्पनिक आय – अवधारणा – श्रमिक की मृत्यु के मामले में काल्पनिक आय के निर्धारण हेतु अधिकरण को तत्समय अर्थात दुर्घटना दिनांक को संबंधित जिले के श्रम अधिकारी द्वारा जारी परिपत्र/अधिसूचना में दर्शाये गये दैनिक वेतन को विचार में लिया जाना चाहिए।

Sapna and ors. v. Mangilal and anr.

Judgment dated 24.02.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Miscellaneous Appeal No. 5274 of 2019, reported in 2021 ACJ 957

Relevant extracts from the judgment:

Having heard the learned counsel for parties and on perusal of the record, it is noticed that the appellant had deposed before the tribunal that the deceased was earning Rs.8,000/- per month, but no document in support of which was produced. The tribunal had noted that the deceased was about 20 years of age and was a labourer, therefore, considering the minimum wages and dearness allowance for the relevant period, the tribunal has assessed the income of the deceased as ₹ 6000/-. No notification/circular of the concerned Labour Officer was taken note of by the tribunal while mentioning the daily wages of ₹ 6000/- The circular dated 7/4/2018 issued by the Labour Officer, Barwani applicable to the period from 01/4/2018 to 30/9/2018 produced by the appellants reveals that the monthly wages on the basis of daily wages along with dearness allowance fixed by the concerned Labour Officer was ₹ 7325/-. Hence, the tribunal ought to have fixed the monthly income on the basis of the said circular.

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149. MOTOR VEHICLES ACT, 1988 – Section 168

(i) Death of housewife – Calculation of income – There cannot be fixed approach to calculate the notional income of a housewife – Court shall fix an approximate economic value for all work that a housewife does – Court must keep in mind the idea of awarding just compensation.

(ii) Death claim – Future prospects in case of notional income – No rational distinction can be drawn with respect to the granting of future prospects merely on the basis that their income was not proved, particularly when the Court has determined their notional income.

मोटरयान अधिनियम, 1988 – धारा 168

(i) गृहिणी की मृत्यु – आय की गणना – गृहिणी की काल्पनिक आय की गणना की कोई स्थाई पद्धति नहीं हो सकती – न्यायालय को गृहिणी द्वारा किए गए कार्य का करीब–करीब आर्थिक मूल्य नियत करना चाहिए – न्यायालय को न्यायसंगत प्रतिकर अधिनिर्णीत करने की अवधारणा को मस्तिष्क में रखना चाहिए।

(ii) मृत्यु दावा – काल्पनिक आय के मामले में भविष्य की संभावना – जहां आय प्रमाणित नहीं होती है वहां इस आधार पर भविष्य की संभावना का लाभ प्रदान करने में कोई युक्तिसंगत भेद नहीं किया जा सकता है, विनिर्दिष्टतः जहां न्यायालय काल्पनिक आय विचार में लेता है।

Kirti and anr. etc. v. Oriental Insurance Company Ltd.

Judgment dated 05.01.2020 passed by the Supreme Court in Civil Appeal No.19 of 2021, reported in AIR 2021 SC 353 (Three Judge Bench)

Relevant extracts from the judgment:

Certain general observations can be made regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation which can be summarized as follows:

a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes are cognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation's international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation. (pg no.365 para 42)

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150. N.D.P.S. ACT, 1985 – Sections 8, 18 and 29
EVIDENCE ACT, 1872 – Section 27
NDPS Act – Framing of charge – Relevant materials – No seizure or recovery has been made in pursuance to the memorandum recorded u/s 27 of the Evidence Act from the present petitioner – Apart from the memorandum of co-accused recorded u/s 27 of the Evidence Act, there is no other material to implicate the petitioner in the alleged offence – Held, order passed by the trial Court regarding framing of charge against the present petitioner of offence u/s 8, 18 and 29 of NDPS Act cannot be sustained and is hereby set aside.

स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8, 18 एवं 29

साक्ष्य अधिनियम, 1872 – धारा 27

एनडीपीएस अधिनियम – आरोप विरचना – सुसंगत विषयवस्तु – वर्तमान याचिकाकर्ता से साक्ष्य अधिनियम की धारा 27 के तहत अभिलिखित कथन के अनुसरण में कोई जप्ती अथवा बरामदगी नहीं की गई, सह–अभियुक्त के धारा 27 साक्ष्य अधिनियम के तहत अभिलिखित किए गए मेमोरेण्डम कथन के अतिरिक्त ऐसी कोई विषयवस्तु नहीं है जो याचिकाकर्ता को प्रश्नगत अपराध में आलिप्त करती हो – अभिनिर्धारित, विचारण न्यायालय द्वारा वर्तमान याचिकाकर्ता के विरूद्ध धारा 8, 18 एवं 29 एनडीपीएस अधिनियम एक्ट के तहत विरचित आरोपों को स्थिर नहीं रखा जा सकता एतद् द्वारा अपास्त किया जाता है।

Pradeep Sharma v. State of M.P.

Order dated 14.08.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Criminal Revision No. 1789 of 2020, reported in 2021 CriLJ 560

Relevant extracts from the order:

Having heard the learned counsel for the parties and on perusal of the record, it is noticed that on 22.8.2019 police had intercepted the co-accused Manish who was going in Motorcycle No. MP14MW8896 and from him the police had seized the contraband item i.e. 3 k.g. of opium. The memorandum of co-accused under Section 27 of the Evidence Act has been recorded on 25.8.2019, wherein he had stated that the contraband item was supplied to him by the present petitioner. On the basis of this statement, the petitioner was arrested and he was granted bail by this Court by order dated 10.12.2019 passed in MCRC No.48655/2019. Thereafter the trial Court by order dated 7.3.2020 had framed charge against the petitioner for offence under Section 8/18, 29 of the NDPS Act. Counsel for the State has not disputed that apart from the memorandum of co-accused Manish recorded under Section 27 of the Evidence Act, there is no other material to implicate the petitioner in the alleged offence. No seizure or recovery has been made in pursuance to the memorandum recorded under Section 27 of the Evidence Act from the present petitioner.

Order dated 7.3.2020 passed by the trial Court framing the charge against the present petitioner of offence under Section 8/18, 29 NDPS Act cannot be sustained and is hereby set aside.

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151. N.D.P.S. ACT, 1985 – Sections 8, 21 (b) and 50
EVIDENCE ACT, 1872 – Sections 3 and 137

(i) Testimony of police witness – It cannot be said as a rule of thumb that the statement of police officer is to be discarded in all circumstances or such statement can be relied upon only when it is corroborated by statement of independent witness – If the statement of police officer is worthy of credence, the

conviction can be recorded on the basis of statement of police officer even if such statement is not supported by independent witness.

(ii) Personal Search – Right of accused – As per Section 50 of NDPS Act, the accused must be apprised by the person concerned regarding his right to get searched before Gazetted Officer or Magistrate – Despite apprising him about this said right, if the accused person has chosen to be searched by the police officer, no fault can be found in the search.

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 8, 21 (ख) एवं 50

साक्ष्य अधिनियम, 1872 – धाराएं 3 एवं 137

(i) पुलिस साक्षी की साक्ष्य – अनुभवसिद्ध नियम के रूप में यह नहीं कहा जा सकता कि पुलिस अधिकारी का कथन सभी परिस्थितियों में अस्वीकार्य होगा या ऐसा कथन केवल तभी स्वीकार किया जा सकता है जबकि उसे स्वतंत्र साक्षियों के कथनों से समर्थन प्राप्त हो – यदि पुलिस अधिकारी का कथन विश्वास के योग्य हो तो पुलिस अधिकारी के कथन के आधार पर दोषसिद्धि की जा सकती है भले ही ऐसा कथन स्वतंत्र साक्षी द्वारा समर्थित न भी हो।

(ii) व्यक्तिगत तलाशी – अभियुक्त का अधिकार – एनडीपीएस अधिनियम की धारा 50 के अनुसार अभियुक्त को संबंधित व्यक्ति द्वारा निश्चित रूप से अवगत कराया जायेगा कि उसे राजपत्रित अधिकारी अथवा मजिस्ट्रेट के समक्ष तलाशी का अधिकार है – उसके अधिकारों से अवगत कराने के बाद भी अभियुक्त व्यक्ति यदि यह चुनाव करता है कि पुलिस अधिकारी द्वारा ही तलाशी ली जावे, तब ऐसी तलाशी में कोई त्रुटि नहीं मानी जा सकती।

Raju alias Surendar Nath Sonkar v. State of Madhya Pradesh
Judgment dated 08.12.2020 passed by the High Court of Madhya Pradesh in Criminal Appeal No. 5610 of 2019, reported in 2021 CriLJ 688

Relevant extracts from the judgment:

In view of principles laid down in the aforesaid judgments, it cannot be said as a rule of thumb that the statement of police officer to be discarded in all circumstances or such statement can be relied upon only when it is corroborated by statement of independent witness. If the statement of police officer is worthy of credence, the conviction can be recorded on the basis of statement of police officer even if such statement is not supported by independent witness. Thus, first submission of appellant deserves rejection.

