

**JOTI JOURNAL
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Section 10 – For the application of S. 10 CPC the entire subject-matter of the two suits must be the same.

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Section 24 – See Sections 4 and 10 of Family Court Act, 1984 **2 2**

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(ii) Requirement of a conceptual change regarding civil litigation needed so that the emphasis is not only on the disposal of the suits, but also on securing relief to litigant.

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Sections 80 (1) & (2) and Order 7 Rule 11 – Suit filed without complying with the provisions of Section 80 (1) CPC – No order was passed on the application filed under Section 80 (2), whereby leave of the court for filing the suit without complying with the provisions of Section 80 (1) CPC was sought, till a final order was passed granting the said application – The regularity in filing of suit continued – Procedure for determination of such an application – The court is supposed to give hearing to both the sides and consider the nature of the suits and urgency of the matter before proceeding with the suit. **203 300**

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205 302

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Order 8 Rule 1 – Until the pleadings of Written Statement are not verified, it cannot be said to be a Written Statement in the eyes of law. **101 147**

Order 8 Rules 3, 4 & 5, Order 6 Rule 18 and Order 18 Rule 3 – Where variance between pleadings and proof is very little and does not cause prejudice or surprise to opponent, it would not be material.

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Order 14 Rule 1 – Additional issue of fact framed – The Court is bound to extend the opportunity to both the parties to adduce evidence thereon.

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Order 14 Rule 2 – Only material facts asserted by one party and denied by other should form subject-matter of issues.

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Issues relating to jurisdiction and bar to suit may be tried as preliminary issues.

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116 163

Section 319 – Addition of new accused – Expression “could be tried together” – Connotation of – Cannot be interpreted to mean that such newly added accused must be tried together with original accused persons. **54 72**

Section 354 – (i) Concept of proper sentencing – What are relevant considerations?

(ii) It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. **217 320**

Section 354 (3) – See Sections 395 and 396 of Indian Penal Code, 1860.

78 110

Section 354 (3) – Tests to be applied where death sentence is proposed – The “crime test” and the “criminal test” both must be applied – Then the case has the “rarest of rare case test”. **74 104**

Section 357 – (i) It is mandatory for the Court to consider the question of awarding compensation to the aggrieved under section 357 of the Cr.P.C.

(ii) The occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused.

(iii) An inquiry regarding the capacity of the accused to pay compensation under s. 357 may precede an order on sentence. **164 242**

Section 374 – The Appellate Court is required to deal with each and every question raised on behalf of the appellants – Appeal from conviction. **165 243**

Sections 374 and 386 – The first Court of appeal on facts must apply its independent mind and record its own findings on the basis of its own assessment of evidence in criminal cases. **55 (i) 74**

Section 378 – Appeal against acquittal – Appreciation of evidence – Powers and duties of appellate court – Principles to be kept in mind. **117 (i) 166**

Section 378 (1) (a), (b), (4) – (i) Whether a case is or is not a case instituted upon a complaint - Test prescribed.

(ii) An appeal from an order of acquittal passed by a Magistrate would not lie to the Sessions Court under section 378 (1) (a) Cr.P.C. – Remedy – Special leave to appeal to High Court. **14 18**

Sections 386 – Course to be adopted when counsel for the appellant in a criminal appeal is absent – Principles laid down in *Bani Singh's case 1996 4 SCC 720* culled out.

The dictum in *Mohd. Sukur Ali, 2011 4 SCC 729* to the effect that the court cannot decide a criminal appeal in the absence of the counsel for the accused being contrary to the ratio laid down by the larger Bench in *Bani Singh* (supra) is per incuriam. **56 75**

Section 391 – The application under section 391 Cr.P.C. for taking additional evidence on record should be considered and disposed of after hearing the criminal appeal on merits. **166 245**

Sections 397 and 204 – Whether order passed under Section 204 of the Cr.P.C. is an order of interim nature? An order directing issuance of process must be held to be intermediate or quasi-final and, therefore, revisional jurisdiction under section 397 could be exercised against the same. **260 398**

Sections 397 (2), 401(2) and 319 – (i) Revision lies against an order refusing to issue summons on an application under section 319 of Cr.P.C.

(ii) A notice is required to be issued to the persons sought to be arrayed as accused persons, when such an order is challenged in revision. **167 245**

Sections 399 and 167 (2) Proviso (a) (ii) – Accused persons taken into custody on 18.02.2013 – Charge sheet filed on 22.04.2013 – Application for compulsive bail filed prior to filing of chargesheet – Trial Court granted bail under section 167 (2) CrPC – In revision, Sessions Court cancelled the bail – Order in revision challenged by way of writ – Held, for offence under section 399 IPC, punishment may extend up to 10 years – Therefore, chargesheet ought to have been filed within 60 days – But the same was not filed within the said period – Further held, Trial Court rightly granted bail under section 167 (2) of the Code – Order passed by the Revisional Court set aside. **261 399**

Section 427 (1) – Where an offender is already undergoing sentence of imprisonment and sentenced to imprisonment or life imprisonment on a subsequent conviction, the Court has jurisdiction to make sentences concurrent. **168 246**

Sections 432 and 433A – The Court cannot nullify the power of appropriate government to remit sentences by imposing sentences of 20 years, 25 years or even without remission.

Before granting remission under Section 432 of the Cr.P.C., the appropriate Government must obtain the opinion of the presiding Judge of the convicting or confirming Court.

118 168

Sections 432 and 433 – Unless commuted, the life imprisonment means imprisonment for whole of life. **68 95**

Sections 438 and 82 – Grant of anticipatory bail – Where the accused has misused the interim protection against the arrest – Points to be considered. **15 20**

Section 439 (2) – Where the order granting bail is legally infirm leading to miscarriage of justice, the Court may cancel bail under section 439 (2) of the Cr.P.C., even in the absence of any default or apprehended default on the part of the accused. **16 21**

Sections 451 and 482 – See Sections 4, 5, 6, 9, 11 (5) and 17 of the Govansh Vadh Pratishedh Adhiniyam, 2004 (M.P.) **262 400**

Section 464 – In determining the failure of justice on account of irregularity, omission or mis-joinder of charges, the Court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. **57 78**

CRIMINAL TRIAL

– A person may run away due to fear of false implication, so absconding by itself, does not prove the guilt of a person.

Where the prosecution has not been able to prove its case beyond reasonable doubt, it cannot take advantage of weakness of the case of accused.

Lapses or irregularities in investigation going to the root of the matter and dislodging the substratum of prosecution case, adversely affected prosecution case. **119**

169

– Acquittal on the ground of defective investigation – When permissible – Law reiterated.

170 (iii) 252

– Appreciation of evidence – Standard of proof required to establish the plea of alibi – Laid down. **172 (i) 255**

– In a case involving death sentence, it is the duty of the Court to fully explore, every detail. **169 250**

– Non-explanation of injuries on the person of the accused – When insignificant?

17 22

– Non-examination of material witness – When not fatal to prosecution case.

171 253

– Non-explanation of injuries on the person of accused may affect the prosecution case if the injuries were of serious nature and caused at the time of the occurrence.

227 (ii) 333

– Principles of Sentencing – The fundamental purpose of imposition of sentence in criminal cases elucidated. **120 171**

– See Section 24 of the Evidence Act, 1872. **63 88**

– See Sections 138 and 141 of the Negotiable Instruments Act, 1881 **1243 353**

– See Sections 186/332 and 302 of the Indian Penal Code, 1860. **178 263**

– See Sections 230, 231 and 309 of the Criminal Procedure Code, 1973.

161 233

- See Sections 231 and 309 of the Criminal Procedure Code, 1973. **162** **238**
- Testimony of a witness whose conduct is unnatural and not in accordance with acceptable human behaviour, is liable to be rejected. **173 (i) 259**

DOWRY PROHIBITION ACT, 1961

Section 2 – Where the demand was not in connection with the marriage section 2 of Dowry Prohibition Act is not attracted. **179 (iii)264**

Sections 3 and 4 – See Sections 190, 239 and 245 of the Criminal Procedure Code, 1973 **214 314**

DRAVIKRAT PETROLEUM GAS PARADAYA AUR VITRAN VINIYAM AADESH, 2000

Clause 2 – See Sections 3 and 6-A of the Essential Commodities Act, 1955. **58 79**

DUTY OF HIGHER JUDICIARY TO PROTECT HONEST SUBORDINATE JUDICIAL OFFICERS

A subordinate Judicial-officer works under a psychological pressure and mostly in a charged atmosphere; therefore, in case the High Court does not protect honest Judicial-officers, the survival of the judicial system would itself be in danger. **121 172**

ELECTRICITY ACT, 2003

Sections 153,154 and 155 – Whether a Special Court constituted under Electricity Act, 2003 can try offences other than those mentioned under Electricity Act, 2003 – Held, Yes.

