JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P., LUCKNOW

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CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS

(Covering important judgments of Supreme Court and Allahabad High Court)

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INDEX

Part I (Supreme Court)

Part II (High Court)

LIST OF THE CASES COVERED IN THIS ISSUE (SUPREME COURT)

Sl. No.	Name of the Case & Citation
1.	**Vilas Dinkar Bhat V. State of Maharashtra 2018 (8) Supreme 507**
2.	**Reliance Cellulose Products Ltd. vs. Oil and Natural Gas Corporation Ltd., (2018) 9 SCC 266**
3.	**Ruby Tour Services Pvt. Ltd. V. Union of India 2018 (8) Supreme 311**
4.	**Govindammal (D) by LRS. V. Vaidiyanathan 2018 (36) LCD 2762**
5.	**Narayana Gramani V. Mariammal 2018 (36)LCD 2776**
6.	**Ved Pal (D) through LRs. V. Prem Devi (D) through LRs. 2018 (36) LCD 2227**
7.	**Jharkhand State Housing Board V. Didar Singh 2018 (36) LCD 2759**
8.	**M/s. Alagu Pharmacy V. N. Manudeswari, 2018(3) ARC 690**
9.	**M/s. Bee Gee Corporation Pvt. Ltd Vs. Punjab Financial Corporation 2018 (15) SCALE 620**
10.	**Government (NCT of Delhi) vs. Union of India, (2018) 8 SCC 501**
11.	**State of Bihar V. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472**
12.	**Jarnail Singh V. Lachhmi Narain Gupta, (2018) 10 SCC 396**
13.	**Mazdoor Kisan Shakti Sangathan Vs. Union of India 2018 (8) Supreme 214**
14.	**Lakshmi Sreenivasa Cooperative Building Society V. Puvvada Rama (Dead) by Legal Representatives, (2018) 9 SCC 251**
15.	**M.C. Mehta v. Union of India, AIR 2018 SC 5194**
16.	**Vinay Sharma V. State of NCT of Delhi 2018 (8) Supreme 168**

17.	**Shivaji V. Divisional Manager, United India Insurance Co. Ltd. 2018 ACJ 2161**
18.	**Romila Thapar V. Union of India, 2018 (13) SCALE 278**
19.	**Major Amod Kumar V. Union of India 2018 (36) LCD 2799**
20.	**Medical Council of India v. State of Kerala, AIR 2018 SC 5041**
21.	**Bir Singh V. Delhi Jal Board, (2018) 10 SCC 312**
22.	**Kamala v. M.R. Mohan Kumar, AIR 2018 SC 5128**
23.	**Achpal @ Ramswaroop V. State of Rajasthan 2018 (13) SCALE 5**
24.	**Babasaheb Maruti Kamble V. State of Maharashtra 2018 (15) SCALE 228**
25.	**Mallikarjun Kodagali (D) represented through Legal Representatives V. State of Karnataka 2018 (14) SCALE 32: AIR 2018 SC 5206**
26.	**Lok Prahari V. Election Commission of India 2018(36) LCD 2806**
27.	**Shalu Ojha V. Prashant Ojha 2018 (7) Supreme 121**
28.	**Corporation of Madras V. M. Parthasarathy, (2018) 9 SCC 445**
29.	**Palani V. State of Tamil Nadu 2018 (15) SCALE 178**
30.	**Asar Mohammad V. The State of U.P. 2018 (14) SCALE 343**
31.	**Kehar Singh (D) through LRs V. Nachittar Kaur 2018 (36) LCD 2474**
32.	**Mr. Anurag Mittal V. Mrs. Shaily Mishra Mittal 2018(36) LCD 2214**
33.	**Mangammal @ Thulasi and another V. T.B. Raju and others, 2018(141) RD 680**
34.	**Bilal Hajar @ Abdul Hameed V. State Rep. By the Inspector of Police 2018 (14) SCALE 11**
35.	**New Okhla Industrial Development Authority V. Commissioner of Income Tax-Appeals, (2018) 9 SCC 342**
36.	**Justice K.S. Puttaswamy (Retd.) V. Union of India 2018 (12) SCALE 1: 2018 (7) Supreme 129**
37.	**Jagjit Singh V. State of Punjab 2018 (14) SCALE**
38.	**K. Ravichandra & Ors. Vs. State of Karnataka 2018 (15) SCALE**

	622
39.	**Ahmed Abdulla Ahmed Al Ghurair V Star Health and Allied Insurance Co. Ltd. 2018 (15) SCALE 133**
40.	**State of Mizoram V. Dr. C. Sangnghina 2018 (14) SCALE 442**
41.	**Nandhini Delux V. Karnataka Cooperative Milk Producers Federation Ltd., (2018) 9 SCC 183**
42.	**Commissioner of Customs (Import), Mumbai V. Dilip Kumar and Company, (2018) 9 SCC 1**
43.	**Anurag Mittal V. Shaily Mishra Mittal, (2018) 9 SCC 691 : 2018(36) LCD 2214**
44.	**Union of India V. Gyagala Devamma, (2018) 8 SCC 48**
45.	**Anat V. Pratap 2018 ACJ 2773**
46.	**M/s. Simplex Infrastructure Ltd. V. Union of India 2018 (15) SCALE 590**
47.	**P. Radha Bai v. P. Ashok Kumar, AIR 2018 SC 5013**
48.	**Rani V. National Insurance Co. Ltd. 2018 ACJ 2430**
49.	**Ram Chandra Singh V. Rajaram 2018 (36) LCD2463**
50.	**Shivaji V. Divisional Manager, United India Insurance Co. Ltd. 2018 ACJ 2161: 2018(8) Supreme 454**
51.	**Anant V. Pratap 2018 (36) LCD 2468**
52.	**Santosh Devi V. Mahaveer Singh 2018(8) Supreme 452**
53.	**Sebastiani Lakra V. National Insurance Company Ltd. 2018 (14) SCALE 20:AIR 2018 SC 5034.**
54.	**T.P. Murugan (Dead) through LRs. V. Bojan, 2018 (8) Supreme 274**
55.	**Om Prakash Agarwal (D) through LRS. V. Vishan Dayal Rajpoot 2018(14) 116**
56.	**Shyam Narayan Prasad V. Krishna Prasad 2018 (36) LCD 2230**
57.	**Ameer Minhaj V. Dierdre Elizabeth (Wright) Issar, 2018(141) RD 557**
58.	**Aseer Jamal v. Union of India, (2018) 10 SCC 437**
59.	**Apollo Zipper India Ltd. Vs. W. Newman and Co. Ltd., 2018(3) ARC 187 (S.C.).**
60.	**Jagjit Singh (D) through LRS. Vs. Amarjit Singh 2018 (36) LCD 2787**

61.	**Saojni Amma V. Velayudhan Pillai Sreekumar 2018 (14) SCALE 339**
62.	**Union of India through Its Secretary V. Major General Manomoy Ganguly, (2018) 9 SCC 65**
63.	**B.N. Firos V. State of Kerala, (2018) 9 SCC 220**
64.	**Rameshwar Prasad Shrivastava V. Dwarkadhis Projects Pvt. Ltd. 2018(15) SCALE 629**
65.	**State (Govt. of NCT of Delhi) V. Pankaj Chaudhary 2018 (14) SCALE 423**
66.	**Maqbool V. State of U.P., AIR 2018 SC 5101**
67.	**Motiram Padu Joshi V. State of Maharashtra, (2018) 9 SCC 429**
68.	**Nipun Saxena V. Union of India 2018 (15) SCALE 769**
69.	**Shamanna V. Divisional Manager, United Oriental Insurance Co. Ltd. 2018 ACJ 2163 : 2018 (8) Supreme 479**
70.	**Magma General Insurance Co. Ltd. V. Nanu Ram and others 2018 ACJ 2782**

LIST OF THE CASES COVERED IN THIS ISSUE

(HIGH COURT)

Sl. No.	Particulars
1.	**Ajay Kumar Srivastava Vs. State thru. Director CBI/Ac-1 New Delhi an others, 2018(6) ALJ 58**
2.	**Anil S/o Aadalat Vs. State of U.P. and others, 2018(3) ARC 231**
3.	**Baljor Singh v. State of U.P. and another, 2018(5) ALJ 401**
4.	**Berendra and another vs. State of U.P Through Secretary (Revenue and Finance), Lucknow and others, 2018(141) RD 589**
5.	**Brijesh Kumar V. State of U.P., 2018 (6) ALJ 416**
6.	**Daya Ram Gupta v. State of U.P., 2018 (6) 75**
7.	**Dilip Kumar Agarwal and another Vs. Kuldeep Kumar Vaish and 7 others, 2018(3) ARC 270**
8.	**Dinesh Kumar V. State of U.P. 2018 (36) LCD 2594**
9.	**Dinesh Kumar Yadav V. State of U.P. 2018 (36) LCD 2546 (FB)**
10.	**Hublal Shah @ Hublal Sahu V. State of U.P. and others, 2018(141) RD 180**
11.	**Indian Institute of Technology v. Abhinav Kumar, 2018 (6) ALJ 98**
12.	**Jagdish Singh V. Amresh 2018 (36) LCD 2729**
13.	**M/s. Sumac International Limited, Lucknow and others vs. State of P.P., 2018(5) ALJ 580 Lucknow Bench**
14.	**Maqbool V. State of U.P. and another, 2018(5) ALJ 740**
15.	**Mishri Lal Yadav v. Oriental Insurance Co. Ltd. 2018 ACJ 2856**
16.	**New Indian Assurance Co. Ltd. v. Ram Swaroop Sahu, 2018 (5) ALJ 748**
17.	**Nitish Agrawal V. Smt. Usha Agrawal and others, 2018(3) ARC 229**
18.	**Oriental Insurance Co. Ltd., Lucknow v. Smt. Santosh Kumari, 2018 (6) ALJ 585**
19.	**Pankaj Prakash v. United India Insurance Company Ltd., 2018 (6) ALJ 579**
20.	**Prem Shanker Giri and others V. Deputy Director of Consolidation, Ballia and others, 2018(141) RD 436**