In view of foregoing analysis, this Court is of the opinion that as per Section 50 of NDPS Act, the accused must be apprised by the person concerned regarding his right to get searched before Gazetted Officer or Magistrate. Despite apprising him about this said right, if the accused person has chosen to be searched by the police officer, no fault can be found in the search.Pertinently, a Constitution Bench of Supreme Court in ***Vijaysinh Chandubha Jadeja v. State of Gujarat (2011) 1 SCC 609*** observed that "thereafter the suspect may or may not choose to exercise the right provided to him under the said proviso." Similarly, another Constitution Bench in ***State of Punjab v. Baldev Singh (1999) 6 SCC 172*** held that a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial, but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of illicit article, the recovery from his person, during a search conducted in violation of provisions of Section 50 of the NDPS Act.

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152. N.D.P.S. ACT, 1985 – Sections 21 and 32-B

Quantum of sentence – Offence relating to commercial quantity under NDPS Act – 1000 grams of Heroin seized while minimum commercial quantity is 250 grams – Accused sought leniency on the ground of poverty, being carrier only and being sole bread earner of family – Held, in a murder case accused commits murder of one or two; while a person dealing in narcotic drugs cause death of number of young victims – It causes deadly impact on society as a whole – Therefore, in NDPS Act cases public interest and impact on society always tilt in favour of suitable higher punishment – Rigorous imprisonment of 15 years upheld.

मादक द्रव्य एवं मनःप्रभावी पदार्थ अधिनियम, 1985 – धाराएं 21 एवं 32–ख

दण्ड की मात्रा – एनडीपीएस अधिनियम के अधीन व्यावसायिक मात्रा का अपराध – 1000 ग्राम हेरोइन जप्त, जबकि उसकी न्यूनतम व्यावसायिक मात्रा 250 ग्राम है – अभियुक्त ने निर्धनता, केवल वाहक होने और परिवार का एकमात्र कमाने वाला होने के आधार पर नर्म रुख की वांछा की – अभिनिर्धारित, एक हत्याकांड में अभियुक्त एक–दो की हत्याएं करता है जबकि नशीले पदार्थों का कारोबार करने वाला व्यक्ति कई युवा पीड़ितों की मृत्यु का कारण बनता है – यह समग्र रूप से समाज पर घातक प्रभाव डालता है – इसलिए, एनडीपीएस अधिनियम के मामलों में सार्वजनिक हित और समाज

पर प्रभाव हमेशा उपयुक्त उच्च दण्ड के पक्ष में झुकते हैं – 15 वर्ष के कठोर कारावास का दण्ड यथावत रखा गया।

Gurdev Singh v. State of Punjab

Judgment dated 06.04.2021 passed by the Supreme Court in Criminal Appeal No. 375 of 2021, reported in 2021 (1) ANJ (SC) 325

Relevant extracts from the judgment:

In the present case the appellant-accused was found to be in possession of 1 kg heroin and he sold it to the informant. Therefore, he cannot be said to be a mere carrier. In given case, even a carrier who is having the knowledge that he is carrying with him narcotic substance/drugs and is found to be with huge commercial quantity of narcotic substance/drugs can be awarded the sentence higher than the minimum sentence provided under the Act.

In the present case, as observed hereinabove, the accused was found to be in possession of 1 kg heroin and the minimum commercial quantity is 250 gm. Therefore, the accused was found to be in possession of 4 times higher than the minimum commercial quantity and therefore, the sentence imposed by the Learned Special Court imposing the sentence of 15 years R.I. with fine of Rs.2 lakhs, confirmed by the High Court is not required to be interfered with by this Court. It cannot be said that while imposing such punishment the Court has taken into consideration any irrelevant factors.

While considering the submission on behalf of the accused on mitigating and aggravating circumstances and the request to take lenient view and not to impose the punishment higher than the minimum sentence provided under the Act it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young 16 victims who are vulnerable; it cause deleterious effects and deadly impact on the society; they are hazard to the society. Organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole. Therefore, while awarding the sentence/punishment in case of NDPS Act, the interest of the society as a whole is also required to be taken in consideration. Therefore, while striking balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always be tilt in favour of the suitable higher punishment. Therefore, merely because the accused is a poor man and/or a

carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of NDPS Act. Even otherwise, in the present case, the Special Court, as observed hereinabove has taken into consideration the submission on behalf of the accused that he is a poor person; that he is sole bread earner, that it 17 is his first offence, while not imposing the maximum punishment of 20 years R.I and imposing the punishment of 15 years R.I. only.

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153. PREVENTION OF CORRUPTION ACT, 1988 – Sections 7, 13 (1) (d) and 13 (2)

(i) Illegal gratification – Trap case – Procedure to be adopted – It is clear from the deposition that hands of the accused did not test immediately after the payment and statement of the appellant was not recorded as required under Rule 47 Clause 1 of the Vigilance Manual – Held, is not reliable.

(ii) Benefit of doubt – Circumstances under which money and article are recovered, is not sufficient to convict the accused when the substantive evidence in the case is not reliable – In view of the material contradictions in the deposition of key witnesses, benefit of doubt has to go to the accused.

भ्रष्टाचार निवारण अधिनियम, 1988 – धाराएं 7, 13 (1) (घ) एवं 13 (2)

(i) अवैध पारितोषण – ट्रैप प्रकरण – आवश्यक प्रक्रिया – साक्ष्य से स्पष्ट है कि राशि देने के तुरंत बाद अभियुक्त के हाथों का परीक्षण नहीं किया गया और अभियुक्त के कथन, जैसे कि सतर्कता मैनुअल के नियम 47 खण्ड 1 में आवश्यक है, के अंतर्गत अभिलिखित नहीं किए गए – अभिनिर्धारित, विश्वसनीय नहीं।

(ii) संदेह का लाभ – परिस्थितियाँ जिनके अंतर्गत राशि एवं वस्तुयें अभिग्रहीत किए गए अभियुक्त को दोषसिद्ध किए जाने हेतु पर्याप्त नहीं है जबकि प्रकरण में तात्विक साक्ष्य विश्वसनीय नहीं हो – महत्वपूर्ण साक्षियों की साक्ष्य में आये तात्विक विरोधाभासों को दृष्टिगत रखते हुए संदेह का लाभ अभियुक्त को देना होगा।

N. Vijayakumar v. State of Tamil Nadu

Judgment dated 03.02.2021 passed by the the Supreme Court in Criminal Appeal No. 100 of 2021, reported in 2021 CriLJ 1353 (Three Judge Bench)

Relevant extracts from the judgment:

It is clear from the deposition of all the witnesses, i.e., PW-2, 3, 5 and 11 that trap was at about 05:45 p.m. and the hands of the Appellant were tested

only at 07:00 p.m. Further in the cross-examination, PW-11 has clearly stated that when they were monitoring the place of occurrence for about one hour and during that period many persons came in and out of the office of the Appellant. Added to the same, admittedly, after completion of the phenolphthalein test, statement of the Appellant was not recorded as required under Rule 47 Clause 1 of the Vigilance Manual. Further PW-11 also clearly deposed in the cross-examination that he did not test the hands of the appellant-accused immediately after payment and handing over of the money and cell phone. Further PW-4 and PW-11 both have stated in their evidence that, only when TLO has asked the bribe amount and cell phone, the accused produced the same by taking out from the left side drawer of his table. It is fairly well settled that mere recovery of tainted money, divorced from the circumstances under which such money and article is found is not sufficient to convict the accused when the substantive evidence in the case is not reliable. In view of the material contradictions as noticed above in the deposition of key witnesses, the benefit of doubt has to go to the accused-appellant.