263 402

ESSENTIAL COMMODITIES ACT, 1955

Sections 3 & 6-A – 70 LPG cylinders were found to be short from the stock – The Supply Officer seized 388 cylinders in respect of which no breach of any provision of Control Order, 2000, had been committed – Seizure and consequent confiscation by the Collector under s. 6-A of the Essential Commodities Act, 1955 is not valid in the eyes of law. **58 79**

EVIDENCE ACT, 1872

Section 3 – Addition of something new, in order to explain a thing in a better way, cannot be said to be a material contradiction. **122 173**

Section 3 – An affidavit is not evidence within the meaning of Section 3 of the Indian Evidence Act, 1872. **104 (i) 149**

Section 3 – Appreciation of evidence of a less educated house wife with a limited vocabulary and imperfect capacity describe manner of assault. **123 174**

Section 3 – Appreciation of evidence – How to consider the behaviour or reactions of witnesses? **117 (ii) 166**

Sections 3, 138 and 146 – (i) Contradictions in medical evidence and ocular evidence – Ocular testimony of a witness has greater evidentiary value *vis-a-vis* medical evidence – When medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence – Where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

(ii) Contradictions in evidence – Minor contradictions in the deposition of the witnesses are to be ignored as the same cannot be dubbed as improvements – In case the contradictions are so material that the same go to the root of the case, materially a fact in the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witness and find out as to whether their case deposition inspire confidence – Exaggerations *per se* do not render the evidence brittle – It can be one of the factors to test credibility of the prosecution version.

(iii) Evidence of related/interested witnesses – Interested witnesses are those who want to derive some benefit out of the litigation/case – The evidence cannot be disbelieved merely on the ground that the witnesses are related to each other or to the deceased – In case the evidence has a ring of truth to it, is cogent, credible and trustworthy, it can and certainly should, be relied upon – In case the circumstances reveal that a witness was present on the scene of the occurrence and had witnessed the crime, his depositions cannot be discarded merely on the ground of being closely related to the victim/deceased.

(iv) Delay in lodging FIR and its contents – The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR –The court has to examine the explanation furnished by the prosecution for explaining the delay – If the prosecution explains the delay, the court should not reject the case of the prosecution solely on this ground – Therefore, the entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into consideration whether it can be termed as abnormal – Merely non-mentioning the names of all the accused or their overt acts elaborately or details of injuries said to have been suffered, could not render the FIR vague or unreliable – The FIR is not an encyclopaedia of all the facts – Moreso, it is quite natural that all the names and details may not be given in the FIR, where a large number of accused are involved.

(v) Effect of non-cross examination of a witness on a particular fact/circumstance – Defence cannot rely on nor can the court can base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in-chief and defence has not cross-examined him on the said aspect of the matter. **264**

403

Section 3 – If a witness ran away to another place because of threats issued by the accused person, it is no ground to disbelieve his evidence. **83 (ii) 120**

Section 3 – If there is a delay in bringing the factum of rape to the prosecution agency allowance will have to be made for the fact that all witnesses were rural and illiterate persons. **230 341**

Section 3 – See Section 300 of the Indian Penal Code, 1860. **71 100**

Section 3 – See Section 147 (1) of the Motor Vehicles Act, 1988. **136 195**

Section 3 – (i) Simply because the panch witness had given evidence in another case, he cannot be disbelieved.

(ii) Non-explanation of human blood found on the clothes of the accused is an incriminating circumstance. **224 330**

Sections 3 and 8 – Motive is relevant in a case based upon circumstantial evidence, however where the commission of offence is proved beyond reasonable doubt, absence of motive cannot be a ground to acquit the accused. **72 102**

Sections 3, 8 and 9 – Where the attack was dastardly and eye witnesses had seen the accused from close quarters, the dock identification was held to be reliable.

Where there is credible eye witness account, the absence of proof of motive is insignificant. **128 (i) 184**

& (ii)

Sections 3, 9, 27, 133 and 134 – The basis of appreciating evidence in a civil or criminal case remains the same but by way of judicial interpretation, Courts have created the requirement of a higher degree of proof for criminal cases.

Identification of an accused in Test Identification Parade is only a circumstance corroborating his dock identification – Circumstances under which the TIP is meaningless, elucidated.

An accomplice who has not been put to trial is a competent witness and his deposition may be acted upon without corroboration – However, such evidence is required to be considered with care and caution.

Evidence must be weighed and not counted.

59 (i),(ii)82

(iii) & (v)

Sections 3 and 32 – The court can take into consideration the part of the statement of a hostile witness which supports the case of the prosecution, as such hostility of prosecution witnesses must not always be fatal to the prosecution.

A person being under serious apprehension of death is expected to tell only the truth – Under certain circumstances, it may form basis for conviction. **60 (iii) 84**

& (iv)

Sections 3 and 32 (1) – Where the dying declaration is true and reliable and was recorded in accordance with the established principles of law, it can form the sole basis of conviction.

The hostility of the witnesses is a relevant consideration but it is not the sole determinative factor for deciding the guilt or otherwise of an accused. **61**

86

Sections 3 and 32(1) – Recording of the statement in the presence of relatives, does not affect the prosecution case.

In view of the categorical statement made by the deceased in the dying declaration, the reference made by the doctor while recording the history of the case that it was accidental fire while cooking food, does not affect the prosecution case. **62**

88

Sections 3 and 45 – Ocular testimony – When may be disbelieved on the basis of medical evidence. **124 174**

Sections 6, 11, 24, 25, 26 and 30 – (i) A confessional statement is admissible only as against an accused who has made it, only exception being section 30 of Evidence Act.
(ii) Confession made by other accused in a different case – Relevant under section 11 but would be admissible only through the person who made it and not through the person who recorded it. **174 259**

Sections 8, 114 and 155 – Non-examination of Investigating Officer is not fatal to prosecution where no prejudice is likely to be suffered by the accused – However, there may be certain circumstances where the examination of Investigating Officer becomes vital. **173 (ii) 257**

Section 9 – Under what circumstances dock identification could be relied upon even in the absence of Test Identification Parade during investigation? **18 23**

Sections 17, 21 and 145 – Admissions are substantive evidence by themselves though they are not conclusive proof of the matter admitted. **218 323**

Section 24 – An extra-judicial confession is capable of sustaining a conviction provided it is not made under any inducement, is voluntary and truthful. **63 88**

Sections 24, 25 and 26 – See Section 230 of M.P. Land Revenue Code, 1959
265 409

Sections 25 and 27 – Where definite admission on the part of the accused has led to recovery of dead body from a place which was within the special knowledge of the accused, accused is put to explanation. **219 323**

Section 27 – See Section 313 of the Criminal Procedure Code, 1973. **64 89**

Section 27 – (i) The recovery of an incriminating article from a place which is open and accessible to others, alone cannot vitiate the recovery u/s 27 of the Evidence Act in all cases.

(ii) Where there was a unexplained horizontal ligature mark admeasuring 10 c.m. x 1.5 c.m. on the neck of deceased, the act of taking deceased wife to the hospital cannot absolve the accused from guilt.

(iii) The post-mortem report is not a substantive piece of evidence but the evidence of the doctor, who conducted the post mortem, cannot be insignificant. **225 331**

Section 32 – Dying declaration – The certification of the doctor with regard to condition of the declarant to make statement is not the last word in all cases – May have to be balanced with surrounding facts if circumstances so demand. **19 24**

Section 32 (1) – The dying declaration is not admissible for the purposes of Section 498A IPC as the cause of death is not in question therein. **232 (ii) 343**

Sections 32 (1), 63 and 65 – (i) Thumb impression on the dying declaration by 100% burnt person – It is a question of fact regarding whether the skin of the thumb had in fact been completely burnt, and if not, whether the ridges and curves had remained intact.

(ii) Secondary Evidence relating to document –Can be adduced only when the original has been destroyed or lost, or when party offering evidence of its contents cannot, for any other reason, not arising from his own default, or neglect, produced in reasonable time –The court is obliged to examine the probative value of documents produced court

or their contents and decide the question of admissibility of a document in secondary evidence. **266 409**

Sections 34, 45 and 114 (f) – The books of accounts maintained in the regular course of business, ought not to be rejected or discarded without any rebuttal or reason.

45 (ii) 55

Section 44 – A stranger whose rights are affected by a fraudulently obtained decree, can always sue to get the judgment and its consequences set aside. **20 25**

Section 52 – The admissions in pleadings or judicial admissions, admissible under section 58 of the Evidence Act stand on a higher footing than evidentiary admissions and constitute waiver of proof. **220 324**

Section 57 – See Section 23 of Land Acquisition Act, 1894 **267 412**

Sections 61 62, 63 and 64 – There is a difference between admissibility of a document and its probative value. **95 (iii) 139**

Section 64 – A document cannot be read in evidence merely because it has been marked as exhibit unless it is proved in accordance with law. **21 25**

Section 65 – A photocopy cannot be taken on record as secondary evidence, if the fact that the photocopy was made from and compared with the original, who prepared photocopy by a mechanical process and compared it with the original, has not been mentioned in the application u/s 65 of the Evidence Act. **125 177**

Sections 65 and 63 – Proof of Will – Secondary evidence – Whether photocopy of the document is admissible as one of the modes of secondary evidence? Held, Yes – Further held, photocopy can be one of the procedures for leading secondary evidence under section 65 of the Evidence Act. **268 413**

Section 65-B – The Court is required to properly appreciate the requirement of section 65-B (4) of the Act, while deciding upon admissibility of electronic evidence.