21.	**Punjab National Bank v. Anand Ganeriwal, 2018 (6) ALJ 66**
22.	**Purushottam vs. Board of Revenue and others, 2018(141) RD 600**
23.	**Rai Sharwan Kumar V. In the matter of Goods of Late Rai Bharat Kumar, 2018(141) RD 85**
24.	**Ram Kishun (since deceased) and others vs. Deputy Director of Consolidation and others, 2018(141) RD 631**
25.	**Ram Kumar V. Shoola Devi 2018 (36) LCD 2609**
26.	**Ram Prakash V. State of U.P. and another, 2018(141) RD 628**
27.	**Rao Shivnath Singh Memorial Khadi Gramodyog Samiti and another vs. State of U.P. and others, 2018(141) RD 59**
28.	**Smt. Riiorani Jain v. Deep Chand Jain alias Deelep Jain, 2018 (5) ALJ 436**
29.	**Sanjeev Agrawal v. Nagar Palika Soron, 2018 (5) ALJ 593**
30.	**Satyapal Singh V. State of U.P. and others, 2018(6) ALJ 530**
31.	**Sher Singh V. State of U.P. and another, 2018(5) ALJ 630**
32.	**Shreya Vidyarthi v. Ashok Vidyarthi, 2018 (6) ALJ 767**
33.	**Siddharth Tiwari V. Union of India 2018 (36)LCD 2361**
34.	**Smt. Viplapuri V. Judge, Small Causes Court/ Additional Civil Judge (SD) 2018 (36) LCD 2588**
35.	**State of U.P. V. Riya Julla aslias Munna, 2018 (6) ALJ 49**
36.	**State of Uttar Pradesh v. Achal Singh, 2018 (6) ALJ614**
37.	**Subhash Kumar and others V. Chief Controlling Revenue Authority/Board of Revenue and other, 2018(141) RD 633**
38.	**Tilak Singh V. State of U.P. and others Respondents, 2018(141) RD 32**
39.	**Umar Daraj Khan v. Fateh Narain, 2018 (5) ALJ 566**
40.	**Umesh Kumar Singh v. State of U.P., 2018 (6) ALJ 122**
41.	**Usha Devi V. Deputy Director of Consolidation 2018 (36) LCD 2847**
42.	**Vinod Kumar v. Chetan Prakash Verma, 2018 (6) ALJ 125**
43.	**Yatendra Kumar V. State of U.P. 2018 (36) 2894**

PART –I (SUPREME COURT)

Administration of Justice:

BACK TO INDEX

Judicial Propriety

When a party relies upon any evidence, whether it is oral or documentary, in support of his case, the Court/ Committee/ Authority, as the case may be, and especially the original Court is under an obligation to apply its mind to the entire documentary evidence on which the party has placed reliance for proving his case and record its reasoned findings whether accepting the evidence or rejecting it. What is important is the consideration of entire evidence adduced by the parties in accordance with law while deciding the case. **Vilas Dinkar Bhat V. State of Maharashtra 2018 (8) Supreme 507**

BACK TO INDEX

Administrative Law:

Purpose of public law

The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court molds the relief by granting 'compensation' in proceedings under Articles 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrong doer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a

suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

It was also emphasized that it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have molded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings. **Ruby Tour Services Pvt. Ltd. V. Union of India 2018 (8) Supreme 311**

BACK TO INDEX

Arbitration Act:

Sec. 29—

Under the 1940 Act, an arbitrator has power to grant pre-reference interest under the Interest Act as well as pendent lite and future interest, however, he is constricted only by the fact that an agreement between the parties may contain an express bar to the award of pre-reference and/or pendent lite interest. **Reliance Cellulose Products Ltd. vs. Oil and Natural Gas Corporation Ltd., (2018) 9 SCC 266**

BACK TO INDEX

Arbitration and Conciliation Act:

Sec. 34 – Requirement of

A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the

High Court did, is to breach a clear statutory mandate. **M/s. Simplex Infrastructure Ltd. V. Union of India 2018 (15) SCALE 590**

Sec. 34(3) – Scope of –Sec. 34(3) deserves careful scrutiny and its characteristics must be highlighted:

(a) Section 34 is the only remedy for challenging an award passed under Part I of the Arbitration Act. Section 34(3) is a limitation provision, which is an inbuilt into the remedy provision. One does not have to look at the Limitation Act or any other provision for identifying the limitation period for challenging an Award passed under Part I of the Arbitration Act.

(b) The time limit for commencement of limitation period is also provided in Section 34(3) i.e. the time from which a party making an application "had received the Arbitral Award" or disposal of a request under Section 33 for corrections and interpretation of the Award.

(c) Section 34(3) prohibits the filing of an application for setting aside of an Award after three months have elapsed from the date of receipt of Award or disposal of a request under Section 33. Section 34(3) uses the phrase "an application for setting aside may not be made after three months have elapsed". The phrase "may not be made" is from the UNCITRAL Model Law ("An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal".) and has been understood to mean "cannot be made".

The proviso to Section 34(3) enables a Court to entertain an application to challenge an Award after the three months period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days period is the outer boundary for challenging an Award. If Section 17 were to be applied, the outer boundary for challenging an Award could go beyond

120 days. The phrase “but not thereafter” would be rendered redundant and otiose. This Court has consistently taken this view that the words “but not thereafter” in the proviso of Section 34 (3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. **P. Radha Bai v. P. Ashok Kumar, AIR 2018 SC 5013.**

Sec. 34(5)—

Section 34(5) does not deal with the power of the Court to condone the non-compliance thereof. It is imperative to note that the provision is procedural, the object behind which is to dispose of applications under Section 34 expeditiously. One must remember the wise observation contained in Kailash vs. Nanhku, (2005) 4 SCC 480, where the object of such a provision is only to expedite the hearing and not to scuttle the same. All rules of procedure are the handmaids of justice and if, in advancing the cause of justice, it is made clear that such provision should be construed as director, then so be it. **State of Bihar V. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472**

BACK TO INDEX

Civil Procedure Code:

Sec. 11 – Doctrine of Res judicata

"If a plaintiff cannot get at his right without trying and deciding a case between codefendants, the Court will try and decide that case, and the codefendants will be bound, but if the relief given to the plaintiff does not require or involve a decision of any case between codefendants, the codefendants will not be bound as between each other by any proceeding which may be necessary only to the decree the plaintiff obtains."

This statement of the law has been accepted and followed in many Indian cases: see Ahmad Ali v. Najabat Khan [(1895) 18 All. 65], Ramchandra Narayan v.Narayan Mahadev [(1887) 11 Bom. 216], Magniram v. Mehdi Hossein Khan [(1904) 31 Cal. 95]. It is, in their Lordships' opinion, in accord with the provisions of S. 11, Civil P.C., and they adopt it as the correct criterion in cases where it is sought to apply the rule of res judicata as between codefendants. In such a case therefore three conditions are requisite: (1) There must be a conflict of interest between

the defendants concerned; (2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims; and (3) the question between the defendants must have been finally decided. **Govindammal (D) by LRS. V. Vaidiyanathan 2018 (36) LCD 2762**

Sec. 80—

Sec. 80, though a procedural provision, has been held to be mandatory as it is conceived in public interest, the public purpose underlying it being the advancement of justice by giving the Government the opportunity to scrutinize and take immediate action to settle a just claim without driving the person who has issued a notice having to institute a suit involving considerable expenditure and delay. This is to be contrasted with Section 34(5), also a procedural provision, the infraction of which leads to no consequence. To construe such a provision as being mandatory would defeat the advancement of justice as it would provide the consequence of dismissing an application filed without adhering to the requirements of Section 34(5), thereby scuttling the process of justice by burying the element of fairness. **State of Bihar V. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472**