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***154. PROBATION OF OFFENDERS ACT, 1958 – Sections 3, 4 and 6**

Benefit of probation – Provisions of the Act of 1958 – Applicability of – When minimum mandatory sentence is provided in the statute – Benefits of the Act of 1958 do not apply in cases where mandatory minimum sentence is prescribed by special legislation enacted after the Act of 1958 – However, benefit of the Act of 1958 is not excluded by the provisions of mandatory minimum sentence prescribed under other laws, of course, except for offences punishable with death or imprisonment of life.

अपराधी परिवीक्षा अधिनियम, 1958 – धाराएं 3, 4 एवं 6

परिवीक्षा का लाभ – 1958 के अधिनियम के प्रावधानों की प्रयोज्यता – जब संविधि में न्यूनतम अनिवार्य दण्ड का प्रावधान हो – 1958 के अधिनियम के लाभ उन मामलों में लागू नहीं होते हैं जहाँ अनिवार्य न्यूनतम दण्ड 1958 के अधिनियम के बाद अधिनियमित विशेष विधि द्वारा उपबंधित हो – तथापि, मृत्यु या आजीवन कारावास से दण्डनीय अपराधों को छोड़कर, 1958 के अधिनियम के लाभ को अन्य विधियों द्वारा निर्धारित अनिवार्य न्यूनतम दण्ड के प्रावधानों से बाहर नहीं रखा गया है।

Lakhvir Singh and ors. v. State of Punjab and anr.

Judgment dated 19.01.2021 passed by the Supreme Court in Criminal Appeal No. 47 of 2021, reported in (2021) 2 SCC 763

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155. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 – Sections 19 and 36

MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007 – Sections 3, 4 and 23

(i) Right of a woman to secure a residence order in respect of a shared household cannot be defeated by simple expedient of securing an order of eviction by adopting summary procedure under Senior Citizens Act, 2007.

(ii) Allowing Senior Citizens Act, 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of Domestic Violence Act, 2005, would defeat the object and purpose which Parliament sought to achieve in enacting latter legislation.

(iii) In the event of a conflict between special Acts, dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other.

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005 – धाराएं 19 एवं 36

माता–पिता और वरिष्ठ नागरिकों का भरण–पोषण तथा संरक्षण अधिनियम, 2007 – धाराएं 3, 4 एवं 23

(i) साझा गृहस्थी के सम्बंध में एक महिला के निवास आदेश को सुरक्षित करने के अधिकार को वरिष्ठ नागरिक अधिनियम, 2007 के अधीन संक्षिप्त प्रक्रिया अपनाकर निष्कासन का आदेश प्राप्त करने के साधारण उपाय द्वारा परास्त नहीं किया जा सकता है।

(ii) समस्त परिस्थितियों में घरेलू हिंसा अधिनियम, 2005 के अन्तर्गत साझा गृहस्थी में महिला का अधिकार होते हुए वरिष्ठ नागरिक अधिनियम, 2007 को अधिरोही बल और प्रभाव दिया जाना उस उद्देश्य तथा प्रयोजन को परास्त करेगा जो संसद द्वारा पश्चात्वर्ती विधान को बनाने में तलाशा गया है।

(iii) विशेष अधिनियमों के मध्य मत भिन्नता की स्थिति में कौन किस पर अधिरोही प्रभाव रखेगा यह पता लगाने के लिए दोनों अधिनियमों के प्रभावी प्रयोजन का विश्लेषण किया जाना चाहिए।

Smt. S. Vanitha v. The Deputy Commissioner, Bengaluru Urban District and ors.

Judgment dated 15.12.2020 passed by the Supreme Court in Civil Appeal No. 3822 of 2020, reported in 2021 (1) Crimes 53 (SC) (Three Judge Bench)

Relevant extracts from the judgment:

Section 36 of the PWDV Act 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. This is intended to ensure that the remedies provided under the enactment are in addition to other remedies and do not displace them. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is undoubtedly a later Act and as we have noticed earlier, Section 3 stipulates that its provisions will have effect, notwithstanding anything inconsistent contained in any other enactment. However, the provisions of Section 3 of the Senior Citizens Act, 2007 giving it overriding force and effect, would not by themselves be conclusive of an intent to deprive a woman who claims a right in a shared household, as under the PWDV Act, 2005. Principles of statutory interpretation dictate that in the event of two special acts containing non obstante clauses, the later law shall typically prevail [***Solidaire India Ltd. v. Fair growth Financial Services Ltd, (2001) 3 SCC 71***]. In the present case, as we have seen, the Senior Citizens Act, 2007 contains a *non obstante* clause. However, in the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other. The primary effort of the interpreter must be to harmonize, not excise. A two-judge bench of this Court, in the case of ***Bank of India v. Ketan Parekh, (2008) 8 SCC 148***, in examining a similar factual scenario, observed that:

> "28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993."

This principle of statutory interpretation was also affirmed by a three-judge bench of this Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416***. In the present case, Section 36 of the PWDV Act 2005, albeit not in the nature of a non-obstante clause, has to be construed harmoniously with the non obstante clause in Section 3 of the Senior Citizens Act 2007 that operates in a separate field.

In this case, both pieces of legislation are intended to deal with salutary aspects of public welfare and interest. The PWDV Act, 2005 was intended to deal with the problems of domestic violence which, as the Statements of Objects and Reasons sets out, "is widely prevalent but has remained largely invisible in the public domain". The Statements of Objects and Reasons indicates that while Section 498A of the Indian Penal Code created a penal offence out of a woman's subjection to cruelty by her husband or relative, the civil law did not address its phenomenon in its entirety. Hence, consistent with the provisions of Articles 14, 15 and 21 of the Constitution, Parliament enacted a legislation which would "provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society". The ambit of the Bill has been explained thus:

"4. The Bill, *inter alia*, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her

matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc."

The above extract indicates that a significant object of the legislation is to provide for and recognize the rights of women to secure housing and to recognize the right of a woman to reside in a matrimonial home or a shared household, whether or not she has any title or right in the shared household. Allowing the Senior Citizens Act, 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of a woman to a right in a shared household within the meaning of the PWDV Act, 2005, would defeat the object and purpose which the Parliament sought to achieve in enacting the latter legislation. The law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives. Equally, the purpose of the PWDV Act, 2005 cannot be ignored by a slight of statutory interpretation. Both sets of legislations have to be harmoniously construed. Hence the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act, 2007.

This Court is cognizant that the Senior Citizens Act, 2007 was promulgated with a view to provide a speedy and inexpensive remedy to senior citizens. Accordingly, Tribunals were constituted under Section 7. These Tribunals have the power to conduct summary procedures for inquiry, with all powers of the Civil Courts, under Section 8. The jurisdiction of the Civil Courts has been explicitly barred under Section 27 of the Senior Citizens Act, 2007. However, the over-riding effect for remedies sought by the applicants under the Senior Citizens Act, 2007 under Section 3, cannot be interpreted to preclude all other competing

remedies and protections that are sought to be conferred by the PWDV Act, 2005. The PWDV Act, 2005 is also in the nature of a special legislation, that is enacted with the purpose of correcting gender discrimination that pans out in the form of social and economic inequities in a largely patriarchal society. In deference to the dominant purpose of both the legislations, it would be appropriate for a Tribunal under the Senior Citizens Act, 2007 to grant such remedies of maintenance, as envisaged under S.2(b) of the Senior Citizens Act, 2007 that do not result in obviating competing remedies under other special statutes, such as the PWDV Act 2005. Section of the PWDV Act empowers certain reliefs, including relief for a residence order, to be obtained from any civil court in any legal proceedings. Therefore, in the event that a composite dispute is alleged, such as in the present case where the suit premises are a site of contestation between two groups protected by the law, it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act, 2005 and Senior Citizens Act, 2007. Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly that of a woman's right to a 'shared household' under Section 17 of the PWDV Act, 2005. In the event that the "aggrieved woman" obtains a relief from a Tribunal constituted under the Senior Citizens Act, 2007, she shall duty-bound to inform the Magistrate under the PWDV Act, 2005, as per Sub-section (3) of Section 26 of the PWDV Act, 2005. This course of action would ensure that the common intent of the Senior Citizens Act, 2007 and the PWDV Act, 2005 of ensuring speedy relief to its protected groups who are both vulnerable members of the society, is effectively realized. Rights in law can translate to rights in life, only if there is an equitable ease in obtaining their realization.