175 259

Sections 67 and 68 – See Section 63 of the Succession Act, 1925 **249* 372**

Section 68 – Registration of Will would not attract presumption as to the correctness or regularity of the attestation – It is required to be specifically pleaded and proved.

198 (ii) 293

Section 73 – Comparison of handwriting by Court is permissible but Court should or be slow to base its finding solely on such comparison. **52 67**

Sections 90, 68 and 71 – (i) Presumption under section 90 regarding documents purported to be more than 30 years old, does not apply to Wills.

(ii) Where the sole available attesting witness did not state that he had seen the other attesting witness signing the will in the presence of the testatrix, other attendant circumstances maybe looked into. **176 260**

Section 93 – See Section 29 of the Contract Act, 1872. **108 154**

Sections 106 and 114 – Section 106 of the Evidence Act would apply to cases where prosecution has succeeded in proving facts from which a reasonable inference can be drawn. **225 (ii) 335**

Section 113-A – Physical assault upon the wife by her husband offends her dignity. It is not an accepted social norm.

Deceased was subjected to mental and physical cruelty by the accused in their matrimonial home which drove her to suicide – The accused was not able to rebut the presumption under section 113-A of the Evidence Act - Convicted under s. 306 IPC.

**65 (ii) 91
& (iii)**

Section 113-A – Presumption under section 113-A Evidence Act - Scope of.

250 (iv) 372

Sections 113-A and 113-B – See Sections 498-A, 304-B and 306 of the Indian Penal Code, 1860

277 442

Section 113-B – For the Court to draw the presumption under Section 113B of the Evidence Act, besides demand for dowry, it is essential to prove that harassment or cruelty was done soon before her death.

179 (ii) 264

Sections 113-B and 113-A – Presumption as to dowry death – Under Section 113B – It is for prosecution to first show availability of all ingredients constituting offence under s. 304B so as to shift burden of proof in terms of Section 113B of Evidence Act, on the accused.

229 (ii) 338

Section 118 – Child Witness – Requirement of corroboration – As a rule of practical wisdom, evidence of child witness must find adequate corroboration.

269 415

Section 133 – Approver – It is unsafe to record a conviction on the testimony of an approver unless same is corroborated in material particulars by some untainted and credible evidence.

66 93

Section 134 – In a case involving a large number of offenders and victims, conviction can be sustained only if at least two witnesses give a consistent account of the incident.

221 324

Section 134 – See Sections 154 and 162 of the Criminal Procedure Code, 1973

158 224

Sections 146 and 157 – Where no question was asked in cross-examination regarding omission of a fact from evidence, such omission is no ground to doubt veracity of evidence.

Former statement made by a witness relating to the fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved to corroborate the testimony of the witness in the Court.

170 (i) 252

& (ii)

FAMILY COURT ACT, 1984

Sections 4 and 10 – The principal Judge is not empowered to entertain an application under section 24 of C.P.C for transfer of a case from one Judge of a Family Court to another.

2 2

FAMILY LAW

– Marital relationship – What is?

250 (ii) 372

FORENSIC MEDICINE

See Section 304 of the Indian Penal Code, 1860. **130 188**

GENERAL CLAUSES ACT, 1897

Section 8 – Meaning of and distinction between “Referential legislation” and “legislation by incorporation”. **22 26**

Section 9 – Whether the date on which the cause of action arose is to be excluded? Held, Yes. **244 (i) 357**

GOVANSH VADH PRATISHEDH ADHINIYAM, 2004 (M.P.)

Sections 4, 5, 6, 9, 11 (5) and 17 – Whether Judicial Magistrate is competent to pass order of interim custody of vehicle, cow progeny and beef seized in respect of an offence under Madhya Pradesh Govansh Vadh Pratishedh Adhiniyam, 2004 during the pendency of trial or proceedings for confiscation? Held, Yes. **262 400**

GUARDIANS AND WARDS ACT, 1890

Sections 7 and 47 – Custody of child – Welfare and wishes of a child are paramount consideration – It is not only the physical but also the mental welfare which has to be taken into consideration – Term ‘guardian’ has to be measured not only in terms of money and physical comfort but also in terms of moral and ethical welfare of the child.

270 417

HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Section 18 (2) – See Section 125 of the Criminal Procedure Code, 1973. **156 217**

HINDU MARRIAGE ACT, 1955

Sections 1 (2) and 2 (1) – The Hindu Marriage Act, 1955 – Has extra-territorial operation – Extra-territorial operation of law is saved not because of nexus with Hindus but Hindus domiciled in India. **222 326**

Sections 5 and 7 – Relationship in the nature of marriage and marital relationship – Distinction – Relationship of marriage continues, notwithstanding the fact that there are differences of opinion, marital unrest etc., even if they are not sharing a shared household, being based on law – But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage – Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end – Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the Legislature has used the expression “in the nature of”. **271 (i) 418**

Section 5 (1) (i) – See Section 125 Criminal Procedure Code. 1973 **256 386**

Section 11 – Invalidity of marriage, if not conceded by the wife, cannot be considered in the proceedings under section 12 of the Protection of Women from Domestic Violence Act, 2005. **41 46**

Section 13 (1) (i-a) – Some illustrative instances of mental cruelty enumerated. Making allegations, filing complaints, issuing notices and filing cases, which are defamatory to the spouse, may amount to mental cruelty, in a given case.

Supreme Court issued certain directions regarding mediation for the Courts dealing with matrimonial matters. **126 179**

Sections 13 (1) (i-a) and 24 – (i) Mental cruelty – What is?

(ii) Computation of permanent alimony – Factors to be taken into consideration.

23 27

Section 16 – Availability of benefit of section 16 of Hindu Marriage Act – It comes into operation only in a case in which a marriage in fact proved to have taken place between the persons which may be null and void as per the provisions of the Act – If the factum of marriage is not proved, section 16 (1) is not attracted and the children born out of such relationship cannot get the benefit of section 16 (1) of the Act – There must be a marriage, which would be hit by the provisions of this Act and would cover a relationship resulting from any other arrangement than any other marriage – Where there is no proof of solemnisation of marriage, the provisions of section 16 are not attracted. **272**

426

HINDU LAW

Partition- See Section 16 of Hindu Marriage Act, 1955 **272 426**

HINDU SUCCESSION ACT, 1956

Sections 6 and 8 – (i) Coparcener – Coparcenary Property? Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor.

(ii) Nature of property on partition in the hands of a single person – Revival of Coparcenary property?

So long, on partition, an ancestral property remains in the hands of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned – But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

(iii) Difference between the nature of property acquired on the death of father and on partition of the ancestral property – In the former, property ceases to be joint family property and all the heirs and legal representatives of deceased would succeed to his interest as tenants in common and not as joint tenants – In a case of this nature, the joint coparcenary did not continue – In the latter, the property is coparcenary property and the son would acquire interest in that and become a coparcener. **273 428**

IDENTIFICATION OF PRISONERS ACT, 1929

Section 5 – See Article 20 3 of the Constitution of India and Section 53 of the Criminal Procedure Code, 1973. **47 58**

INDIAN PENAL CODE, 1860

- Section 30** – See Section 133 of the Evidence Act, 1872 **66 93**
- Section 34** – Principle of vicarious liability – Can be the result of a pre-meditated decision between several co-accused or in a given case such a common intention can very well develop on the spur of the moment or at the scene of the crime – Direct proof of common intention is seldom available and therefore, such intention can only be inferred from the circumstances appearing from the proved facts of case and the proved circumstances. **274 430**
- Sections 34, 96, 97, 100, 149, 302, 324** – (i) Free fight - S. 34 I.P.C. not applicable – Normally, no right of private defence is available.
- (ii) Evidence recorded in one cross-case cannot be read in other. **24 28**
- Sections 34 and 300** – An accused may be convicted with the aid of section 34 of I.P.C. even in the absence of a charge under that provision provided that no prejudice is caused to the accused.
- Expressions “Failure of Justice” & “Prejudice” – Connotation of. **53 69**
- Sections 34 and 302** – Section 34 of the Penal Code lays down a principle of joint criminal liability which is only a rule of evidence but does not create a substantive offence.
- How to gather common intention? **67 93**
- Sections 40 and 141 Third** – The expression “other offence” used in S. 141 Third, means any offence for which punishment is prescribed under the Indian Penal Code. **177 264**
- Sections 53, 53 A, 55 and 57** – See Sections 432 and 433 of the Criminal Procedure Code, 1973. **68 95**
- Sections 53, 279, 337, 338 and 304-A** – Where offences were established under numerous provisions of law, but separate sentence was not imposed under a particular provision, would not imply that there was no conviction thereunder. **25 29**
- Section 120-B** – In order to constitute the offence of conspiracy, mere knowledge of the main object/purpose of conspiracy without knowing different stages of action, is sufficient. **59 (iv) 82**
- Sections 141 and 436** – See Section 134 of the Evidence Act, 1872 **221 324**
- Sections 141, 149 and 302** – Ingredients of section 149 reiterated.
- Delay in lodging FIR – Whenever an incident of fatal injury has taken place, the victims would have to recover from the shock and trauma caused by injuries suffered by them and Non explanation of injuries on accused – Effect explained. **127 182**
- Sections 148 and 149** – See Section 313 of the Criminal Procedure Code, 1973. **116 163**
- Sections 149, 302 and 436** – Concept of constructive liability must not be so stretched as to lead to false implication of innocent bystanders. **128 (iv) 184**
- Sections 186/332 & 302** – A Witness from the Police Department cannot per se, be said to be untruthful and unreliable. **178 263**