Sec. 100

Subsection (1) of Section 100 says that the second appeal would be entertained by the High Court only if the High Court is "satisfied" that the case involves a "substantial question of law". Subsection (3) makes it obligatory upon the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Subsection (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court. Subsection (5) provides that the appeal

shall be heard only on the question formulated by the High Court under subsection (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under subsection (4). The respondent, however, 9 at the time of hearing of the appeal is given a right under subsection (5) to raise an objection that the question framed by the High Court under subsection (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the admission stage which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed behind the back of respondent and, therefore, subsection (5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to subsection (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under subsection (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of 10 hearing of the appeal. **Narayana Gramani V. Mariammal 2018 (36)LCD 2776**

Sec. 100 – Scope of

Since the second appeal was disposed of affecting the rights of the parties in the light of compromise, the proper Forum to reexamine the issue, in our opinion, is the High Court, which disposed of the second appeal rather than any other Forum to examine the issue at this stage. It is more so when we find that the High Court did not go into the details in the proceedings filed by the appellants in its correct perspective. **Ved Pal (D) through LRs. V. Prem Devi (D) through LRs. 2018 (36) LCD 2227.**

O. 21, R. 85

Held: Order 21 Rule 85 mandates the deposit of the bid amount. As per proviso to Order 21 Rule 85 CPC an amount of bid, in which the decree holder is a purchaser, can be set-off. Since first respondent-

corporation is not only the auction purchaser but also a decree holder as well, there is no question of deposit of the auction amount. Since there was no prospective buyer to offer bid on the occasion of the previous auction sale, the first respondent-corporation filed application on 03.12.1983 seeking permission under Order 21 Rule 72 CPC and also exemption from depositing 25% of the bid amount at the time of auction and remaining 75% later under Order 21 Rules 84 and 85 CPC respectively.

This application was allowed by the Executing Court on the same date i.e. 03.12.1983 and the same was not challenged. Both the Executing Court as well as the High Court have concurrently held that mandatory provisions of Order 21 Rule 85 CPC has been duly complied with. As pointed out earlier, the first respondent-corporation is not only an auction purchaser but also a decree holder entitled to the provisions of set off under Order 21 Rule 85 proviso, as noted above. **M/s. Bee Gee Corporation Pvt. Ltd Vs. Punjab Financial Corporation 2018 (15) SCALE 620**

O. 23, R. 3-Eviction of tenants-On basis of compromise entered into between the parties-Permissibility-In cases where a protection under a Rent Act is available, no eviction can be ordered unless ground eviction out, even if parties had entered into compromise-The invalidity on that count can even be raised in execution.

The common thread that runs through the aforesaid pronouncements of this Court is in cases where protection under a Rent Act is available, no eviction can be ordered unless ground seeking eviction is made out, even if parties had entered into a compromise. Moreover, the invalidity on that count can even be raised in execution. **M/s. Alagu Pharmacy V. N. Manudeswari, 2018(3) ARC 690**

O. 39 – Maintainability of suit for permanent injunction

In each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the

defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction. **Jharkhand State Housing Board V. Didar Singh 2018 (36) LCD 2759**

BACK TO INDEX

Constitution of India:

Constitutional Morality—

Constitutional morality in its strictest sense of the term implies strict and complete adherence to the constitutional principles as enshrined in various segments of the document. When a country is endowed with a Constitution, there is an accompanying promise which stipulates that every Member of the country right from its citizens to the high constitutional functionaries must idolize the constitutional fundamentals. This duty imposed by the Constitution stems from the fact that the Constitution is the indispensable foundational base that functions as the guiding force to protect and ensure that the democratic set-up promised to the citizenry remains unperturbed. The constitutional functionaries owe a greater degree of responsibility towards their power and authority and, as a natural corollary, they must ensure that they cultivate and develop a spirit of constitutionalism where every action taken by them is governed by and is in strict conformity with the basic tenets of the Constitution. **Government (NCT of Delhi) V. Union of India, (2018) 8 SCC 501**

Public Interest Litigation

Held: Admission of a child in his school cannot be covered under Section 7 of the Aadhaar Act as it is neither subsidy nor service. No doubt, the expression 'benefit' occurring in Section 7 is very wide. At the same time, it has to be given restrictive meaning and the admission of children in the schools, when they have fundamental right to education, would not be covered by Section 7, in our considered view. The respondents made an attempt to justify the linkage of Aadhaar with child information and records by arguing that there have been several instances of either impersonations at examinations or bogus admissions which have the potential to pilfer away various scholarship schemes which the

Government provides for weaker sections from time to time. If this is the objective, then also requirement of Aadhaar cannot insisted at the time of admission but only at the stage of application for Government scholarships. Insofar as impersonation at examination is concerned, that can be easily checked and contained by other means with effective checks and balances. When there are alternative means, insistence on Aadhaar would not satisfy the test or proportionality. This would violate the privacy right of the children importance whereto is given by the Constitution Bench in K.S. Puttaswamy

It has to be kept in mind that when the children are incapable of giving consent, foisting compulsion of having Aadhaar card upon them would be totally disproportionate and would fail to meet the proportionality test. As the law exists today, a child can hold property, operate a bank account, be eligible to be a nominee in an insurance policy or a bank account or have any financial transaction only through a legal guardian who has to be a major of sound mind. In cases where a child is in conflict with the law, the child is given a special criminal trial under the Juvenile Justice (Care and Protection of Children) Act, 2015 and there is a mandatory requirement for the records to be kept confidential and destroyed so that the criminal record of the child is not maintained. This is the position in law contained in Section 11 of the Indian Contract Act, 1872, Section 45ZA of the Banking Regulation Act, 1949, Section 39 of the Insurance Act, 1938, Section 90 of the Indian Penal Code (which provides that consent of the child who is under 12 years of age shall not be regarded as consent) etc. Thus, when a child is not competent to contract; not in a position to consent; barred from transferring property; prohibited from taking employment; and not allowed to open/operate bank accounts and, as a consequence, not in a position to negotiate her rights, thirsting upon compulsory requirement of holding Aadhaar would be an inviable inroad into their fundamental rights under Article 21. The restriction imposed on such a right in the form of an Aadhaar cannot be treated as constitutionally justified. We may also mention here that State is supposed

to keep in mind the best interest of the children which is regarded as primary consideration in our Constitution.

After considering the matter in depth and having regard to the discussion aforesaid, we hold as under: (a) For the enrolment of children under the Aadhaar Act, it would be essential to have the consent of their parents/guardian. (b) On attaining the age of majority, such children who are enrolled under Aadhaar with the consent of their parents, shall be given the right to exit from Aadhaar, if they so choose. (c) Insofar as the school admissions of children are concerned, requirement of Aadhaar would not be compulsory as it is neither a service nor subsidy. Further, having regard to the fact that a child between the age of 6 to 14 years has the fundamental right to education under Article 21A of the Constitution, school admission cannot be treated as 'benefit' as well. (d) Benefits to children between 6 to 14 years under Sarva Shiksha Abhiyan, likewise, shall not require mandatory Aadhaar enrolment. (e) For availing the benefits of other welfare schemes which are covered by Section 7 of the Aadhaar Act, though enrolment number can be insisted, it would be subject to the consent of the parents, as mentioned in (a) above. (f) We also clarify that no child shall be denied benefit of any of these schemes if, for some reasons, she is not able to produce the Aadhaar number and the benefit shall be given by verifying the identity on the basis of any other documents. **Justice K.S. Puttaswamy (Retd.) V. Union of India 2018 (12) SCALE 1: 2018 (7) Supreme 129**

Art. 14 – Requirement of

There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach.

No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here

what was pointed out by the majority in E.P. Royappa v. State of T.N. , namely, that: (SCC p. 38, para 85) '85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14....' Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied." **Justice K.S. Puttaswamy (Retd.) V. Union of India 2018 (12) SCALE 1: 2018 (7) Supreme 129**

Art. 14 & 16—

As the "creamy layer" in the backward class is to be treated "on a par" with the forward classes and is not entitled to benefits of reservation, it is obvious that if the "creamy layer" is not excluded, there will be discrimination and violation of Articles 14 and 16(1) inasmuch as equals (forwards and creamy layer of Backward Classes) cannot be treated unequally. Again, non-exclusion of creamy layer will also be violative of Articles 14, 16(1) and 16(4) of the Constitution of India since unequals (the creamy layer) *cannot be treated as equals,* that is to say, equal to the rest of the backward class.

The creamy layer principle sounds in Arts. 14 and 16(1), as unequals within the same class are being treated equally with other members of that class. Thus, when Arts. 14 and 16 are harmoniously interpreted along with Arts. 341 and 342, it is clear that Parliament has complete freedom to include or exclude persons from Presidential Lists

based on relevant factors. Similarly, constitutional courts, when applying principle of reservation are well within their jurisdiction to exclude creamy layer from such groups or sub-groups when applying principles of equality under Arts. 14 and 16 of the Constitution. **Jarnail Singh V. Lachhmi Narain Gupta, (2018) 10 SCC 396**

Art. 16 -

Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalizing principle?