Adverting to the factual situation at hand, on construing the provisions of sub-Section (2) of section 23 of the Senior Citizen Act, 2007, it is evident that it applies to a situation where a senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred. On the other hand, the appellant's simple plea is that the suit premises constitute her 'shared household' within the meaning of Section 2(s) of the PWDV Act, 2005. We have also seen the series of transactions which took place in respect of the property: the spouse of the appellant purchased it in his own name a few months before the marriage but subsequently sold it, after a few years, under a registered sale deed at the same price to his father (the father-in-law of the appellant),who in turn gifted it to his spouse i.e. the mother-in-law of the appellant after divorce proceedings were instituted by the Fourth respondent. Parallel to this, the appellant had instituted proceedings of dowry harassment against her mother-in-law and her estranged spouse; and her spouse had instituted divorce proceedings. The appellant had also filed proceedings for maintenance against the Fourth respondent and the divorce proceedings are pending. It is subsequent

to these events, that the Second and Third respondents instituted an application under the Senior Citizens Act, 2007. The fact that specific proceedings under the PWDV Act, 2005 had not been instituted when the application under the Senior Citizens Act, 2007 was filed, should not lead to a situation where the enforcement of an order of eviction deprives her from pursuing her claim of entitlement under the law. The inability of a woman to access judicial remedies may, as this case exemplifies, be a consequence of destitution, ignorance or lack of resources. Even otherwise, we are clearly of the view that recourse to the summary procedure contemplated by the Senior Citizen Act 2007 was not available for the purpose of facilitating strategies that are designed to defeat the claim of the appellant in respect of a shared household. A shared household would have to be interpreted to include the residence where the appellant had been jointly residing with her husband. Merely because the ownership of the property has been subsequently transferred to her in-laws (Second and Third Respondents) or that her estranged spouse(Fourth respondent) is now residing separately, is no ground to deprive the appellant of the protection that was envisaged under the PWDV Act, 2005.

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156. REGISTRATION ACT, 1908 – Sections 17 and 49
STAMP ACT, 1899 – Section 35
Unregistered sale agreement – Admissibility in evidence – Suit is filed for recovery of money and not for specific performance of the contract – Agreement could be considered in evidence for collateral purpose.

परिसीमा अधिनियम, 1908 – धाराएं 17 एवं 49

स्टाम्प अधिनियम, 1899 – धारा 35

अपंजीकृत विक्रय अनुबंध – साक्ष्य में ग्राह्यता – वाद धन की वसूली हेतु प्रस्तुत किया गया था ना कि संविदा के विनिर्दिष्ट पालन हेतु – अनुबंध सम्पार्श्विक प्रयोजन के लिए साक्ष्य में विचार में लिया जा सकता है।

Fide Ali v. Zaffar Hussain
Order dated 05.06.2020 passed by the High Court of Madhya Pradesh (Bench Indore) in M.P. No. 4607 of 2019, reported in AIR 2021 MP 8

Relevant extract from the order:

In the present case, the respondent/plaintiff has filed a suit for recovery of Rs.31,10,000/-, although the suit is not for specific performance of contract or declaration of title, therefore, the same agreement could be seen/considered in the evidence for collateral purpose. In ***Bondar Singh and ors. v. Nihal Singh and ors., (2003) 4 SCC 161***, it has been held that the un-stamped and un-registered sale-deed can at least be looked into for the collateral purpose. In the present

case also in the said agreement no title is conferred as it was for recovery of money and therefore, although it is un-stamped and un-registered agreement, but it can be looked into for collateral purpose. (para 7 page 9)

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

Consent/compromise decree – Consent decree related to the subject-matter of the suit is not required to be registered u/s 17 (2)(vi) and is covered by exclusionary clause.

रजिस्ट्रीकरण अधिनियम, 1908 – धाराएं 17 (1) एवं 17 (2) (vi)

सहमति/समझौता आज्ञप्ति – वाद की विषयवस्तु से सम्बंधित समझौता आज्ञप्ति का पंजीयन धारा 17 (2) (vi) के अन्तर्गत आवश्यक नहीं है और अपवर्जनात्मक खण्ड द्वारा आच्छादित है।

Khusi Ram and ors. v. Nawal Singh and ors.

Judgment dated 22.02.2021 passed by the Supreme Court in Civil Appeal No. 5167 of 2010, reported in AIR 2021 SC 1117

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158. SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989 – Section 3 (1) (r)

(i) Offence of intentional insult or intimidation with intent to humiliate a member of SC/ST in any place within public view – Ingredients of – Explained.

(ii) "Any place within public view" – Meaning of – Explained – Held, a private building or lawn where public is present or have access may also be a place within public view – Offence alleged to occur inside the house – No evidence of presence of public inside house – Offence not made out.

अनुसूचित जाति एवं अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989 – धारा 3 (1) (द)

(i) सार्वजनिक दृश्यता के किसी भी स्थान पर अनुसूचित जाति/अनुसूचित जनजाति के सदस्य को साशय अपमानित अथवा अभित्रस्त करने का अपराध – आवश्यक घटक – समझाए गए।

(ii) "सार्वजनिक दृश्यता का कोई स्थान" – अर्थ समझाया गया – अभिनिर्धारित, एक निजी भवन या लॉन जहां लोग उपस्थित हों अथवा उनकी पहुंच हो, सार्वजनिक दृश्यता का स्थान हो सकता है – अपराध कथित रूप से घर के भीतर हुआ – घर में आमजन की उपस्थिति का कोई प्रमाण नहीं – अपराध नहीं बनता।

Hitesh Verma v. State of Uttarakhand and anr.

Judgment dated 05.11.2020 passed by the Supreme Court in Criminal Appeal No. 707 of 2020, reported in (2020) 10 SCC 710 (Three Judge Bench)

Relevant extracts from the judgment:

The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as ***Swaran Singh v. State, (2008) 8 SCC 435***. The Court had drawn distinction between the expression "public place" and "in any place within public view". As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in ***Swaran Singh*** (supra), it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet.

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159. SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 – Sections 14 and 31

Agricultural land – Applicability of the Act – Provisions of Act of 2002 are not applicable on agricultural land – District Magistrate cannot initiate proceeding for taking possession and forwarding such assets to the creditor u/s 14 of the Act.

वित्तीय आस्तियों का प्रतिभूतिकरण एवं पुनर्गठन और प्रतिभूति हित का प्रवर्तन अधिनियम, 2002 – धाराएं 14 एवं 31

कृषि भूमि – अधिनियम का लागू होना – अधिनियम, 2002 के प्रावधान कृषि भूमि पर प्रभावशील नहीं हैं – जिला मजिस्ट्रेट अधिनियम की धारा 14 के अंतर्गत ऐसी आस्तियों (कृषि भूमि) का आधिपत्य लेने और उन्हें ऋण दाता को देने की कार्यवाही करने हेतु अग्रसर नहीं हो सकता।

Narendra v. State of M.P. and another

Judgment dated 29.05.2020 passed by the High Court of Madhya Pradesh (Indore Bench) in Writ Petition No. 19665 of 2019, reported in 2021 (1) MPLJ 563

Relevant extracts from the judgment:

Section 31: Provisions of this Act not to apply in certain cases-The provision of this Act shall not apply to-

(a) ....