Sections 292 and 34 – Where the accused was convicted under s. 292 of the I.P.C. for showing a blue film to 15 young persons, benefit of probation not extended to the accused regardless of the fact that this was his first offence.	69	96
Section 300 – Death in police encounter – Magisterial Inquiry – The Inquiring Officer must focus its attention on the circumstances that led to the death of the person in an encounter – He cannot begin the inquiry by keeping in mind the antecedents of the deceased.	70	98
Section 300 – If cogent and satisfactory proof of homicidal death of victim is adduced, absence of corpus delicti by itself is not fatal to a charge of murder. Circumstance of last seen together, appreciation of – Legal position restated.	71	100
Section 300 – See Sections 3 and 8 of the Evidence Act, 1872.	72	102
Section 302 – A Court cannot impose punishment lesser than death or imprisonment for the offence of murder – The offender is free to make a representation to the Government for remission.	73	104
Section 302 – Circumstance of last seen together – The accused persons were duty bound to explain as to when and how they parted company with the deceased.	223	329
Section 302 – See Section 3 of Evidence Act, 1872	224	330
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Section 302 – See Section 27 of Evidence Act, 1872	225	331
Section 302 – See Section 31(1) of the Criminal Procedure Code, 1973.	48	62
Section 302 – See Section 354 (3) of the Indian Penal Code, 1908.	74	104
Section 302 – Life imprisonment always means imprisonment for whole of remaining natural life of the convicted person. Provisions in section 432 2 to 5 of Cr.P.C., are meant to check arbitrary remissions.	75	105
Section 302 – Where absolutely no injuries were found on the person of the accused on physical examination and the group of the blood found on the shirt of accused matched with that of the deceased, non-examination of the blood group of the accused was not fatal to the prosecution.	226	332
Sections 302, 364 and 120-B – Circumstantial evidence – Panchsheel – Five golden principles reiterated.	129	186
Sections 302, 364 A and 201 – Unless otherwise established by the kidnapper, it shall be presumed that the it would be presumed/inferred that the kidnapped person continued in the kidnapper's custody till he was eliminated. Guidelines for imposition of death sentence – Law on the point restated.	76	106

Section 302 r/w/s 34 – Appreciation of evidence – Standard of proof required to established the plea of alibi – Laid down. **172 (i) 255**

Section 302 r/w/s 149 – Common object would mean the purpose or design shared by all members of such assembly – Prior concert is not necessary as the common object may be formed on spur of the moment. **227 (i) 333**

Sections 302/34 and 304 Part I r/w/s 109 & 498-A – A person charged under section 302 r/w/s 34 cannot be convicted under section 304 Part I with the aid of section 109.

228 (i) 335

Section 304 – Allegations of mere omission, lapse or negligence on the part of the named accused is not sufficient to constitute offence of Culpable – Some act more positive, is necessary.

Mere absence of diatoms in body of deceased – Does not rule out possibility of death by drowning. **130 188**

Section 304-A – Criminal Medical Negligence – Degree of negligence should be much higher i.e. gross or of a very high nature – Procedure required to be followed for prosecuting doctors on charge of Criminal Negligence – As laid down in *Jacob Mathew's case, AIR 2005 SC 3180*. **275 438**

Section 304-B – Dowry death – Sentence – There is no scope for a sub-minimal sentence in the offence for dowry death, even on the grounds of advanced age. **131**

(i) 188

Section 304-B – Ingredients of the offence under section 304-B – Explained.

55 (ii) 74

Section 304-B – Young age of the accused and the fact that he is the only earning member in his family, are no grounds for leniency and to reduce sentence below minimum prescribed. **77 109**

Sections 304-B and 302 – The direction made by the Supreme Court in the case of *Rajbir v. State of Haryana, (2010) 15 SCC 116* was not meant to be followed mechanically – The charge of section 302 is to be added to the charge of S. 304B only in the cases where the evidence permits it. **160 232**

Sections 304B and 498A – (i) Cruelty as defined in explanation to section 498A of IPC is essential ingredient of offence punishable under section 498A – The onus of proving it beyond reasonable doubt is upon the prosecution. **179 (i) 264**

Sections 304B and 498A – Dowry Death – Essential Ingredients – Discussed – Cruelty – No requirement under Section 498-A IPC that cruelty should be within 7 years of marriage or in connection with demand of dowry. **229 (i) 338**

Sections 304B and 498A – (i) Where there is illegal demand which is not connected with the marriage, whether conviction under section 304B is maintainable? Held, No.

(ii) Where illegal demand for money coupled with harassment was proved, the case was covered under section 498A. **180 265**

Section 306 – See Section 113-A of the Evidence Act, 1872 and Section 154 of the Criminal Procedure Code, 1973 **65 91**

Sections 306 and 376 – See section 3 of Evidence Act, 1872 **230 341**

Section 307 – (i) If accused does an act with intention or knowledge that by his act he might cause death and hurt is caused, life imprisonment under section 307 I.P.C. is attracted.

(ii) That the injury was not caused on vital part of the body, is not sufficient ground to reduce sentence.

**231 (i) 342
& (ii)**

Section 326 – See section 354 of the Criminal Procedure Code, 1973 **217
320**

Section 354 – See sections 3, 4 & 6 of the Probation of Offenders Act, 1958.
246 (i) 362

Section 354 – See sections 3, 4 & 6 of the Probation of Offenders Act, 1958.
246 (i) 362

Section 375 clause “Fourthly” – Man already married – Man contracting second marriage with prosecutrix without taking divorce from his first wife – Physical relation with the prosecutrix from time to time – On being told by the first wife about the marriage of accused with her, prosecutrix lodged an FIR – Availability of plea of consent to accused – Held, when a woman gives her consent to a man to whom she believes to be her husband and she was lawfully married with him, then the offence committed by that man may come within the purview of Section 376 of the IPC. **276
440**

Sections 375, 417 and 90 – (i) Consent - What is?

(ii) Sexual intercourse consequent to promise of marriage – May amount to rape only where there is sufficient evidence to establish that accused had no intention to marry the prosecutrix and the promise was made only to satisfy his lust. **181 266**

Sections 379, 411, 120-B and 201 – Misappropriation of property seized in a criminal case by Police Officers – Government is liable to return the property or its value to the person entitled thereto. **26 30**

Sections 395 and 396 – A judge, while imposing sentence, should not be swayed away with any kind of sensational aspect and individual predilections. Binding precedents should be the Bible of a Judge.

The discussions or deliberations made on the State Judicial Academies or the National Judicial Academy at Bhopal, only update or open new vistas of knowledge of judicial officers. Criminal courts have to decide the cases before them examining the relevant facts and evidence placed before them, applying binding precedents.

Death Sentence – The approach should not be purely “judge centric” or “crime centric” – Circumstances of the accused should also be taken into consideration. **78 110**

Sections 395, 396 and 376 (2) (g) – Less than five persons can be convicted for the offence of dacoity, where the participation of 5 or more persons is established but there is some doubt as to their identity.

Where the prosecutrix was overpowered by several men and threatened with death in case she cried out and was not in a position to resist and fight, the absence of injuries on her person was immaterial. **132 189**

Sections 399 and 402 – See Sections 399 and 167 (2) Proviso (a) (ii) of the Criminal Procedure Code, 1973 **261 399**

Sections 403 and 406 – See Sections 202, 468, 472 and 473 of the Criminal Procedure Code, 1973 **13 16**

Sections 406 and 420 – A civil or commercial dispute in certain circumstances may also contain ingredients of criminal offence and such dispute has to be entertained as a criminal case.

For offence of cheating, it has to be shown that the intention of accused was dishonest at the time of making the promise. **79 114**

Section 493 – (i) Where deceit practiced by the accused led woman to believe that she was lawfully married to him offence under section 493 was complete - Proof of rituals not necessary.