It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarchy. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power

and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16." **Justice K.S. Puttaswamy (Retd.) V. Union of India 2018 (12) SCALE 1: 2018 (7) Supreme 129**

Art. 19 – Larger public interest to balance two rights

there can be a conflict between two individuals qua their right under Article 21 of the Constitution and in such a situation, to weigh the balance the test that is required to be applied is the test of larger public interest and further that would, in certain circumstances, advance public morality of the day. To put it differently, the "greater community interest" or "interest of the collective or social order" would be the principle to recognize and accept the right of one which has to be protected.

right of people to hold peaceful protests and demonstrations etc. is a fundamental right guaranteed under Articles 19(1)(a) and 19(1)(b) of the Constitution. The question is as to whether disturbances etc. caused by it to the residents, as mentioned in detail by the NGT, is a larger public interest which outweighs the rights of protestors to hold demonstrations at Jantar Mantar road and, therefore, amounts to reasonable restriction in curbing such demonstrations. Here, we agree with the detailed reasoning given by the NGT that holding of demonstrations in the way it has been happening is causing serious discomfort and harassment to the residents.

At the same time, it is also to be kept in mind that for quite some time Jantar Mantar has been chosen as a place for holding demonstrations and was earmarked by the authorities as well. Going by the dicta in Asha Ranjan, principle of primacy cannot be given to one right whereby the right of the other gets totally extinguished. Total extinction is not balancing. Balancing would mean curtailing one right of one class to some extent so that the right of the other class is also protected.

We feel that the pathetic conditions which were caused as a result of the processions, demonstrations and agitations etc. at the Jantar Mantar were primarily because of the reason that authorities did not take necessary

measures to regulate the same. Had adequate and sufficient steps were taken by the authorities to ensure that such dharnas and demonstrations are held within their bounds, it would have balanced the rights of protestors as well as the residents. For example, the dharnas and protests were allowed to be stretched almost on the entire Jantar Mantar road, on both sides, and even across the width of the road. Instead, a particular area could have been earmarked for this purpose, sufficiently away from the houses etc. so that there is no unnecessary blockage of roads and pathways.

Likewise, the demonstrators were allowed to go on with non-stop slogans, even at odd hours, at night, and that too with the use of loudspeakers etc. The authorities could have ensured that such slogans are within the parameters of noise pollution norms and there are no shoutings or slogans at night hours or early morning hours. Again, these dharnas, agitations and processions could be prohibited on certain occasions, for example, whenever some foreign dignitaries visit and pass through the said area or other such sensitive occasions. The authorities could also ensure that the protestors do not bring their trucks/buses etc. and park those vehicles in and around the residential buildings; the protestors are not allowed to pitch up their tents and stay for days together; they are not allowed to bathe or wash their clothes using Delhi Jal Board tankers or defecate in the open, on pavements; and do not create any unhygienic situations.

The authorities could also examine, while allowing such demonstration, as to the number of protestors who are likely to participate and could refuse permission to hold any such demonstration etc. when the number is going to be abnormally large which, if allowed, would per se create hardships of various kinds to the residents. These are some of the examples given by us. The underlying message is that certain categories of peaceful protests and demonstrations, in a guarded and regulated manner, could be allowed so as to enable the protestors to exercise their right and, at the same time, ensuring that no inconvenience of any kind is caused to the residents. **Mazdoor Kisan Shakti Sangathan V. Union of India 2018 (8) Supreme 214**

Art. 20(2)

Under Article 20(2) of the Constitution of India, no person shall be prosecuted and punished for the same offence more than once. Section 300 Cr.P.C. lays down that a person once convicted or acquitted, cannot be tried for the same offence. In order to bar the trial of any person already tried, it must be shown – (i) that he has been tried by a competent court for the same offence or one for which he might have been charged or convicted at that trial, on the same facts; (ii) that he has been convicted or acquitted at the trial; and (iii) that such conviction or acquittal is in force. Where the accused has not been tried at all and convicted or acquitted, the principles of "double jeopardy" cannot be invoked at all. **State of Mizoram V. Dr. C. Sangnghina 2018 (14) SCALE 442**

Art. 21 – Privacy

Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. In 1690, John Lockehad in his Second Treatise of Government observed that the lives, liberties and estates of individuals are as a matter of fundamental natural law, a private preserve.

The idea of a private preserve was to create barriers from outside interference. In 1765, William Blackstone in his Commentaries on the Laws of England spoke of a "natural liberty". There were, in his view, absolute rights which were vested in the individual by the immutable laws of nature. These absolute rights were divided into rights of personal security, personal liberty and property. The right of personal security involved a legal and uninterrupted enjoyment of life, limbs, body, health and reputation by an individual.

Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.

Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

Therefore, privacy is the necessary condition precedent to the enjoyment of any of the guarantees in Part III. As a result, when it is claimed by rights bearers before constitutional courts, a right to privacy may be situated not only in Article 21, but also simultaneously in any of the other guarantees in Part III. In the current state of things, Articles 19(1), 20(3), 25, 28 and 29 are all rights helped up and made meaningful by the exercise of privacy. This is not an exhaustive list. Future developments in technology and social ordering may well reveal that there are yet more constitutional sites in which a privacy right inheres that are not at present evident to us.

In the Indian context, a fundamental right to privacy would cover at least the following three aspects:

- Privacy that involves the person i.e. when there is some invasion by the State of a person's rights relatable to his physical body, such as the right to move freely;
- Informational privacy which does not deal with a person's body but deals with a person's mind, and therefore recognises that an individual may have control over the dissemination of material that is personal to him. Unauthorised use of such information may, therefore lead to infringement of this right; and
- The privacy of choice, which protects an individual's autonomy over fundamental personal choices.

For instance, we can ground physical privacy or privacy relating to the body in Articles 19(1)(d) and (e) read with Article 21; ground personal information privacy under Article 21; and the privacy of choice in Articles

19(1)(a) to (c), 20(3), 21 and 25. The argument based on "privacy" being a vague and nebulous concept need not, therefore, detain us.

The learned counsel for the petitioners also referred to another important aspect of the right to privacy. According to the learned counsel for the petitioner this right is a natural law right which is inalienable. Indeed, the reference order itself, in para 12, refers to this aspect of the fundamental right contained. It was, therefore, argued before us that given the international conventions referred to hereinabove and the fact that this right inheres in every individual by virtue of his being a human being, such right is not conferred by the Constitution but is only recognised and given the status of being fundamental. There is no doubt that the petitioners are correct in this submission. However, one important roadblock in the way needs to be got over.

Privacy has both positive and negative content. The negative content restrains the State from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual."

(v) Informational Privacy is a facet of right to privacy: The old adage that 'knowledge is power' has stark implications for the position of individual where data is ubiquitous, an all encompassing presence. Every transaction of an individual user leaves electronic tracks without her knowledge. Individually these information silos may seem inconsequential. In aggregation, information provides a picture of the beings. The challenges which big data poses to privacy emanate from both State and non-State entities.

This proposition is described in the following manner:

Ours is an age of information. Information is knowledge. The old adage that "knowledge is power" has stark implications for the position of the individual where data is ubiquitous, an all-encompassing presence. Technology has made life fundamentally interconnected. The internet has become all-pervasive as individuals spend more and more time online each

day of their lives. Individuals connect with others and use the internet as a means of communication.

The internet is used to carry on business and to buy goods and services. Individuals browse the web in search of information, to send e-mails, use instant messaging services and to download movies. Online purchases have become an efficient substitute for the daily visit to the neighbouring store. Online banking has redefined relationships between bankers and customers. Online trading has created a new platform for the market in securities. Online music has refashioned the radio. Online books have opened up a new universe for the bibliophile. The old-fashioned travel agent has been rendered redundant by web portals which provide everything from restaurants to rest houses, airline tickets to art galleries, museum tickets to music shows. These are but a few of the reasons people access the internet each day of their lives.

Data mining processes together with knowledge discovery can be combined to create facts about individuals. Metadata and the internet of things have the ability to redefine human existence in ways which are yet fully to be perceived. This, as Christina Moniodis states in her illuminating article, results in the creation of new knowledge about individuals; something which even she or he did not possess. This poses serious issues for the Court. In an age of rapidly evolving technology it is impossible for a Judge to conceive of all the possible uses of information or its consequences: ".. The creation of new knowledge complicates data privacy law as it involves information the individual did not possess and could not disclose, knowingly or otherwise. In addition, as our State becomes an "information State" through increasing reliance on information-such that information is described as the "lifeblood that sustains political, social, and business decisions.