(b) ....

(c) ....

(e) ....

(f) ....

(g) ....

(h) ....

(i) any security interest created in agricultural land;

(j)...."

The purpose of enacting Section 31(i) and the meaning of the term "agricultural land" assume significance. This provision, like many others is intended to protect agricultural land held for agricultural purposes by agriculturists from the extraordinary provisions of this Act, which provides for enforcement of security interest without intervention of the Court. The plain intention of the provision is to exempt agricultural land from the provisions of the Act. In other words, the creditor cannot enforce any security interest created in his favour without intervention of the Court or Tribunal, if such security interest

is in respect of agricultural land. The exemption thus protects agriculturists from losing their source of livelihood and income i.e. the agricultural land, under the drastic provision of the Act. It is also intended to deter the creation of security interest over agricultural land as defined in Section 2 (zf) Thus, security interest cannot be created in respect of property specified in Section 31.

It is true that there is a remedy available to the petitioners to approach the Debt Recovery Tribunal but the order passed by the District Magistrate is *void ab initio* in the light of Section 31(i) of SARFAESI Act, 2002 which categorically provides that the provisions of Act of 2002 are not applicable in respect of any security interest created in agricultural land and therefore, once the Act of 2002 was not applicable in respect of the agricultural land, the order passed by the District Magistrate is a nullity and there appears to be no justification in forcing the petitioners to file an appeal.

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160. SPECIFIC RELIEF ACT, 1963 – Section 20

(i) Agreement to sale – As per agreement vendor need to obtain ceiling permission from competent authority which was not obtained – Vendee entitled to decree of specific performance.

(ii) Delay in court proceedings – Effect – Once a suit for specific performance has been filed, any delay as a result of the Court process cannot be put against the plaintiff as a matter of law in decreeing specific performance.

विनिर्दिष्ट अनुतोष अधिनियम, 1963 – धारा 20

(i) विक्रय के लिए अनुबंध – अनुबंध के अनुसार विक्रेता के लिए आवश्यक था कि वह सक्षम प्राधिकारी से अधिकतम सीमा संबंधी अनुमति प्राप्त करे, जो प्राप्त नहीं की गई – क्रेता विनिर्दिष्ट अनुपालन की आज्ञप्ति प्राप्त करने का अधिकारी है।

(ii) न्याय प्रक्रिया में विलंब – प्रभाव – एक बार जब विनिर्दिष्ट अनुपालन का वाद दायर कर दिया गया हो, तो न्यायालय प्रक्रिया के परिणामस्वरूप विलंब, विनिर्दिष्ट पालन की आज्ञप्ति पारित करने में विधि के विषय के रूप में वादी के विरुद्ध प्रस्तुत नहीं किया जा सकता।

Ferrodous Estates (Pvt.) Ltd. v. P. Gopirathnam (Dead) and ors.
Judgment dated 12.10.2020 passed by the Supreme Court in Civil Appeal No. 13516 of 2015, reported in AIR 2020 SC 5041

Relevant extracts from the judgment:

When these portions of the Full Bench judgment ***Mathura Prasad Bajoo Jaiswal v. Dossibai N. B. Jeejeebhoy, AIR 1971 SC 2355*** are applied to the agreement in question, it is clear that the agreement itself contains a specific clause, namely, clause 4, in which it is for the vendor to obtain permission from the competent authority under the Tamil Nadu Urban Land Ceiling Act. This agreement,

therefore, cannot be said to be hit by the decision of the Full Bench judgment as the Full Bench itself recognises that there may be agreements with such clauses, in which case it is the Court's duty to enforce such clause. That is all that the learned Single Judge has done in the facts of this case – he has correctly held that it was for the defendants to obtain exemption from the authorities under the Tamil Nadu Urban Land Ceiling Act which they did not, as a result of which they were in breach of the agreement.

The resultant position in law is that a suit for specific performance filed within limitation cannot be dismissed on the sole ground of delay or laches. However, an exception to this Rule is where immovable property is to be sold within a certain period, time being of the essence, and it is found that owing to some default on the part of the Plaintiff, the sale could not take place within the stipulated time. Once a suit for specific performance has been filed, any delay as a result of the court process cannot be put against the Plaintiff as a matter of law in decreeing specific performance. However, it is within the discretion of the Court, regard being had to the facts of each case, as to whether some additional amount ought or ought not to be paid by the plaintiff once a decree of specific performance is passed in its favour, even at the appellate stage.

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***161. WILD LIFE (PROTECTION) ACT, 1972 – Sections 9 and 51**

Offence of capture or seizure of wild life – When made out? Held, offence is made out only when it is committed in respect of wild life specified in Schedules I to IV of the Act – Instantly, Indian Flapshell Turtle *(Lissemys punctata)* was seized from the possession of accused – Item 8, Part II, Schedule I of the Act provides Indian Soft Shell Turtle *(Lissemys punctata punctata)* – Held, turtle seized is not included in Schedule I Part II, thus, offence not made out.

वन्य प्राणी (संरक्षण) अधिनियम, 1972 – धाराएं 9 एवं 51

वन्य प्राणी को पकड़ने या जप्त करने का अपराध – कब गठित होगा? अवधारित, अपराध तभी गठित होगा जब यह अधिनियम की अनुसूची I से IV में निर्दिष्ट वन्य प्राणी के संबंध में कारित किया जाता है – हस्तगत मामले में, भारतीय फ्लैपशेल कछुआ (लिसेमिस पंक्टाटा) को अभियुक्त के आधिपत्य से जप्त किया गया – अधिनियम की अनुसूची I, भाग II, आइटम 8 भारतीय सॉफ्टशेल कछुआ (लिसेमिस पंक्टाटा पंक्टाटा) का प्रावधान करता है – जप्त कछुआ अनुसूची I, भाग II में सम्मिलित नहीं, अतः, अपराध नहीं बनता है।

Titty Alias George Kurian v. Deputy Range Forest Officer

Judgment dated 09.12.2020 passed by the Supreme Court in Review Petition (Crl.) No. 593 of 2018 of 2018, reported in (2021) 1 SCC 812

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PART - II A

GUIDELINES TO BE FOLLOWED WHILE DEALING WITH APPLICATION UNDER SECTION 156(3) CrPC

In ***Om Prakash Sharma v. State of M.P. and anr., McRC No. 44485/2020 (Bench Gwalior) order dated 25.03.2021***, High Court of Madhya Pradesh considered the questions relating to the extent and nature of power of a Magistrate u/s 156(3) CrPC while considering grievance either of non-registration of cognizable offence or improper/delayed investigation and extent of jurisdiction available to Magistrate when an application u/s 156(3) CrPC is filed along with a complaint u/s 200 CrPC.

High Court noted that applications u/s 156(3) CrPC are kept pending for long awaiting report of Police. There are occasions where secion 156(3) application is filed along with complaint but due to delay in processing section 156(3) application, the complaint u/s 200 CrPC is kept pending for an unreasonably long time.

To brook this delay, High Court lay down certain guidelines which are though not exhaustive in character but are enough to show the right path to be treaded by Judicial Magistrates. These guidelines are as follows :

(A) Where application u/s 156(3) CrPC only alleges non-registration of cognizable offence

(i) The Magistrate, on receiving an application u/s 156(3) CrPC should first ensure that the application is supported by an affidavit of the applicant detailing about exhaustion of remedy u/s 154(1) and 154(3) CrPC [vide ***Priyanka Srivastava and another v. State of Uttar Pradesh and others (2015) 6 SCC 287*** (Para 31)].

(ii) If the application u/s 156(3) passes the aforesaid test laid down in ***Priyanka Shrivastava*** (supra) then the Magistrate shall form an opinion as to whether the information contained in section 156(3) application reveals commission of any cognizable offence or not.

(iii) In case the Magistrate is of the opinion that application does not disclose commission of any cognizable offence, then the same should be forthwith dismissed by passing a short speaking order.