(ii) Deceit – What is? Law explained. **27 31**

Sections 494 and 498-A – Right of private defence – Where after the death of one of the members of his party the second deceased started running away from the place of incident, a reasonable apprehension of harm had disappeared – If after that he was chased by the accused persons and they inflicted lathi blows on his person, the accused persons cannot be held to have acted in the exercise of right of self defence.

80 116

Section 498-A – Mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such, would not amount to “cruelty”. **250 (iii) 372**

Section 498-A – Permitting the first wife to enter the house of second wife with new born child – Does not amount it to Cruelty to second wife within the meaning of the second limb of clause (a) of the explanation under Section 498-A IPC. **232**

343

Section 498-A – See sections 190, 239 and 245 of the Criminal Procedure Code 1860

214 314

Sections 498-A, 304-B and 306 – (i) Absence of a viscera report, effect of – A chemical examination of viscera is not mandatory in every case of a dowry death; even when a viscera report is sought for, its absence is not necessarily fatal to the case of the prosecution when an unnatural death punishable under section 304-B IPC or under section 306 of the IPC or takes place; in a case of an unnatural death inviting section 304-B of the IPC or section 306 of the IPC as long as there is evidence of poisoning, identification of the poison may not be absolutely necessary.

(ii) Distinction between Sections 304-B and 306 IPC – Section 306 of the IPC is wide enough to take care of an offence under section 304-B also – However, an offence under section 304-B of the IPC has been made a far of serious offence with imposition of minimum period of seven years imprisonment with the sentence going upto imprisonment for life – Offence under section 304-B is treated separately from an offence under section 306 of the IPC – These two sections are not mutually exclusive – If a conviction for causing a suicide is based on section 304-B of the IPC, it will necessarily attract section 306 of the IPC – However, the converse is not true.

(iii) “Otherwise than under normal circumstance” – Scope – An unnatural dowry death, whether homicidal or suicidal would attract section 304-B of the IPC. **277 442**

Sections 499 and 500 – Editor is responsible for any defamatory news item published in a newspaper. **81 119**

INTERPRETATION OF STATUTES:

Interpretation of statutes – Court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress i.e. if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. **256 (iii) 386**

Strict Interpretation of penal statutes is not a rule of universal application. **47 (iv) 58**

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

Sections 2, 7(a) and 68 – See Rule 12 3 b of the Juvenile Justice Care & Protection of Children Act, 2000. **82 119**

Section 2 (k) – (i) Where a juvenile is found to be guilty of an offence he cannot go unpunished but the punishment must be left to the Juvenile Justice Board constituted under the 2000 Act.

(ii) Where an accused physically appears to be a juvenile when produced before a Magistrate, a prima facie opinion regarding juvenility has to be recorded. **233 345**

Sections 2(k), 2(l) & 7-A – The plea of juvenility may be raised at any stage, even after the final disposal of the case and even after the accused has ceased to be a juvenile.

In order of priority, the matriculation or equivalent certificate comes in first place and the certificate from the school (other than a play school) first attended comes at the second, for consideration. **28 32**

Sections 2 (k) and 7A – Plea of juvenility may be raised at any stage. **246 (ii) 362**

Sections 2(k), 7A and 20 – Even where the offence committed prior to coming into force of Juvenile Justice Care and Protection of Children Act, 2000, the Court shall have to see whether he was a juvenile in terms of 2000 Act on the date of the offence. **83 (i) 120**

Section 7-A – Claim of juvenility may be made for the first time even before the Supreme Court.

For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. **84 122**

Section 20 – Date of the incident, and not the date on which cognizance is taken by the Magistrate, is relevant for determination of juvenility.

Where during the pendency of an appeal before the High Court under the old Act, new Act came into being, the High Court may convict appellant but he should be referred to Juvenile Justice Board for further action. **133 191**

JUVENILE JUSTICE ACT, 1986 (since repealed)

Section 21 – See Section 2 (k) Juvenile Justice (Care & Protection of Children) Act, 2000

233 345

JUVENILE JUSTICE CARE & PROTECTION OF CHILDREN RULES, 2007

Rule 12 (3) (b) – Where matriculation certificate was filed, Ossification Test could not have been taken recourse to for determination of the age of a juvenile, as per rule 12 (3) Juvenile Justice care & protection of children Rules, 2007 **82 119**

Rule 12 – Provisions of rule 12 should also be applied for determination of the age of a child, who is the victim of a crime. **182 267**

Rule 12 – See Rule 12 of the Juvenile Justice Care & Protection of Children Act, 2000. **84 122**

Rule 15 – See Sections 2(k), 2(l) & 7-A of Juvenile Justice (Care & Protection of Children) Act, 2000. **28 32**

LAND ACQUISITION ACT, 1894

Sections 4 and 6 – The civil Court has no jurisdiction to go into the question of the validity or legality of the notification u/s 4 of the Act, declaration u/s 6 of the Act and subsequent proceedings. **85 123**

Sections 4 (1), 23 and 24 – A land-owner, who has been dispossessed prior to issuance of preliminary notification u/s. 4 (1) of the Land Acquisition Act, is entitled to recover the possession of his land from the Government. **134 193**

Section 23 – (i) Judicial Notice – Of the fact that there is a steady increase in the market value of the land.

(ii) Determination of increased market value – Procedure – Reliance upon transaction at a given rate per year – Value of a larger extent of land may be determined on the basis of value of smaller area. **267 412**

Sections 23 and 28 – Awarding Compensation – Acquisition of undeveloped land situated in municipality area – More realistic deduction against development cost would be one third i.e. 33-1/3%.

Where land is situated within municipal area having material potential for development of both residential and commercial complexes, belting system is not to be applied.

135 194

LAND REVENUE CODE, 1959 (M.P.)

Section 131 – (i) Private easement, connotation of – It is a customary easement i.e. right of way and has wider meaning with that of right of easements as envisaged in the Easements Act, 1992.

(ii) Right of way – Customary easement – Plaintiff admitted that suit land is being used as path since the time of ancestors – Right is ancient, reasonable, certain, regular and is neither opposed to public policy nor forbidden by law – Held, no obstruction can be made by the plaintiff in construction of a pucca road on the path for the convenience of public at large.

(iii) Essential ingredients of valid custom – Stated. **278 445**

Section 230 – Village Chowkidar and Patel – Mere fact that the village Chowkidar or Patel was obliged to inform the police about any crime which took place in the village doesn't give them status of police officer – Extra-judicial confession made before them is admissible in evidence. **265 409**

Section 248 – Section 248 of M.P.L.R.C. cannot be pressed into service in case of encroachment upon Wakf Property. **29 35**

Sections 250 and 257 – A civil suit for possession of agricultural land on the basis of title, without availing the speedy remedy under section 250 of the MPLRC, is maintainable.

201 297

LEGAL MAXIMS

Legal maxim "*Construction ut res magis ualeat quam pereat*" meaning of – Where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. **256 (iv) 386**

LIMITATION ACT, 1963

Section 5 – (i) Application under section 5 is required to be considered with a pragmatic and liberal approach but where the application for condonation of delay is based on false averment, the delay cannot be condoned.

(ii) The Courts do not enjoy the unlimited and unbridled discretionary powers for condonation of delay. **183 270**

Section 5 – Application for condonation of delay of 6 years and 121 days by the State – Holding that the Court should adopt lenient view with justice-orientated approach and keeping in view the state of the litigation (*Nazul*) land and other circumstances, application allowed. **279 446**

Section 5 – See Section 115 and Order 9 Rule 9 of the Civil Procedure Code, 1908.

154* 216

Section 5 – Where due to negligence of the officers of the Government, there was unexplained delay of more than six months, it was not condoned under section 5 of Limitation Act. **30 36**

Section 12 – See Section 9 of the General Clauses Act, 1897 **244 (i) 357**

Article 58 – The limitation for a suit for declaration that termination of lease is invalid, is 3 years from the date of termination.