It becomes impossible to conceptualize all of the possible uses of information and resulting harms. Such a situation poses a challenge for courts who are effectively asked to anticipate and remedy invisible, evolving harms." **Justice K.S. Puttaswamy (Retd.) V. Union of India 2018 (12) SCALE 1: 2018 (7) Supreme 129**

Art. 21 –

It is an established principle of law that the right to life, as envisaged under Article 21 of the Constitution of India includes the right to a decent environment (Shantistar Builders v. Narayan Khimalal Totame AIR 1990 SC 630;(1990) 1 SCC 520). It includes within its ambit the right of a citizen to live in a clean environment (Bhavani River Sakthi Sugars Ltd., In re, (1998) 2 SCC 601). With regard to vehicular traffic, this Court has issued a number of directions to ensure a clean environment and reduce pollution (M.C. Mehta v. Union of India, (1998) 6 SCC 60, M.C. Mehta v. Union of India, (1998) 6 SCC 63, M.C. Mehta v. Union of India (Matter regarding emmission standard for vehicles), (1999) 6 SCC 12, M.C. Mehta v. Union of India, (2002) 10 SCC 191, M.C. Mehta v. Union of India, 2017 SCC Online SC 394: AIR 2017 SC 2430). It has been held that the right to clean environment is a fundamental right (N.D. Jayal v. Union of India, (2004) 9 SCC 362). The right to live in an environment free from smoke and pollution follows from the "quality" of life which is an inherent part of Article 21 of the Constitution. The right to live with human dignity becomes illusory in the absence of a healthy environment (Shantistar Builders v Narayan Khimalal Gotame & Ors. Etc, AIR 1990 SC 630, M.C. Mehta v. Union of India,(2004) 12 SCC 118, State of M.P. v. Kedia Leather & Liquor Ltd., (2003) 7 SCC 389). The right to life not only means leading a life with dignity but includes within its ambit the right to lead a healthy, robust life in a clean atmosphere free from pollution. Obviously, such rights are not absolute and have to coexist with sustainable development. Therefore, if there is a conflict between health and wealth, obviously, health will have to be given precedence. When we are concerned with the health of not one citizen but the entire citizenry including the future citizens of the country, the larger public interest has to outweigh the much smaller pecuniary interest of the industry, in this case the automobile industry, especially when the entire wherewithal to introduce the cleaner technology exists. **M.C. Mehta v. Union of India, AIR 2018 SC 5194**

Art. 136—Interference with—When permissible

The burden of showing that a concurrent decision of two or more courts or tribunals is manifestly unjust lies on the appellant, but once that burden is discharged, it is not only the right but the duty of the Court to remedy the injustice, further, merely because two courts had taken a particular view on the material issues, that by itself would not operate as a fetter on the Court to exercise jurisdiction under Art. 136. **Lakshmi Sreenivasa Cooperative Building Society V. Puvvada Rama (Dead) by Legal Representatives, (2018) 9 SCC 251**

Art. 137 r/w O. 47 R. 1 of Supreme Court Rules – Review Petition

As per rule, review in a criminal proceeding is permissible only on the ground of error apparent on the face of the record.

The rule, on its face, affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-à-vis criminal proceedings to "errors apparent on the face of the record". If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the "deceased" shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not.

The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalizes the flow from the reservoir of power. The stream cannot stifle the source. Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here "record" means any material which is already on record or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is there, correction becomes necessitous.

The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Article 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression "record" is read to mean, in its 15 semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1, CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source.

In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court.

If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to

correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. **Vinay Sharma V. State of NCT of Delhi 2018 (8) Supreme 168**

Art. 142 –

Held: Article 142 of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni case, the Supreme Court pointed out that Article 142 of the Constitution of India does not cover such type of cases and that "if the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under Article 142 of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle". **Shivaji V. Divisional Manager, United India Insurance Co. Ltd. 2018 ACJ 2161**

Art. 226 – Public Interest Litigation

It is well settled that a public interest litigation can be entertained by the constitutional courts only at the instance of a bona fide litigant. The Supreme Court has uniformly and consistently held that the individual who moves the Court for judicial redress in cases of public interest litigation must be acting bona fide with a view to vindicating the cause of justice and not for any personal gain or private profit or of the political motivation or other oblique consideration…"29 It was also observed that:

"The High Court in exercise of its whatsoever jurisdiction cannot direct investigation by constituting a special investigation team on the strength of anonymous petitions.

These observations indicate that what found disfavour with this Court was the High Court having entertained an anonymous petition to constitute a SIT. The facts of the above case are distinct from the case at hand. The observations made on the maintainability of public interest litigation only lend support to the present case. The petitioners in the present case are not anonymous. There has been no argument that the

petitioners have been motivated by personal gain or political considerations.

The Hon'ble Chief Justice held:

"...there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant." The fact that the payment of compensation was ordered nearly 24 years after the wrongful arrest is a grim reminder about how tenuous liberty can be and of the difficulty in correcting wrongs occasioned by unlawful arrest. 38 There can be no manner of doubt that the deprivation of human rights seriously impinges upon the dignity of the individual for which even compensation may not constitute an adequate recompense. **Romila Thapar V. Union of India, 2018 (13) SCALE 278**

Art. 226 – Scope

The scope of interference of Courts under Art. 226 of the Constitution in cases where transfer orders had been challenged. The Court held that matters of transfers are best left to the discretion of the competent authority, and should not be tinkered with, in the absence of a demonstrable violation of statutory rules, or an instance of mala fide on the part of the competent authority.

The scope of interference by the Courts in regard to members of the armed forces is far more limited and narrow. It is for the higher authorities

to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made. **Major Amod Kumar V. Union of India 2018 (36) LCD 2799**

Art 246 - Powers of Legislature -

Separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation, and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs- legislature, executive, and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers.

Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution. Separation of judicial power is a significant constitutional principle under the Constitution of India.

Separation of powers between three organs – the legislature, executive, and judiciary - is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality under Article 14 of the Constitution.

The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State Legislatures) void if it is found to have transgressed

the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

The doctrine of separation of powers applies to the final judgments of the courts. The legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aliunde. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation law it removes the defect which the courts had found in the existing law. **Medical Council of India v. State of Kerala, AIR 2018 SC 5041**

Art. 341(1)—

Article 341(1) of the Constitution empowers the President with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

Articles 341 and 342 also makes it clear that the caste, race or tribe or part of or group within any caste, race or tribe as specified in the Presidential Order under Article 342(1) shall be deemed to be Scheduled Castes/Scheduled Tribes for the purposes of the Constitution in relation to that State or Union Territory, as the case may be. The above position is further made clear by Clause (2) of the two Presidential Orders which are in the following terms.

"*Clause 2 of the Constitution (Scheduled Castes) Order, 1950*

2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts I to XXV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.

Clause 2 of the Constitution (Scheduled Tribes) Order, 1950

2. The Tribes or trial communities, or parts of, or groups within, tribes or trial communities, specified in Parts I to XXII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule." **Bir Singh V. Delhi Jal Board, (2018) 10 SCC 312**

BACK TO INDEX

Consumer Protection Act:

Sec. 13(6)

Held: The language used and the text in Section 13(6) is clear that wherever a complaint is filed by a complainant in the category referred to in Section 2(1)(b)(iv), the provisions of Order 1 Rule 8 CPC shall apply with the modification that reference to suit or decree shall be construed as reference to a complaint or order of the District Forum. The expression "with the permission of the District Forum" as appearing in Section 12(1)(c) must be read along with Section 13(6) which provides the context and effect to said expression. In our view Sections 12(1)(c) and 13(6) are not independent but are to be read together and they form part of the same machinery. **Rameshwar Prasad Shrivastava V. Dwarkadhis Projects Pvt. Ltd. 2018(15) SCALE 629**

BACK TO INDEX

Copyright Act

Sec. 17—

Sec. 70 of the IT Act, therefore, cannot be construed independent of the provisions of the Copyright Act; if Section 70 of the IT Act has to be

read in conjunction with Section 2(k) and Section 17 of the Copyright of the Act, 1957 the rigours that would control the operation of Section 70(1) of the IT Act are clearly manifested. **B.N. Firos V. State of Kerala, (2018) 9 SCC 220**

BACK TO INDEX

Criminal Procedure Code:

Sec. 125 - Maintenance -

Unlike matrimonial proceedings where strict proof of marriage is essential, in the proceedings under Section 125 Cr.P.C., such strict standard of proof is not necessary as it is summary in nature meant to prevent vagrancy. The standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of the parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached." When the parties live together as husband and wife, there is a presumption that they are legally married couple for claim of maintenance of wife under Section 125 Cr.P.C. Applying the well-settled principles, in the case in hand, appellant No.1 and the respondent were living together as husband and wife and also begotten two children. Appellant No.1 being the wife of the respondent, she and the children appellants No.2 and 3 would be entitled to maintenance under Section 125 Cr.P.C.