(iv) In case, the Magistrate finds that Section156(3) application discloses commission of cognizable offence then direction may either be issued to the Police to lodge FIR or the Magistrate may, in his discretion, dismiss the application in the interest of justice for reasons to be recorded in writing. [vide ***Sukhwasi v. State of U.P., 2008 Cri.L.J. 472*** and ***Anju Chaudhary v. State of Uttar Pradesh and anr. (2013) 6 SCC 384***]

(B) When application u/s 156(3) CrPC reveals improper/delayed investigation only

(i) In case, application u/s 156(3) relates to grievance of improper or delayed investigation after lodging of FIR, the Magistrate should direct the police to submit report and thereafter pass appropriate remedial directions if the report submitted by Police discloses improper or delayed investigation. The Magistrate after passing such order can also monitor the process of investigation to ensure that it reaches to it's logical and lawful conclusion. However, while doing so, the Magistrate should avoid stepping into the shoes of investigating authority. The Magistrate ought to assume only supervisory role.

(ii) In case the report requisitioned from Police reveals that investigation is being done with promptitude and in accordance with law, then the application u/s 156(3) should be dismissed by passing a short speaking order.

(C) Where application u/s 156(3) CrPC is filed along with complaint u/s 200 CrPC

(i) The police qua section 156(3) CrPC application (alleging improper/delayed investigation simpliciter or along with non-registration of FIR) should not be granted more than 60/90 days or any longer period of time statutorily prescribed.

(ii) If the Police submits the report within 60/90 days or any longer period of time statutorily prescribed, then the Magistrate may pass appropriate directions in accordance with law to either dismiss/dispose of section 156(3) application with/without directions by passing a speaking order or to supervise and monitor the investigating process if need arises.

(iii) However, in case the Police fails to submit report within 60/90 days or any longer period of time statutorily prescribed, then the Magistrate shall proceed with the complaint u/s 200 CrPC in accordance with Chapter XV and XVI CrPC, notwithstanding the bar in section 210 CrPC .

(iv) While so proceeding under Chapter XV and XVI CrPC, the Magistrate shall keep in mind that as and when police report u/s 173 CrPC is filed (even after 60/90 days or any longer period of time statutorily prescribed) and cognizance of offence in police report is taken, then the Magistrate shall club the complaint case with the charge-sheet (final report) filed by police and proceed to adjudicate both

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PART - IV

IMPORTANT CENTRAL/STATE ACTS & AMENDMENTS

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) RULES, 2020

[25th September, 2020]

Published in Gazette of India (Extraordinary) Part II Section 3(i) dated 29.09.2020.

In exercise of the powers conferred by section 22 of the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019), the Central Government hereby makes the following rules namely:-

1. **Short title and commencement.-** (1) These rules may be called the Transgender Persons (Protection of Rights) Rules, 2020.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definition.-** In these rules, unless the context otherwise requires,-

   (a) "Act" means the Transgender Persons (Protection of Rights) Act, 2019 (40 of 2019);

   (b) "applicant" means a transgender person who submits an application under rule 3;

   (c) "application" means the application form as provided in Form – 1;

   (d) "any official documents" include all documents listed in Annexure 1, which the appropriate Government may revise, by notification in the Official Gazette;

   (e) "certificate of identity" means a certificate issued by the District Magistrate under section 6 or section 7 of the Act as in Form – 3 or Form – 4 respectively;

   (f) "form" means a form prescribed to these rules;

   (g) "identity card" means a photo identity card issued in Form – 5 to a transgender person under section 6 or issued in Form – 6 to a transgender person on change of gender under section 7 on the basis of "certificate of identity" issued by the District Magistrate or an identity card to a transgender person issued by a State authority prior to the coming into force of these rules;

   (h) "medical institution" means any medical institution whether hospital or clinic, private or public, in rural areas or urban or overseas;

(i) "medical intervention" includes any gender affirming medical intervention undertaken by an individual to facilitate the transition to their self-identified gender, including but not limited to counselling, hormonal therapy and surgical intervention, if any.

(j) "section" means a section of the Act;

(k) all other words and expressions used herein but not defined and defined in the Act shall have the same meaning assigned to them in the Act.

3. Application for issue of certificate of identity under section 6 or section 7.- (1) A transgender person desirous of obtaining a certificate of identity shall make an application as prescribed in Form – 1.

(2) The application shall be submitted to the District Magistrate in person or by post till online facilities are developed by the State Government concerned and thereafter the application shall be made by online only:

Provided that the appropriate Government may undertake measures, as it deems appropriate, to facilitate the submission of applications for certificate of identity by transgender persons living in remote areas or disadvantaged conditions:

Provided further that in case of a minor child, such application shall be made by a parent or guardian of such minor child and in the case of a child in need of care and protection, by the competent authority under the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016).

(3) Transgender persons who have officially recorded their change in gender, whether as male, female or transgender, prior to the coming into force of the Act shall not be required to submit an application for certificate of identity under these rules:

Provided that such persons shall enjoy all rights and entitlements conferred on transgender persons under the Act.

4. Procedure for issue of certificate of identity.- (1) The District Magistrate shall, subject to the correctness of the applicant's particulars, get the application processed based on the affidavit submitted declaring the gender identity of any person in Form – 2, without any medical or physical examination, and thereafter issue an identification number to the applicant, which may be quoted as proof of application.

(2) For the purpose of determination of the place of residence, the applicant shall have to reside in the area under the jurisdiction of District Magistrate as on the date of application and an affidavit to this effect shall be submitted in Form – 2.

5. **Issue of certificate of identity for a transgender person under section 6.-** (1) The District Magistrate shall issue to the applicant, a certificate of identity in Form – 3 following the procedure provided in rule 4 indicating the gender of such person.

(2) The said certificate of identity shall be issued within thirty days of receipt of duly filled in application along with the affidavit.

(3) The certificate of identity issued under sub-rule (1) shall be the basis to change the gender as well as the name and the photograph, if so necessitated, of the transgender person in all such official documents as provided in Annexure – 1, in accordance with the gender specified in the said certificate of identity.

(4) The District Magistrate shall, at the time of issuance of the certificate of identity under sub-rule (1), issue a transgender identity card in Form – 5 to the applicant.

(5) The appropriate Governments shall maintain a register for the issuance of certificate of identity card and the transgender identity card.

(6) The authority that issued the official document, on an application made by an applicant under rule 3, shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(7) Any official document wherein gender, name and the photograph of transgender are revised based on the said certificate of identity, shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents:

Provided that all benefits that a transgender person was entitled to based on an identity card, if any, issued by a State authority shall continue to be enjoyed by that transgender person based on the certificate of identity issued under these rules.

6. **Procedure for issue of a certificate of identity for change of gender.-**

(1) If a transgender person undergoes medical intervention towards a gender affirming procedure, either as a male or female, such person may apply in the Form – 1, along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution in which that person has undergone the said medical intervention, to the District Magistrate for the issue of a revised certificate of identity.

(2) The District Magistrate shall, on receipt of an application referred to in sub-rule (1) shall verify the genuineness of the said medical certificate, which shall not include any physical examination.

(3) The applicant shall be currently residing in the area under the jurisdiction of the District Magistrate as on the date of application and an affidavit to this effect shall be submitted along with the application in Form – 1 and no additional evidence shall be called for.

7. **Issue of certificate of identity under section 7.-** (1) The District Magistrate shall issue a revised certificate of identity in Form – 4 to the applicant seeking change in gender indicating the gender of such a person as male or female, as the case may be.

(2) The District Magistrate shall issue the revised certificate under sub-rule (1) within fifteen days of its receipt of the application.

(3) The certificate of identity issued under sub-rule (1) shall entitle the applicant to record or change the gender, as well as photograph and name, if so necessitated of transgender person in all such official documents provided in Annexure – 1, in accordance with the gender specified in the said certificate of identity as male or female, as the case may be.

(4) The District Magistrate while issuing the certificate of identity for change of gender shall simultaneously issue an identity card in Form – 6 to the applicant.

(5) The authority that issued the official document, on an application made by an applicant under sub-rule (3), shall change the name or gender or photograph or any of this information of the applicant in the official documents within fifteen days of making of such application.