"Right to Sue" explained

**96 (I) 141
& (ii)**

M.P. MUNICIPALITIES ACT, 1967

Section 319 – Bar of suit in absence of notice – Applies only in respect of anything done or purporting to be done under the Act – Withholding the amount due to the employee on account of leave encashment cannot be said to be an act done or purporting to be done under the provisions of the Act – Hence, suit by municipal employee instituted without giving such notice is maintainable. **280 447**

MEDICAL TERMINATION OF PREGNANCY ACT, 1971

Section 3 – Forced prostitution leading to pregnancy – Termination has to be permitted with the aid of Exception I of section 3 clause (ii) of the Act as it would cause grave injury to the mental health of the woman. **234 346**

Sections 3 to 5 – See Sections 3 to 7 and 9 of the Pre-Conception and Pre-Natal Diagnostic Techniques Prohibition of Sex Selection Act, 1994. **91 133**

MOTOR VEHICLES ACT, 1988

Section 2 (28) – Direction issued to restrain the use of motorized vehicle “Jugaad” as they have become a menace to the public safety – A “jugaad”, seized by the police authorities, could not be released in favour of its owner either by the law-enforcing agency or even by the Magistrate. **184 271**

Sections 2(30) and 168 – “Owner” – For the purpose of section 168 of the Motor Vehicles Act, 1988, a person in whose name a motor vehicle stands registered in the R.T.O. on the date of accident can only be described as “owner”. **281 448**

Sections 3, 149(2) (a) (ii) and 181 – Registration of case u/s 3 and 181 of M. V. Act against the driver by itself, is not sufficient to hold that driver did not have a valid driving licence at the time of accident. **185 274**

Section 123 – Passenger travelling on the rooftop of bus – Duty of conductor and driver – It is the statutory duty of the conductor and the driver of the bus to have noticed if there are any passengers on the rooftop and asked them to alight from the rooftop and board the bus – The driver of the bus is also enjoined with the duty to ensure that the bus moves only after safe travelling conditions for the passengers.

If there was no evidence regarding the deceased refusing to alight from the roof top, in spite of the directions from the driver or the conductor that he was cautioned about the risk, no negligence was fixed on the deceased. **282**

450

Sections 140 and 149 (2) (a) (ii) – The Insurance Company cannot be exonerated at the stage of s. 140 of M.V. Act, for want of proper driving licence.

86 125

Sections 146 and 147 – Difference between “Act policy” and “comprehensive/ package policy” – Explained.

31 37

Sections 146, 147 and 149 – Application of the principle of pay and recover in the cases of injury to a third party

186 276

Section 147 – Liability of a passenger in a car is dependent upon whether it is a comprehensive Policy or an Act Policy.

32 37

Section 147 (1) – Unshaken testimony of the driver to the effect that the claimant was not employed on the tractor but was a third party, may not be disbelieved on the basis of F.I.R.

136 195

Section 147 (1) – Where insurance policy had not covered risk of any injury to the owner-insured himself, Insurance Company was not liable for death of owner-insured, travelling in the vehicle.

137 196

Section 147 (1) (b) (i) – Where Premium covers the risk of only one driver, the Insurance Company is not liable to pay compensation of spare driver in the vehicle.

33 38

Section 147 (1) and 149 (2) (a) – Where the tractor was insured for agricultural purposes, and no premium was paid for any labourer, the insurance company is not liable to pay any compensation for the death of a labourer. **138 197**

Section 147 (1) – Where the cheque premium was dishonoured prior to the date of the accident but the Insurance company informed the insured about the dishonour of cheque and cancellation of policy subsequent to the date of accident, the insurance company would be liable. **236 347**

Sections 147 (1) and 149 (1), (2) (a) (I) (c) – The Insurance Company is not liable for compensation in respect of the persons over and above the number of seating capacity of the vehicle; therefore, an order of pay and recover cannot be made in respect of such persons **237 348**

Sections 147 and 149 – Where the Insurance Policy had covered the risk of labourers and at the time of the accident the vehicle was being used to transport gravel to construct a well in the farm, the Insurance Company could not be exonerated. **235 347**

Sections 149, 163 and 170 – (i) Can owner or insurer be allowed to prove contributory negligence or default or wrongful act on the part of injured or claimant? Held, No – Otherwise, it would defeat the very object and purpose of section 163 A of the Act but the matter referred to a larger Bench in the light of *Sinitha's case, 2012 ACJ 1 (SC)*.

(ii) Point Nos. (iii) to (v) referred in *Shila Datta's case, 2011 ACJ 2729 (SC)* (3 Judge-Bench) are also referred to a larger bench for consideration. **283 451**

Section 149 (2) (a) (I) – Where the bus was not carrying any passenger in excess of the permitted capacity but some pedestrians were also involved in the accident, insurance company cannot be exonerated. **139 198**

Section 149 (2) (a) (ii) – Where the driver had a fake driving licence, the Insurance Company would be exonerated even if the driver was not driving the vehicle negligently. **238 348**

Sections 161 and 166 – An unknown truck hit a motor cyclist causing death of his wife and infant child – Tribunal did pass award against insurance company of motor bike but the motor cyclist was not found liable for the accident – Finding of tribunal reversed by Hon'ble the High Court. **284 452**

Section 163-A – The meaning of the word 'accident' as per Oxford Dictionary is 'an unpleasant event that happens incidentally and causes damage, injuries, etc.'

(ii) What is negligence?

(iii) Accidental murder – Only if the dominant intention of the act of felony is to kill any particular person, then alone such killing can be termed as a murder simpliciter, otherwise it is an accidental murder. **187 277**

Section 163-A – Section 163-A of the Motor Vehicles Act, applicability of – Accident occurred on account of rash and negligent driving of vehicle by the owner – Vehicle was insured for third party and own damage in certain conditions – No additional premium paid by the owner for his personal injuries or death making the Insurance Company liable for payment to his legal heirs – Held, since the deceased owner had not got comprehensive package policy for his personal injuries or death, therefore, claimants are not entitled for compensation for the death of the owner – Further held, provisions of section 163-A of the Act shall have no application in such cases. **285 452**

Section 163 (A) – See Order 23 Rule (1) (3) of Civil Procedure Code, 1908

286 453

Section 166 – Assessment of just compensation in injury cases – Injured aged 17 years is a student – Due to accident he shall not be in a position to speak for the rest of his life and shall not be in a position to do anything except breathing for his life – He would require care of a person everyday so as to see that he is given food, bath and even answering natural call – Tribunal awarded ` 18,75,800 in various heads – High Court reduced the award to ` 12,45,800 – Apex Court upheld the award of Tribunal looking to the condition of injured. **287 454**

Section 166 – Assessment of just compensation in death case – Deceased, aged 19 years was a student of engineering course – Claimants/parents aged mother 42 years and father 45 years – High Court awarded ` 2,00,000 compensation – Apex Court awarded a lump-sum compensation of ` 7,00,000. **288**

Section 166 – Assessment of just compensation in death cases – Deceased aged 22 years was a student of III year in engineering course in computer science – Claimant parents mother aged 42 years and father aged 46 years – Tribunal awarded ` 2,43,500 – High Court held that keeping in view the future prospects and the scope of engineering jobs in our country, according to which the junior engineer at his initial stage of the career is getting the package of between ` 3,00,000 and ` 5,00,000 per annum and as per evidence of the colleague of the deceased, now-a-days, engineers are getting the job with the package of ` 2,00,000 to ` 2,25,000 per annum – High Court enhanced compensation to ` 12,75,000. **289 455**

Section 166 – Assessment of just compensation in death case – Deceased, aged 24 years was a business manager in a private concern – Claimants/parents aged mother 46 years and father 51 years – Tribunal adopted multiplier of 17 and awarded ` 24,65,668 as compensation.

High Court adopted multiplier of 12 and awarded ` 15,14,648 as compensation.

Apex Court adopted multiplier of 18 and awarded ` 20,64,800 as compensation with funeral expenses of ` 10,000. **290 456**

Section 166 – Finding of negligence recorded in connected claim cases by other tribunals does not operate as res judicata against a person who is not a party or who remained ex parte. **239 349**

Section 166 – Merely because 3 persons were riding the two-wheeler at time of the accident, finding of contributory negligence cannot be recorded. **188 279**

Section 166 – Negligence – The tribunal should have considered both oral and documentary evidence produced before it – It should appreciate the same in the proper perspective – Charge-sheet was also filed against respondents u/s 279, 304-A IPC and Sections 133 and 181 of M.V. Act – Apex Court reversed the finding of tribunal and held driver of tractor trolley liable for accident and awarded ` 5 lac. for death of deceased, aged 10 years. **292 460**

Section 166 – Just compensation – (i) The post of driver is a skilled job and his income is ` 6 000 per month, the tribunal should take judicial notice of above facts because ensuring award of just compensation is the statutory duty of tribunal.

(ii) Finding of tribunal on contributory negligence on the basis of filing charge sheet and non-production of F.I.R. reversed by the Apex Court. **291 457**

Section 166 – The claimant had suffered grievous injuries in the pelvic region and he has become impotent – Will have to take further treatment in an Institute like NIMS for at least ten years – The award of ` 4,35,000 enhanced to ` 20,20,000. **240**

350

Section 166 – There cannot be any discrimination on the ground of gender while selecting a multiplier, regardless of the fact that the daughter was to be married shortly.

140 198

Section 166 – Where a railway engine at a unmanned railway crossing hit a two wheeler killing the driver of the two-wheeler and the engine driver was not examined, the pillion rider was the best eye witness. **189 279**

Section 166 – Where the claimant's right leg below knee was amputated below knee, it was just and proper to grant compensation under the head of loss of earnings as well as permanent disability. **190 280**

Section 166 – Where the driver was absent before the tribunal and faced a criminal case in the matter, holding claimant responsible for 25% of contributory negligence, is not justified. **141 199**

Sections 166 and 167 – A claim petition is not maintainable before the Workmen's Compensation Commissioner after taking compensation under Motor Vehicles Act.