The law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. **Kamala v. M.R. Mohan Kumar, AIR 2018 SC 5128.**

Sec. 154—FIR

FIR is not an encyclopaedia which should contain all the details of the incident. FIR is not an encyclopedia which is expected to contain all the details of the prosecution case. It may be sufficient if the

broad facts of the prosecution case about the occurrence appear. Omission as to the names of the assailants or the witnesses may not all the times be fatal to the prosecution, If the FIR is lodged without delay. Unless there are indications of fabrication, the Court cannot reject the prosecution case as given in the FIR merely because of omission. In the present case, FIR was registered without delay and prompt registration of FIR itself lends assurance to the prosecution case. The object of the FIR is to set the law in motion. Omission to give the names of assailants or the names of witnesses in the FIR is not fatal to the prosecution case. The High Court was right in observing that non-mention of the names of eyewitnesses in the FIR can hardly be fatal to the prosecution case. **Motiram Padu Joshi V. State of Maharashtra, (2018) 9 SCC 429**

Sec. 167 (2)

The letter of and spirit behind enactment of Section 167 of the Code as it stands thus mandates that the investigation ought to be completed within the period prescribed. Ideally, the investigation, going by the provisions of the Code, ought to be completed within first 24 hours itself. Further in terms of sub-section (1) of Section 167, if "it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57" the concerned officer ought to transmit the entries in the diary relating to the case and at the same time forward the accused to such Magistrate. Thereafter, it is for the Magistrate to consider whether the accused be remanded to custody or not. Sub-Section (2) then prescribes certain limitations on the exercise of the power of the Magistrate and the proviso stipulates that the Magistrate cannot authorize detention of the accused in custody for total period exceeding 90 or 60 days, as the case may be. It is further stipulated that on the expiry of such period of 90 and 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail.

The provision has a definite purpose in that; on the basis of the material relating to investigation, the Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of

investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending investigation. **Achpal @ Ramswaroop V. State of Rajasthan 2018 (13) SCALE 5**

Sec. 235

Held: In cases where an accused is convicted for offence under Sec. 302, IPC, minimum sentence that is to be awarded is the life imprisonment. However, in rarest of rare cases, the Sessions Court may award death sentence as well. As per the provisions of Sec. 235 of the Code of Criminal Procedure, it is mandatory for the Sessions Court to give a proper hearing to the accused on the question of sentence as well.

The object of hearing under Section 235(2) being intrinsically and inherently connected with the sentencing procedure, the provision of Section 354(3) which calls for recording of special reason for awarding death sentence must be read conjointly with Section 235(2) of the 1973 Code. This Court is of the opinion that special reasons can only be validly recorded if an effective opportunity of hearing as contemplated under Section 235(2) CrPC is genuinely extended and is allowed to be exercised by the accused who stands convicted and is awaiting the sentence. These two provisions do not stand in isolation but must be construed as supplementing each other as ensuring the constitutional guarantee of a just, fair and reasonable procedure in the exercise of sentencing discretion by the court.

These changes in the sentencing structure reflect the "evolving standards of decency" that mark the progress of a maturing democracy and which is in accord with the concept of dignity of the individual-one of the core values in our Preamble to the Constitution. In a way these changes signify a paradigm shift in our jurisprudence with the gradual transition of

our legal regime from "the rule of law" to the "due process of law", to which this Court would advert to in the latter part of the judgment."

When it comes to providing hearing in cases where the judicial mind is to be applied in choosing the sentence between life imprisonment and death, this requirement assumes greater importance. It has been held in Bachan Singh's case that since death sentence can be awarded only in the 'rarest of rare cases', the Court is supposed to give 'special reasons' when it choses to award death sentence.

The reasoning process has to undertake the exercise of considering mitigating as well as aggravating circumstances and after weighing those circumstances with objective assessment, a decision has to be taken in this behalf. Such an exercise inherently calls for recording of reasons for awarding death sentence. The legislature has added another dimension in order to obviate any possibility of error, by making a specific provision to the effect that in those cases where the Session Judge inflicts death penalty, it has to be affirmed and approved by the High Court. **Babasaheb Maruti Kamble V. State of Maharashtra 2018 (15) SCALE 228**

Sec. 300

The whole basis of Sec. 300 (1)Cr.P.C.is that the person who was tried by a competent court, once acquitted or convicted, cannot be tried for the same offence. As discussed earlier, in the case in hand, the respondent/accused has not been tried nor was there a full-fledged trial. On the other hand, the order of discharge dated 12.09.2013 passed by the Special Court was only due to invalidity attached to the prosecution. When the respondent/accused was so discharged due to lack of proper sanction, the principles of “double jeopardy” will not apply. There was no bar for filing fresh/supplementary charge sheet after obtaining a valid sanction for prosecution. The Special Court once it found that there was no valid sanction, it should have directed the prosecution to do the needful. The Special Court has not given sufficient opportunities to produce valid prosecution sanction from the competent authority. The Special Court erred in refusing to take cognizance of the case even after production of

valid prosecution sanction obtained from the competent authority and the High Court was not right in affirming the order of the Special Court. The Special Court and the High Court were not right in holding that the filing of the fresh charge sheet with proper sanction order for prosecution was barred under the principles of "double jeopardy". **State of Mizoram V. Dr. C. Sangnghina 2018 (14) SCALE 442**

Sec. 340 – Deals with

In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1) (b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice.

It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.

That prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to

punish the delinquent and not merely because there is some inaccuracy in the statement.

The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a 28 complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation. **State (Govt. of NCT of Delhi) V. Pankaj Chaudhary 2018 (14) SCALE 423**

Sec. 372

In our opinion, the proviso to Section 372 of the Cr.P.C. must also be given a meaning that is realistic, liberal, progressive and beneficial to the victim of an offence. There is a historical reason for this, beginning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29th November, 1985. The Declaration is sometimes referred to as the Magna Carta of the rights of victims. One of the significant declarations made was in relation to access to justice for the victim of an offence through the justice delivery mechanisms, both formal and informal.

Interestingly, Section 372 of CrPC which was amended in the year 2008 to give a right to the victim is a negative section which specifically provided, before its amendment, that no appeal would lie from any judgment or order of a criminal Court except as provided for by the CrPC or by any other law in force. The Legislature while giving a victim the right to appeal did not, for reasons best known to it, give this right to file appeal to the victim under Section 378 of CrPC or any other specific section. Surprisingly this right to the victim was given as a proviso to Section 372 of CrPC. This proviso is not very happily worded. Be that as it may, the fact is that a victim now has a right to appeal under this proviso. He can file the appeal against the following orders:

(i) any order passed by a Court acquitting the accused;

(ii) any order passed by a Court where the accused is convicted of a lesser offence but the victim feels that he should have been convicted for a higher offence. Obviously the appeal lies against the acquittal of the accused for a higher offence;

(iii) an appeal lies where the victim is not satisfied by the quantum of compensation awarded. **Mallikarjun Kodagali (D) represented through Legal Representatives V. State of Karnataka 2018 (14) SCALE 32: AIR 2018 SC 5206**

Sec. 378 and 386(a)—Appeal against acquittal

It is fairly well-settled that in an appeal against the order of acquittal, the appellate court would be slow to disturb the findings of the trial court which had the opportunity of seeing and hearing the witnesses. In an appeal against the order of acquittal, there is no embargo for reappreciating the evidence and to take a different view; but there must be strong circumstances to reverse the order of acquittal. In the appeal against the order of acquittal, the paramount consideration of the appellate court should be to avoid miscarriage of justice. **Motiram Padu Joshi V. State of Maharashtra, (2018) 9 SCC 429**

Sec. 389(1) –Scope

Sec. 389 of the Code of Criminal Procedure, 1973, empowers the appellate court, pending an appeal by a convicted person and for reasons to be recorded in writing to order that the execution of a sentence or order appealed against, be suspended. An order of conviction by itself is not capable of execution under the Code of Criminal Procedure, 1973. But in certain situations, it can become executable in a limited sense upon it resulting in a disqualification under other enactments. Hence, in such a case, it was permissible to invoke the power under Section 389 (1) to stay the conviction as well.

Whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. An order of an appellate court staying a conviction pending the appeal. Upon the stay of a conviction under Section 389 of the Cr.P.C., the disqualification under Section 8 will not operate. the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections 1, 2 and 3 of Section 8 of the Representation of the People Act 1951 will not operate. Under Article

102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. **Lok Prahari V. Election Commission of India 2018(36) LCD 2806**

BACK TO INDEX

Criminal Trial:

Credibility of related witness

Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be aground to discard the evidence which is otherwise cogent and credible. Court shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version.

Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. **Motiram Padu Joshi V. State of Maharashtra, (2018) 9 SCC 429**

BACK TO INDEX

Domestic Violence Act:

Sec. 12 r/w Sec. 18

Proceedings under Domestic Violence Act being summary in nature, amount of maintenance cannot be adjudicated. Proper course would be a petition u/s 18 of Hindu Adoptions and Maintenance Act, 1956 or u/s 125 of Code of Criminal Procedure, 1973 under Sec. 125 of Cr.P.C.be filed. **Shalu Ojha V. Prashant Ojha 2018 (7) Supreme 121**

O. 41, R. 27—

Once additional evidence is permitted at appellate stage, other side must be given opportunity to lead rebuttal evidence to counter additional evidence. Appellate courts have two options (i) to take recourse remanding entire matter under Or. 41 R. 23-A for retiral, or (ii) to make limited remand under Or. 41 R. 25 by retaining main appeal with itself so that parties can lead evidence on particular issued in light of additional evidence and then to decide main appeal on merits.