(6) Any official document wherein gender, name or photograph of transgender person is revised based on the said certificate of identity shall bear the same serial or reference number as in the original official document of such transgender person who seeks change in the name or gender or both in the official documents.

8. **Communication of rejection of application.-** (1) In case of rejection of application made under rule 3, the District Magistrate shall inform the applicant the reason or reasons for such rejection within thirty days from the date of receipt of such application.

(2) The District Magistrate may review the decision of rejection of the application based on the reply submitted by the applicant regarding the reason for rejection communicated in sub-rule (1) of rule 8 within sixty days from the date of such rejection.

9. **Right to appeal.-** The applicant shall have a right to appeal, within ninety days from the date of intimation of the rejection of the application, to the appellate authority as designated by the appropriate Government by notification for a final order.

10. Welfare measures, education, social security and health of transgender persons by appropriate Government.- (1) The appropriate Government shall constitute a welfare board for the transgender persons for the purpose of protecting their rights and interests of, and facilitating access to schemes and welfare measures framed by the Government.

(2) The appropriate Government shall review all existing educational, social security, health schemes, welfare measures, vocational training and self-employment schemes to include transgender persons to protect their rights and interests and facilitate their access to such schemes and welfare measures framed by that Government.

(3) The appropriate Government shall formulate educational, social security, health schemes and welfare schemes and programmes as specified in Annexure – II in a manner to be transgender sensitive, non-stigmatising and non-discriminatory to transgender persons.

(4) The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation, or private and public educational institution under their purview, and ensure equitable access to social and public spaces, including burial grounds.

(5) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, rehabilitation centre referred to in sub-section (3) of section 12 of the Act, separate human immunodeficiency virus sero-surveillance centres, separate wards in hospitals and washrooms in the establishment, within two years from the date of coming into force of these rules to protect the rights of transgender persons.

(6) The appropriate Government shall carry out an awareness campaign to educate, communicate and train transgender persons to avail themselves of the benefits of welfare schemes, educate and train transgender persons on their rights; eradicate stigma and discrimination against transgender persons and mitigate its effects.

(7) The appropriate Government shall also provide for sensitisation of institutions and establishments under their purview, including:-

(a) sensitization of teachers and faculty in schools and colleges, changes in the educational curriculum to foster respect for equality and gender diversity;

(b) sensitization of healthcare professionals;

(c) sensitization programmes in workplaces;

(d) sensitization programmes for complaints officers.

(8) All educational institutions shall have a committee which shall be accessible for transgender persons in case of any harassment or discrimination, with powers to ensure that transgender students do not have to be affected by the presence of the persons bullying them, including teachers.

(9) The appropriate Government shall create institutional and infrastructure facilities, including but not limited to, temporary shelters, short-stay homes and accommodation, choice of male, female or separate wards in hospitals and washrooms in the establishment within two years from the date of coming into force of these rules to protect the rights of transgender persons.

11. Provisions for non-discrimination.- (1) The appropriate Government shall take adequate steps to prohibit discrimination in any Government or private organisation or establishment including in the areas of education, employment, healthcare, public transportation, participation in public life, sports, leisure and recreation and opportunity to hold public or private office.

(2) The appropriate Government shall within two years from the date of coming into force of these rules, formulate a comprehensive policy on the measures and procedures necessary to protect transgender persons in accordance with the provisions of the Act.

(3) The policy formulated under sub-section (2) shall include preventative administrative and police measures to protect vulnerable transgender communities.

(4) The appropriate Government shall be responsible for the supervision of timely prosecution of individuals charged under section 18 of the Act, or under any other law for similar offences committed against the transgender persons.

(5) Every State Government shall set up a Transgender Protection Cell under the charge of the District Magistrate in each District and under Director General of Police in the State to monitor cases of offences against transgender persons and to ensure timely registration, investigation and prosecution of such offences.

12. Equal opportunities in employment.- (1) Every establishment shall implement all measures for providing a safe working environment and to ensure that no transgender person is discriminated in any matter relating to employment including, but not limited to, infrastructure adjustments, recruitment, employment benefits, promotion and other related issues.

(2) Every establishment shall publish an equal opportunity policy for transgender persons.

(3) The establishment shall display the equal opportunity policy, including the details of the complaints officer, preferably on their website, failing which, at conspicuous places in their premises.

(4) The equal opportunity policy of an establishment shall, inter alias, contain details of -

(a) infrastructural facilities (such as unisex toilets), measures put in for safety and security (transportation and guards) and amenities (such as hygiene products) to be provided to the transgender persons so as to enable them to effectively discharge their duties in the establishment.

(b) applicability of all rules and regulations of the company regarding service conditions of employees;

(c) confidentiality of the gender identity of the employees;

(d) complaint of the officers.

13. Grievance redressal.- The appropriate Government shall ensure that every establishment designates a complaint officer in accordance with section 11 within thirty days from the date of coming into force of notification of these rules.

(2) The complaint officer shall enquire into the complaints received within fifteen days from the date of receipt of such complaints.

(3) The head of the establishment shall take action on the enquiry report submitted by the complaints officer within fifteen days from the date of submission of the report.

(4) The head of the establishment shall take action forthwith in all cases where action has not been taken in accordance with the above time limits.

(5) The appropriate Government shall also set up within one year a grievance redressal mechanism, operating through a helpline and outreach centres, for ensuring proper implementation of the provisions of Chapter V of the Act with special reference to sub-sections (1) and (2) of section 12.

(6) The grievance redressal system shall ensure resolution of grievances within thirty days from the date of bringing of such grievance to the helpline, and imposing of penalties as laid down in section 18.

(7) The appropriate Government shall put in place a monitoring system for tracking the number of complaints filed, enquired and action taken of all the establishments in their jurisdiction.

14. National Council.- (1) The National Council shall perform the functions as per Section 17 of the Act.

(2) National Institute of Social Defence shall give secretarial assistance to the National Council in conduct of its meetings and facilitate in the discharge of the functions of the National Council.

Form – 1
[See rules 2(d), 3(1) and 6(1)]

Application form for issue of transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019

*Strike out whichever is not applicable

State Emblem
State Government of (name of the State)
Office of the District Magistrate

Application form for issue of a transgender certificate of identity under Rule Transgender Persons (Protection of Rights) Rules, 2020 (read with Section 6*/7* of the Transgender Persons (Protection of Rights) Act, 2019 *Strike out whichever is not applicable)		
1	**Name**	
(i)	Given name (in capital letters)	
(ii)	Changed/Chosen name (in capital letters)	
(iii)	Out of (i) and (ii), name to be printed in the certificate of identity and in the identity card	
2	**Gender**	
(i)	Assigned at birth	
(ii)	Requested in the application	
3	**Date of birth**	dd/mm/yyyy
4	**Educational qualification**	
5	**Present address**	
6	**Permanent address**	
7	**If there is a source of income, the annual income:**	
(i)	Under Rs 1,00,000	YES / NO
(ii)	Between Rs 1,00,001 and 3,00,000	YES / NO
(iii)	Above Rs 3,00,000	Please specify the amount:
8	**Do you have any of the following documents? If so, please submit self-attested photocopies of the certificates stated below.**	
(i)	Date of birth certificate	YES / NO
(ii)	Aadhaar card	YES / NO
(iii)	PAN card	YES / NO
(iv)	Election Voter Identity Card	YES / NO

(v)	Ration card	YES / NO
(vii)	Passport	YES / NO
(viii)	Bank passbook	YES / NO
(ix)	MNREGA Card	YES / NO
(x)	Caste certificate (SC/ST/OBC/Others)	YES / NO
9	**Medical history (for those applying under section 7 of the Transgender Persons (Protection of Rights) Act, 2019**	
(i)	Have you undergone any medical intervention in the context of transgender transition?	YES / NO
(ii)	Please give details	
(iii)	Name and complete address of the Hospital or medical institute	
(iv)	Name of the issuing authority along with the date	
(v)	Any other medical status you would like to share	
(vi)	Have you been issued any certificate of identity under Section 6 and Section 7 under the Act, or any other ID Card issued by the State Authority before the commencement of these Rules? If so, enclosed the same.	
10	Any other information you would like to give	
11	Have you attached affidavit prescribed in Form – 2 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule—Transgender Persons Protection of Rights) Rules, 2020	
12	Have you attached the passport size photographs? Enclosed: documents as mentioned in the application	Yes/No

Declaration

1. I declare that the particulars furnished by me are true and correct.
2. Information provided in this application will be treated as confidential and shall not be shared with any person or organisation save the Central and / or State security agencies, any other agency as provided by Law; and for statistical and policy framing purposes.