34 39

Sections 166 and 167 – Section 167 M.V. Act - Acceptance of compensation awarded by Commissioner under Workmen's Compensation Act on the proceedings initiated by the employer does not amount to exercise of option on the part of the dependants to proceed under Workmen's Compensation Act. **87 126**

Sections 166, 168 and 173 – (i) Nature of a claim petition under the Motor Vehicles Act, 1988 – Is Non-adversarial – Rule of the pleadings does not strictly apply as the claimant is required to make an application in a form prescribed under the Act – It is statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute – The tribunal is required to follow such summary procedure as it thinks fit – It may choose one or more persons possessing special knowledge of and matters relevant to enquiry, to assist it in holding the enquiry.

(ii) Effect of non-examination of pillion-rider of a scooter driven by deceased – Keeping in view the nature of the jurisdiction that is exercised by a claims Tribunal under the Motor Vehicles Act, 1988, the hapless condition in which the claimants must have been placed after the death of their sole breadwinner and the sufficiently long period of time that has elapsed in the meantime, failure or inability to examine the pillion-rider as a witness is not fatal. **293 461**

Sections 166 and 173 – Only in death cases and not in injury cases can 1/3rd of income of the claimant be deducted as personal expenses. **142 199**

Sections 166 and 173 – Where a motorcyclist crashed into a truck parked on the road, without any indication at midnight, the ratio of contributory negligence for the accident was held to be 75% on the part of the driver and 25% on the part of the deceased.

88 127

Sections 166 (1) and 147 – Use of vehicle – Murder of driver – When a truck was standing at the side, the cleaner caused fatal injuries to truck driver – He died.

Whether it is accident arising out of use of motor vehicle? Held, No – The insurance company is not liable for compensation. **294 463**

Section 168 – (i) Receipt of provident fund, pension, insurance and similarly in any case, bank balance, shares, fixed deposits, etc. and salary receivable by the claimant on compassionate appointment by the LRs. has no bearing on determination of compensation for the death of a person in a road accident.

(ii) Burden of proof regarding deduction or payment of income tax from the salary or income of a person for the purpose of determining his actual income – Law laid down.

191 281

Section 168 – The claims tribunal has a duty to award just, equitable, fair and reasonable compensation, irrespective of the claim made in the claim petition.

A person who was self-employed or engaged on fixed wages may also get advantage of formula of increase of income for future prospects like a person who was in a permanent job.

The tribunals should award at least Rs. 1 lakh towards loss of consortium and ` 25,000/- for funeral expenses.

Consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affections and sexual relation his or her mate.

An observation made by this court, mainly to achieve uniformity and consistency on a socio-economic issue, ought to be, periodically revisited. **143 201**

Sections 170 (b), 149 and 168 – Heads for getting compensation for personal injury – (i) Pain and suffering; (ii) Loss of amenities; (iii) Shortened expectation of life, if any; (iv) Loss of earnings or loss of earning capacity or in some cases for both; and (v) Medical treatment and other special damages. **295 464**

MOTOR VEHICLES RULES, 1994 (M.P.)

Rule 240 – See Order 23 Rule (1) (3) of the Civil Procedure Code, 1908 **286 453**

MURDER TRIAL

The circumstances proved beyond reasonable doubt in the case were found to have formed an unbroken chain – Conviction, held proper. **144 203**

MUSLIM LAW

– See Section 17 of the Registration Act, 1908 **241* 351**

N.D.P.S. ACT, 1985

Section 15 (c) – Reliable testimony of Police Officer may be accepted even if independent witnesses have not turned up to depose. **35 39**

Sections 18, 41 and 50 – (i) A police witness cannot be presumed to be untrustworthy.
(ii) Section 50 of the NDPS Act is attracted only when the person of an accused is searched and not when a vehicle is searched.

(iii) Where the registration number and name of the owner of the scooter from which the contraband was seized, is clearly established, non-production thereof in the Court is immaterial. **193 285**

Sections 20 (b) (ii) & 50 – Section 50 of NDPS Act applies only to search of vehicles scooters etc. and not to search of persons.

The essence of notice under S. 50 of NDPS Act is that the accused should be apprised of his legal right of being searched either by a gazetted officer or a Magistrate.

Since minimum sentence is prescribed by the Act, the Supreme Court did not interfere in the sentence. **89 128**

Section 32-A – Section 32 A of the N.D.P.S. Act does not alter the severity of penalty, it only obliterates remissions that a convict would normally have earned. **192 284**

Sections 41, 42 and 50 – Section 50 is applicable only in cases of search of a person but in cases where the line of separation is thin and fine between search of a person and an artificial object, the test of inextricable connection is to be applied.

Where the contraband is seized from the residential premises of accused, the proviso of section 42 (1) is not applicable. **242 351**

Sections 42 and 57 – Total non-compliance of statutory provisions of section 42 of N.D.P.S. Act is impermissible and the question of prejudice loses its significance in case of total non-compliance. **36 40**

Section 50 – (i) What constitutes sufficient compliance with S. 50 of N.D.P.S. Act? Law reiterated.

(ii) Maxim *Ignorantia juris non excusat* notwithstanding, strict compliance with S. 50 N.D.P.S. Act on the part of the Officer must be insisted upon. **37 42**

Sections 79 and 80 – The Supreme Court has issued directions and guidelines for trials of NDPS Act cases pertaining to (a) adjournments, (b) examinations of witnesses, (c) workload in Courts d narcotics laboratories, (e) shortage of staff in narcotics laboratories, (f) right of re-testing samples, (g) monitoring for progress of investigation and trial, (h) public prosecutors, (i) compliance of section 207 of Cr.P.C. **90 129**

NEGOTIABLE INSTRUMENTS ACT, 1881

Sections 118, 138 and 139 – Standard of proof required for rebutting presumption of debt or legally enforceable liability – Laid down. **194 286**

Section 138 – The place where there was failure to pay the amount clearly qualifies as the place where a complaint under section 138 of NI Act can be filed. **213 312**

Section 138 – Whether application for amendment in the complaint with respect to offence under section 138 of Negotiable Instruments Act is permissible? Held, No – Further held, there is no provision in the Code of Criminal Procedure which permits amendment in the complaint. **297 467**

Sections 138 and 141 – A demand notice under Section 138 sent to the Director of the Company, signing cheque on its behalf, amounts to notice to the Company itself.

A company cannot escape from penal liability under section 138 of the N.I. Act, on the premise that a petition for winding up of the Company was presented prior to service of a demand notice under S. 138.

It is not necessary to reproduce the language of Section 141 verbatim in complaint – If the substance of the allegations made in the complaint fulfills the requirements of Section 141, the complaint has to proceed and is required to be proceeded with.

Acceptance of resignation of the Director would not assume importance, as the complainant may still prove that change in the management of the Company was effected only to avoid constructive liability.

**145* (ii) 204
to (v)**

Sections 138 and 141 – A non-signing joint account holder cannot be held liable for the offence of dishonour of cheque under section 138 N.I. Act. **243**

353

Sections 138, 141 and 142 – Signing of complaint by the complainant under section 142 of the N.I. Act, is not mandatory.

Where the section containing the non obstante clause does not refer to any particular provision which it intends to override but refers to the provisions of the statute generally, the non obstante clause has to be given restricted meaning – It is not permissible to hold that it excludes the whole Act.

The non obstante clause in Section 142 (a) is restricted to exclude two things only from the Code i.e. (a) exclusion of oral complaints and (b) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course.

38 43

Sections 138, 142 and 145 – See Sections 200, 202 and 482 of the Criminal Procedure Code, 1973

296 467

Sections 138 and 142 – The words ‘of’, ‘from’ and ‘after’ may, in a given case, mean really the same thing.

244 (ii) 357

PARTITION ACT, 1893

Section 4 – Partition suit by transferee of share in dwelling house – Application against the stranger transferee of the share of erstwhile co-owner of dwelling house of undivided family – Stage – It may be at any stage of the proceedings between the parties – Such an application can be maintained after passing a preliminary decree.

254 (ii) 382

PRACTICE CRIMINAL – CAUTION FOR CRIMINAL COURT

Suspicion, however grave, cannot take the place of proof, is basic principle under lying criminal jurisprudence – Must not be lost sight of even in most heinous cases.

39 44

PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES PROHIBITION OF SEX SELECTION ACT, 1994

– PC & PNDA Act has its roots in Article 15(2) of the Constitution of India – The Act is a piece of welfare legislation – Directions issued to ensure proper implementation of the Act.

196 292

Sections 3 to 7 and 9 – To control discrimination towards the female child and practice of eliminating female foetus, Hon'ble Supreme Court has issued a set of guidelines.