By admitting additional evidence, first appellate court should have given opportunity to appellant-defendants to lead rebuttal evidence. First appellate court should have acted under Or. 41 R. 23-A or Or. 41 R. 25 CPC. This was not done and therefore it caused prejudice to appellant-defendants. Such exercise of power by first appellate court resulted in jurisdictional error. High Court failed to take note of this jurisdictional error. Hence, judgment and decree passed by first appellate court and High Court reversed. **Corporation of Madras V. M. Parthasarathy, (2018) 9 SCC 445**

BACK TO INDEX

Evidence Act:

Sec. 3

It is well-settled that oral evidence has to get primacy and the medical evidence is basically opinionative and that the medical evidence states that the injury could have been caused in the manner alleged and nothing more. The testimony of the eye witness cannot be thrown out on the ground of inconsistency.

The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation....." When the opinion given is not inconsistent with the probability of the case, the court cannot discard the credible direct evidence otherwise the administration of justice is to depend on the opinionative evidence of medical expert. The medical jurisprudence is not an exact science with precision; but merely opinionative. In the case in hand, the contradictions pointed out between the oral and medical

evidence are not so grave in nature that can prove fatal to the prosecution case. **Palani V. State of Tamil Nadu 2018 (15) SCALE 178**

Sec. 27

The expression 'fact discovered' in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Emperor AIR1929 Lah 34; Ganu Chandra Kashid v. Emperor AIR 1932 Bom 286). Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this.

The 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

It is a settled legal position that the facts need not be selfprobatory and the word "fact" as contemplated in Section 27 of the Evidence Act is not limited to "actual physical material object". The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place. It includes a discovery of an object, the place from which it is produced and the knowledge of the accused as to its existence. **Asar Mohammad V. The State of U.P. 2018 (14) SCALE 343**

BACK TO INDEX

Hindu Law:

Ancestral Property – sale of

Held: Once the factum of existence of legal necessity stood proved, then, in our view, no co coparcener (son) has a right to challenge the sale made by the Karta of his family. The plaintiff being a son was one of the co coparceners along with his father Pritam Singh. He had no right to challenge such sale in the light of findings of legal necessity being recorded against him. It was more so when the plaintiff failed to prove by any evidence that there was no legal necessity for sale of the suit land or that the evidence adduced by the defendants to prove the factum of existence of legal necessity was either insufficient or irrelevant or no

evidence at all. **Kehar Singh (D) through LRs V. Nachittar Kaur 2018 (36) LCD 2474**

BACK TO INDEX

Hindu Marriage Act:

Sec. 15 – Purpose of Sec. 15 of the Act

Held: Sec. 15 of the Act provides that it shall be lawful for either party to marry again after dissolution of a marriage if there is no right of appeal against the decree. A second marriage by either party shall be lawful only after dismissal of an appeal against the decree of divorce, if filed. If there is no right of appeal, the decree of divorce remains final and that either party to the marriage is free to marry again. In case an appeal is presented, any marriage before dismissal of the appeal shall not be lawful.

The object of the provision is to provide protection to the person who has filed an appeal against the decree of dissolution of marriage and to ensure that the said appeal is not frustrated. The purpose of Sec. 15 of the Act is to avert complications that would arise due to a second marriage during the pendency of the appeal, in case the decree of dissolution of marriage is reversed. The protection that is afforded by Sec. 15 is primarily to a person who is contesting the decree of divorce. **Mr. Anurag Mittal Vs. Mrs. Shaily Mishra Mittal 2018(36) LCD 2214**

BACK TO INDEX

Hindu Succession Act, 1956 [As amended by Hindu succession (Tamil Nadu Amendment) Act, 1989]:

Section 29-A-Right of daughter in coparcenary property-Daughter of coparcener ought not to have been married at the time of commencement of the amendment of 1989-Only unmarred daughter of a coparcener is entitled to claim partition in the Hindu Joint Family property-In the instant case both appellants got married in the year 1981 and 1984 respectively i.e. prior to commencement of 1989 amendment-In view of clause (iv) of section 29(a) of the Amendment Act, 1989 appellants could not institute the suit for partition and separate possession as they were not coparceners-Coparcener and the daughter both should be alive to reap the benefit of this provision at the commencement of the Amendment Act, 1989.

Prior to the amendment, it was only the make who would have been coparcener and entitled to claim the partition and share from the joint family property. On the other hand, daughter did not have any right to partition and to claim share in the ancestral property since she was not a coparcener. At the most, at the time of partition, she could only ask for reasonable maintenance and marriage expenses.

Only un-married daughter of a coparcener is entitled to claim partition in the Hindu Joint Family Property.

Only living daughters of living coparceners would be entitled to claim a share in the ancestral property. **Mangammal @ Thulasi and another V. T.B. Raju and others, 2018(141) RD 680**

BACK TO INDEX

Income Tax Act:

Sec. 194-I—Definition of rent under Income Tax Act

(i) "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any-

(a) land; or

(b) building (Including factory building); or

(c) land appurtenant to a building (including factory building); or

(d) machinery; or

(e) plant; or

(f) equipment; or

(g) furniture; or

(h) fittings;

Whether or not any or all of the above are owned by the payee;

(ii) where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

The definition of rent as contained in the Explanation is a very wide definition. Explanation states that "rent" means any payment, by whatever

name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land. The High Court has read the relevant clauses of the lease deed and has rightly come to the conclusion that payment which is to be made as annual rent is rent within the meaning of Section 194-I, Court does not find any infirmity in the aforesaid conclusion of the High Court. The High Court has rightly held that TDS shall be deducted on the payment of the lease rent to the Greater Noida Authority as per Section 194-I. Reliance on the Circular dated 30.1.1995 has been placed by the Noida/Greater Noida Authority. A perusal of the Circular dated 30.1.1995 indicate that the query which has been answered in the above circular is "Whether requirement of deduction of income tax at source under Section 194-I applies in case of payment by way of rent to Government, statutory authorities referred to in Section 10(20-A) and local authorities whose income under the head "Income from house property" or "Income from other sources" is exempt from income tax". **New Okhla Industrial Development Authority V. Commissioner of Income Tax-Appeals, (2018) 9 SCC 342**

BACK TO INDEX

Indian Penal Code:

Sec. 120B – Held

Reading of Section 120A and Section 120B, IPC makes it clear that an offence of "criminal conspiracy" is a separate and distinct offence. Therefore, in order to constitute a criminal conspiracy and to attract its rigor, two factors must be present in the case on facts: first, involvement of more than one person and second, an agreement between/among such persons to do or causing to be done an illegal act or an act which is not illegal but is done or causing to be done by illegal means.

Therefore, in order to constitute a conspiracy, meeting of mind of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy, which is being hatched and nor it is necessary to prove their active part/role in such meeting.

In other words, their presence and participation in such meeting alone is sufficient. It is well known that a criminal conspiracy is always 15 hatched in secrecy and is never an open affair to anyone much less to public at large. **Bilal Hajar @ Abdul Hameed V. State Rep. By the Inspector of Police 2018 (14) SCALE 11**

Sec. 228

Held: Neither the IPC nor the CrPC define the phrase 'identity of any person'. Section 228A IPC clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. We are clearly of the view that the phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media. The intention of the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

What is however, permitted under sub-section (2) of Section 228A IPC is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a Court with respect to such an offence, without the permission of the Court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or the Supreme Court will not amount to any offence within the meaning of the IPC.

Sub-section (2) of Section 228A IPC makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. We are not oblivious to the fact that in the first information report (for short 'FIR') the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. We are of the opinion that the police officers

investigating such cases and offences should also as far as possible either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. We make it clear that the copy of an FIR relating to the offence of rape against a women or offences against children falling within the purview of POCSO shall not be put in the public domain to prevent the name and identity of the victim from being disclosed. The Sessions Judge/Magistrate/Special Court can for reasons to be recorded in writing and keeping in view the interest of the victim permit the copy of the FIR to be given to some person(s). Some examples of matters where her identity will have to be disclosed are when samples are taken from her body, when medical examination is conducted, when DNA profiling is done, when the date of birth of the victim has to be established by getting records from school etc.. However, in these cases also the police officers should move with circumspection and disclose as little of the identity of the victim as possible but enough to link the victim with the information sought. We make it clear that the authorities to which the name is disclosed when such samples are sent, are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court. There can be no hard and fast rule in this behalf but the police should definitely ensure that the correspondence or memos exchanged or issued wherein the name of the victim is disclosed are kept in a sealed cover and are not disclosed to the public at large. They should not be disclosed to the media and they shall also not be furnished to any person under the Right to Information Act, 2015. We direct that the police officials should keep all the documents in which the name of the victim is disclosed in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinized by a large number of people. The sealed cover can be filed in the court along with the report filed under Section 173 CrPC. **Nipun Saxena V. Union of India 2018 (15) SCALE 769**

Ss. 236A & 326B – Difference between –

The basic difference between Sections 326A and 326B of IPC is the presence of actual injury under Section 326A. The resultant injury has made the offence more serious with a mandatory minimum punishment of ten years which may extend to imprisonment for life and, in either case, with a fine. The fine is mandatory and the quantum should be just and reasonable in the sense that it should be, in any case, sufficient to meet the medical expenses for the treatment of the victim. Therefore, the second proviso under Section 326A requires that the fine imposed should be paid to the litigant. Under Section 326B, the mere act of throwing or attempt to throw or attempt to administer or attempt to use any other means with the intention of causing any of the injuries referred to in the Section, is to be visited with a mandatory minimum imprisonment of five years, which may extend to seven years and fine.