Place : Date :	Signature or left thumb impression of the applicant given name of the applicant

Form – 2

[See rules 2(b) and 4(1)]

Format of affidavit to be submitted by a person applying for certificate of identity for transgender persons under Rule 4 of the Transgender Persons (Protection of Rights) Rules, 2020 read with Section 6 of the Transgender Persons (Protection of Rights) Act,2019

(Affidavit should be on Non-judicial stamp paper of Rs.10/-) Competent Notary Civil, District (Name of the District), (Name of the State)

I, (Name), son/daughter/ward/spouse of (name of the parent/guardian/husband), aged (in completed years), residing at (address), (Tehsil), (District), (State) (Pin code) do hereby solemnly affirm and declare as under:

1. I am currently residing in the above address.
2. I perceive myself as a transgender person whose gender does not match with the gender assigned at birth.
3. I declare myself as transgender.
4. I am executing this affidavit to be submitted to the District Magistrate for issue of certificate of identity as transgender person under Section 6 of the Transgender Persons (Protection of Rights) Act, 2019 under Rule Transgender Persons (Protection of Rights) Rules, 2020.

*strike out whichever is not applicable.

Deponent
(Signature of the Applicant)

Verification

I, (Name), hereby state that whatever is stated here in above serial Nos. 1 to 4 are true to the best of my knowledge.

Deponent
(Signature of the Applicant)

Tehsil

Date

Identified by me

Advocate

Before Me
Notary Public

Form – 3

[See rules 2(e) and 5(1)]

Form of certificate of identity to be issued by District Magistrate under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with section 6 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of the certificate holder District Magistrate to attest the photograph

1. On the basis of the application dated dd/mm/yyyy to the undersigned it is certified that Shri /Smt./ Km/ Ms (name) son / daughter / ward of Shri/ Smt. (name of the parent or Guardian) of (complete residential address of the applicant) is a transgender person.
2. His / her birth name is ……..
3. This certificate is issued in terms of the provisions contained under Rule 5 Transgender Persons (Protection of Rights) Rules, 2020 read with section 6 of the Transgender Persons (Protection of Rights)Act, 2019.
4. It is also certified that Shri/Smt/Km/Ms. is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.

Date Signature of the District Magistrate

Place Seal

Form – 4
[See rules 2(e) and 7(1)]

Form of certificate of identity for change of gender to be issued by District Magistrate under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with section 7 of the Transgender Persons (Protection of Rights) Act, 2019

Photograph of the certificate holder District Magistrate to attest the photograph

1. On the basis of the application submitted to the undersigned along with a medical certificate from the Medical Superintendent or Chief Medical Officer (name of the Hospital and complete address), it is to certify that Shri / Smt./ Km/ Ms. (name) son/daughter / ward of Shri/ Smt. (name of the parent or Guardian) of (complete residential address of the applicant) has undergone medical intervention to change gender.
2. His/ Her birth name is_____ .
3. This certificate is issued in terms of the provisions contained under Rule 6 of the Transgender Persons (Protection of Rights) Rules, 2020 read with section 7 of the Transgender Persons (Protection of Rights) Act, 2019.
4. It is also certified that Shri / Smt/ Km/ Ms. is ordinarily a resident at the address given above.
5. This certificate entitles the holder to change name and gender in all official documents of the holder.
6. Such change in name and gender and the issue of this certificate shall not adversely affect the rights and entitlements of the holder of this certificate.

Date Signature of the District Magistrate

Place Seal

Form – 5

[See rules 2(g) and 5(4)] Form of Identity Card Front side of identity card

State Emblem

State Government of (name of the State) Office of the District Magistrate

Transgender Identity Card

Identity card number

Photograph of the Card holder

Name

Mother's name** -

Father's or Guardian's name** -

Gender	Transgender
Date of birth **or**	dd/mm/yyyy
Age as on the date of application for issue of Identity card	____ Years
Reference number of certificate of authority on the basis of which this card is issued	

Back side of the identity card

Present address

Card issue date

Signature of the issuing authority Designation

Seal of the issuing authority

Issued under Section 6*/ 7* of the Transgender Persons (Protection of Rights) Act, 2019 and under Rule of Transgender Persons (Protection of Rights) Rules, 2020

***Strike out whichever is not applicable**

**only in case the applicant is a minor child

Form – 6

[See rules 2(g) and 7(4)] Form of Identity Card Front side of identity card

State Emblem

State Government of (name of the State) Office of the District Magistrate

Identity Card

Identity card number

Photograph of the Card holder

Name

Mother's name**

Father's / Guardian's name**

Gender Male /Female

Date of birth **or** dd/mm/yyyy

Age as on the date of application for issue of _____years identity card

Reference number of certificate of authority on the basis of which this card is issued

Back side of the identity card

Present address

Permanent address

Card issue date

Signature of the issuing authority

Designation

seal of the issuing authority

**only in case of a minor child

Annexure – 1

Illustrative list of official documents referred to in_____

S No	Name of the official document
(1)	Birth certificate
(2)	Caste/ Tribe certificate
(3)	Any education certificate issued by a school, board, college,
	university or any such academic institution
(4)	Election Photo Identity Card
(5)	Aadhaar Card
(6)	Permanent Account Number (PAN)
(7)	Driving Licence
(8)	BPL ration card
(9)	Post Office bank/ Bank Pass book with photo
(10)	Pass port
(11)	Kisan Pass book
(12)	Marriage certificate
(13)	Electricity / water/ gas connection paper
(14)	property papers,
(15)	vehicle registration
(16)	service book, employment papers
(17)	identity card related to bar,
(18)	policy papers

Annexure – II

Suggested list of welfare schemes to be considered:

1. Access to health

a) At least 1 government hospital in every State shall be equipped to offer safe and free gender affirming surgery, counseling and hormone replacement therapy to the transgender community, including all Male to Female (MTF) and Female to Male (FTM) procedures.

b) State medical insurance shall cover procedures of SRS, hormonal therapy, laser therapy, counselling and other health issues of transgender persons at private hospitals.

c) medical insurance/arogyashri cards,

d) All healthcare facilities should ensure that that there are separate wards for transgender persons.

2. Access to education

a) Scholarship for transgender students

b) Inclusive and equitable quality education in schools that fosters respect for equality and gender diversity

c) Protection against ragging in the educational institutions with provisions for grievance redressal

d) Facilitation of accommodation and schooling for transgender, gender non conforming and intersex children in residential government schools and universities

3. Access to housing:

a) Affordable housing

b) Shelters and community centres for at risk transgender youth that provide nutritious food and counselling.

c) Access to sanitation facilities and safe drinking water

4. Welfare measures

a) Universal access to food security schemes and provision of ration cards,

b) Pension for aged, disabled or other vulnerable transgender persons

c) Old age and retirement homes for transgender persons facing housing exclusion

d) Public transport to have harassment-free zones for transgender persons

5. Economic support

(1) Universal coverage of life Insurance

(2) Access to banking and financial services including loans

(3) Explicit inclusion of transgender persons in employment guarantee schemes such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) and all social security schemes,

(4) Formation into self help groups for livelihood activities

(5) Provisions of zero-interest and other micro-finance schemes

●

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ इन्दौर

मध्यप्रदेश उच्च न्यायालय, खण्डपीठ ग्वालियर

मध्यप्रदेश उच्च न्यायालय, जबलपुर

मध्यप्रदेश राज्य न्यायिक अकादमी, जबलपुर

ब्योहारबाग, जबलपुर (म.प्र.) - 482 007