91 133

PREVENTION OF CORRUPTION ACT, 1988

Sections 3(1)(b), 4(3) and 22 – A special Judge alone can take cognizance of the offence specified in section 3 (1) and can also try any offence other than offence specified in section 3(1) of the Prevention of Corruption Act. **245 359**

Sections 7 and 13 – See Section 4 of the Probation of Offenders Act, 1958.

92 136

Section 19 – An authority empowered to repatriate a Government servant, cannot grant sanction for prosecution because power to repatriate does not embrace within itself the power of removal from office **93 136**

Sections 19 (1) and 3 (2) – See Sections 200, 202, 156 (3) and 190 of the Criminal Procedure Code, 1973 **258 394**

PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971

Section 3 – See Sections 397 and 204 of the Criminal Procedure Code, 1973

260 398

PRISONERS ACT, 1900

Section 29 – See Section 167 and 309 of Criminal Procedure Code, 1973

40 45

PRIVATE INTERNATIONAL LAW

– Kinds of Domicile – How domicile of birth changes – Law discussed. **222 326**

PROBATION OF OFFENDERS ACT, 1958

Sections 3, 4 and 6 – 16 years old accused was not held to be entitled to the benefit of probation in an offence under section 354 of the IPC committed 18 years ago.

Courts cannot take lenient view in awarding sentence on the ground of sympathy or delay as the same cannot be any ground for reduction of sentence.

**246 (i) 362
& (iii)**

Section 4 – See Sections 292 and 34 of the Indian Penal code, 1860.

69 96

Section 4 – Where minimum sentence has been prescribed, Probation of Offenders Act is inapplicable; therefore, its provisions are not applicable to offences under Prevention of Corruption Act. **92 136**

PROTECTION OF HUMAN RIGHTS ACT, 1994

Section 12 – See Section 300 of the Indian Penal Code, 1860. **70 98**

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Relationship of same sex (gay or lesbians) is not recognised by the Act – Hence, any act, omission, commission or conduct of any of the party would not lead to domestic violence, entitling any relief under the DV Act.

Guidelines for testing a relationship to fall within the expression relationship in the nature of marriage u/s 2(f) of the DV Act – (1) Duration of period of relationship (2) Shared household (3) Pooling of resources and financial arrangements (4) Domestic arrangements (5) Sexual relationship (6) Children (7) Socialization in public (8) Intention and conduct of the parties.

271 (ii) 418
& (iii)

Section 12 – See Section 11 of Hindu Marriage Act, 1955. 41 46

Sections 12, 19, 20 and 22 – The claim of wife for alternative accommodation under the Act can only be made against the husband and not against the in-laws or other relatives.

197* 292

RAILWAYS ACT, 1989

Section 161 – See Section 166 of Motor Vehicle Act, 1988 189 279

REGISTRATION ACT, 1908

Section 17 – If rights are relinquished/extinguished/created in a property which is worth more than ₹ 100/-, it should be registered – Mere lists of property do not form an instrument of partition, and therefore, do not require any registration. 146

205

Section 17 – Oral gift of immovable property by a Muslim is valid provided it is accompanied by declaration by both the parties and delivery of possession – If made in writing, registration is not required. 241* 351

SARFAESI ACT, 2002

Section 34 – See Section 9 of Civil Procedure Code, 1908 153 216

SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

Sections 13, 14 and 17 – It is not mandatory for the secured creditor to make attempt to obtain possession on his own before approaching the Magistrate under Section 14.

Right of appeal of borrower – When arises – Appeal to Debt Recovery Tribunal under Section 17 is available only after losing possession of secured assets but not prior to it.

247 (i) 364
& (iii)

SECURITY INTEREST (ENFORCEMENT) RULES, 2002

Rule 8 – Duty of Magistrate before passing suitable orders for the purpose of taking possession of the secured assets – Magistrate is not required to abide by the procedure under rule 8 of 2002 Rules before passing order under Section 14. 247

(ii) 364

SPECIFIC RELIEF ACT, 1963

Section 6 – An encroacher in peaceful possession of immovable property, can sue the true owner for possession under section 6 of the Specific Relief Act, if he is forcibly dispossessed therefrom by the true owner. 248 371

Section 6 – Interim reliefs which amount to pre-trial decrees must be avoided wherever possible. **94 (i) 137**

Sections 9, 10 and 38 – See Order 2 Rule 2 (2) and (3) of Civil Procedure Code, 1908. **3 3**

Section 16 – Distinction between “readiness” and “willingness” reiterated.

Even where the defendant has not taken defence, it is the duty of the Court to frame an issue on this statutory requirement and address the same. **42 48**

Section 16 (c) – (i) Distinction between readiness and willingness – Former refers to financial capacity and the latter to the conduct of plaintiff wanting performance.

(ii) Requirement of section 16(c) – The plaintiff must plead and prove that he had performed and always been ready and willing to perform the essential terms of the contract – The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance and while adjudicating the same – Court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other circumstances – Absence of the specific plea by opposite party doesn't absolve the plaintiff to comply with the mandate of statute under section 16(c) – Want of notice by the plaintiffs to the defendant No.1 to get sale deed executed in their favour – The question of *bona fide* purchaser loses significance where there is non-compliance of S. 16 (1) (c) of Specific Relief Act. **298 468**

Sections 16 and 20 – Purchaser's refusal to pay Income Tax dues to the seller for obtaining clearance certificate with an offer to pay the dues directly to I.T. Authorities, cannot be construed as default in performance of agreement to sell on the ground of business efficacy.

Mere efflux of time and escalation of price is no ground to deny specific performance of agreement, however it can be a ground to compensate vendor by the grant of a price higher than the one agreed upon. **44 52**

Section 19 – A contract for specific performance may not be enforced against a person who is a transferee from the vendor for valuable consideration and without notice. **147 (iii) 206**

Section 19 – A person, who is not party to a contract, cannot be impleaded in a suit for specific performance of contract. **100 145**

Sections 26 – Section 26 of the Specific Relief Act is applicable only where it is pleaded and proved that through fraud or mutual mistake, the real intention of the parties is not expressed in an instrument – Rectification is permissible only by the parties. **95 (i) 139**

Section 29 – See Section 29 of the Contract Act, 1872. **108 154**

Sections 34 and 38 – Relief of declaration under the Specific Relief Act is discretionary in nature. **96 (iii) 141**

SUCCESSION ACT, 1925

Section 63 – Proof of Will – Requirements restated. **198 (i) 293**

Section 63 – The duty of removing suspicious circumstances surrounding the will is upon the plaintiff – If he fails to do so no decree can be based thereon. **148** **209**

Section 63 – Where the execution of the Will is surrounded by suspicious circumstances, the propounder, apart from the statutory requirements, is also required to remove all legitimate doubts to the satisfaction of the judicial conscience of the court. **249*** **372**

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SUITS VALUATION ACT, 1887

Section 8 – See Section 15 and Order 7 Rule 1 (i) of Civil Procedure Code, 1908

1 **1**

THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

Sections 18 and 47 – A Government servant rendered disabled during service, cannot be removed from service or retired compulsorily. **195** **289**

TORTS

(i) A person or authority undertaking an activity involving hazardous or risky exposure to human life is liable to compensate for injury suffered irrespective of any negligence or carelessness.

(ii) Strict liability, what is?

(iii) If the specific provisions are not available in the concerning enactment, then the court may take into consideration the provisions of some other enactments like Motor Vehicles Act and its interpretations for the assessment of compensation. **200** **295**

– Alienation of affection by a stranger – Is an intentional tort known as “Heart Balm” action – The liability arises only if there is any active participation, initiation or encouragement on the part of the defendant. **259 (i)** **372**

Principle of Strict liability – Obligation of the Madhya Pradesh Electricity Board to prevent mishap due to electrocution – Board should exercise better vigilance and proper care to prevent the theft or unauthorised use of electricity to prevent mishaps – No steps taken by M.P. Electricity Board to prevent the illegal abstraction of energy from the supply line – Two minors died due to electrocution as a result of live electricity came into contact with a flowing river – Fully attract the well established principles of strict/absolute liability.

300 **471**

TRANSFER OF PROPERTY ACT, 1882

Section 8 – See Sections 16 and 20 of Specific Relief Act, 1963. **44** **52**

Section 52 – Doctrine of lis pendens is based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but also on those who derive title pendente lite. **147** **(i) 206**

Sections 54, 6 (h) and 136 – Whether transfer to minor is permissible? Held, Yes – There is no law which prohibits a minor from being a transferee. **299 470**

Sections 58 (c) and 54 – (i) Mortgage by conditional sale and a sale with right of repurchase – Merely because of the term was incorporated in the same document, it cannot always be accepted that the transaction agreed between the parties was a mortgage transaction.

(ii) Sale with option of repurchase – This option of repurchase is in the nature of contract for sale – Only personal right to repurchase is reserved. **199 294**

Sections 108, 111 and 116 – See Article 58 of the Limitation Act, 1963 and Sections 34 and 38 of the Specific Relief Act, 1963. **96 141**

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29 35

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