Thus, merely because the title to Section 326A of IPC speaks about grievous hurt by use of acid, it is not a requirement under the Section that the injuries caused should be invariably grievous. Even if the seven injuries are simple, Section 326A, and under Section 326B the mere act of throwing or attempt, as indicated in the Section, would attract the offence. **Maqbool V. State of U.P., AIR 2018 SC 5101.**

Sec. 304 B

Held - A reading of Section 304-B of the IPC along with Section 113-B of the Evidence Act would establish that once the prosecution shows that soon before the death of the wife, she has been subjected to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person caused the dowry death within the meaning of Section 304-B IPC. The words 'shall presume' in Section 113-B of the Evidence Act, while it mandates that the Court is duty bound to proceed on the basis that the person has caused the dowry death, the presumption is rebuttable and it is open to the relative to prove that the ingredients of Section 304-B IPC are not satisfied. **Jagjit Singh V. State of Punjab 2018 (14) SCALE 71**

Sec. 304/ 149

Held: it is not always incumbent upon the prosecution to explain the injuries of the accused persons. The prosecution is obligated to explain the injuries of the accused persons only if the injuries sustained by the accused are grievous in nature. In the present case, there is no evidence to show that the injuries on the accused persons are grievous in nature. **K. Ravichandra & Ors. Vs. State of Karnataka 2018 (15) SCALE 622**

Sec. 376 – Gang rape

Even a woman of easy virtue is entitled to privacy and it is not open to any person to violate her and she is equally entitled to protection of law. Further, the evidence of such a woman cannot be thrown overboard merely because she is a woman of easy virtue.

Even in cases where there is some material to show that the victim was habituated to sexual intercourse, no inference like the victim being a woman of 'loose moral character" is permissible to be drawn from that circumstance alone. A woman of easy virtue also could not be raped by a person for that reason.

There is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. **State (Govt. of NCT of Delhi) V. Pankaj Chaudhary 2018 (14) SCALE 423**

BACK TO INDEX

Indian Trust Act:

Sec. 3 – Beneficial Interest

Held: From the ‘Beneficial interest’ provided in Section 3 of the Indian Trust Act, 1882, there are two parties involved in an issue governing beneficial interest. One is a beneficiary named as ‘beneficial owner’ and the other is the owner named as ‘registered owner’ being the

trustee of the property or the asset in question. Thus, one can deduce the underlining principle that the ownership is nonetheless legal over the trust property, which vests on him but he also acts as a trustee of the beneficiary. A beneficial owner may include a person who stands behind the registered owner when he acts like a trustee, legal representative or an agent.

For applying the principles governing a derivative action one fundamental test has to be passed, viz., such an action will necessary have the sanction of law and this shall have no obligation to a foreign entity having beneficial interest which can be enforced in India especially when there are provisions dealing with such a situation.

While considering the territorial jurisdiction over a suit initiated to protect the beneficial interest, the issue qua the existence of such an interest can only be decided on the condition that the same is amenable to such a jurisdiction. **Ahmed Abdulla Ahmed Al Ghurair V Star Health and Allied Insurance Co. Ltd. 2018 (15) SCALE 133**

BACK TO INDEX

Information Technology Act:

Sec. 70—

The amendment to Section 70(1) of the I.T. Act brought in by Act No. 10 of 2009, in our considered view, makes the power of declaration of protected system even more stringent by further circumscribing the power of declaration of protected system only in respect of a computer resource which directly or indirectly affects the facility of Critical Information Infrastructure, which is a defined expression in the I.T. Act (already extracted). The amendment, in our considered view is not a first time introduction of parameters to govern the exercise of power under Section 70(1) of the I.T. Act. Rather, it is an attempt to circumscribe the power even further than what was prevailing under the pre-amended law, by narrowing down the ambit of "government work" so far as it is relatable to the facility of Critical Information Infrastructure, as defined under the Act.

The challenge made by the appellant before the High Court insofar as the Notification dated 27th December, 2002 is concerned was founded on a claim of copyright in the FRIENDS application software. The said

claim, ex facie, is not tenable in the light of the provisions contained in Section 17(a) of the Copyright Act and the admitted/pleaded case of the appellant in the writ petition to the effect that it was entrusted by Microsoft to develop the software for which it received due consideration from Microsoft. If that be so, on the appellant's own pleadings in the writ petition, it would not be entitled to claim copyright in the FRIENDS application software under Section 17(a) of the Copyright Act. Whether under clause 10 (under the head "Role of Government of Kerala") of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala, the State would have a claim of copyright in view of Section 17(a) of the Copyright Act is altogether a different question which has no bearing on the claim of the appellant to copyright in the FRIENDS application software. In the present proceedings, the issue of inter- parties rights between Microsoft and 1st respondent/4th respondent is not in dispute to require any resolution. The only point for adjudication is the claim of the appellant, as the developer of the application software, to be the first author of the said work so as to vest in him/it a copyright under the provisions of Section 17 of the Copyright Act, 1957, a claim which is palpably unfounded both on the basis of the provisions of Section 17(a) of the Copyright Act and under clause 10 (under the head "Role of Government of Kerala") of the Memorandum of Understanding between Total Solution Providers for E-Governance and Government of Kerala. **B.N. Firos vs. State of Kerala, (2018) 9 SCC 220**

BACK TO INDEX

Intellectual Property Act:

Trade Marks Act, 1999—Ss. 9, 11 and 18

The burden of proving that the trade mark which a person seeks to register is not likely to deceive or to cause confusion is upon the applicant. It is for him to satisfy the Registrar that his trade mark does not fall within the prohibition of Section 8 and therefore it should be registered. Moreover, in deciding whether a particular trade mark is likely to deceive or cause confusion that duty is not discharged by arriving at the result by merely comparing it with the trade mark which is already registered and whose proprietor is offering opposition to the registration of the mark. The

real question to decide in such cases is to see as to how a purchaser, who must be looked upon as an average man of ordinary intelligence, would react to a particular trade mark, what association he would form by looking at the trade mark, and in what respect he would connect the trade mark with the goods which he would be purchasing. **Nandhini Delux V. Karnataka Cooperative Milk Producers Federation Ltd., (2018) 9 SCC 183**

BACK TO INDEX

Interpretation of Statutes:

Interpretation of Statute –

While interpreting any provision of a statute the plain meaning has to be given effect and if language therein is simple and unambiguous, there is no need to traverse beyond the same. Likewise, if the language of the relevant section gives a simple meaning and message, it should be interpreted in such a way and there is no need to give any weightage to headings of those paragraphs.

It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them"**. Maqbool V. State of U.P., AIR 2018 SC 5101.**

Basic Rules—Generally—Rule of literal construction, principle of strict construction and plain meaning rule—How differ and when apply, explained

The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it

becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. **Commissioner of Customs (Import), Mumbai V. Dilip Kumar and Company, (2018) 9 SCC 1**

Expression "Interpretation"—Connotation of, explained

Interpretation has been explained by Cross in Statutory Interpretation, Dr. John Bell & Sir George Ingale (Eds.), Cross Statutory Interpretation (2nd Edn., 1987) as:

"The meaning that the Court ultimately attaches to the statutory words will frequently be that which it believes members of the legislature attached to them or the meaning which they would have attached to the words had the situation before the Court been present to their minds. Interpretation is the process by which the Court determines the meaning of a statutory provision for the purpose of applying it to the situation before it."

The Hindu Marriage Act is a social welfare legislation and a beneficent legislation and it has to be interpreted in a manner which advances the object of the legislation. The Act intends to bring about social reforms (Parayankandiyal Eravath Kanapravan Kalliani Amma v. K. Devi, (1996) 4 SCC 76, para 68). It is well known that this Court cannot interpret a socially beneficial legislation on the basis as if the words therein are cast in stone (Revanasiddappa v. Mallikarjun, (2011) 11 SCC 1, para 40).

The statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principles is

now widely applied by the courts not only in this country but in many other legal systems as well." **Anurag Mittal V. Shaily Mishra Mittal, (2018) 9 SCC 691 : 2018(36) LCD 2214**

Interpretation of Statute – Meaning of

The meaning that the Court ultimately attaches to the statutory words will frequently be that which it believes members of the legislature attached to them, or the meaning which they would have attached to the words had the situation before the Court been present to their minds. Interpretation is the process by which the Court determines the meaning of a statutory provision for the purpose of applying it to the situation before it. **Mr. Anurag Mittal V. Mrs. Shaily Mishra Mittal (2018) 9 SCC 691 : 2018(36) LCD 2214**

Held: The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. **Rameshwar Prasad. Shrivastava and Ors. Vs. Dwarkadhis Projects Pvt. Ltd. 2018 (15) SCALE 629**

BACK TO INDEX

Land Acquisition Act:

Sec. 23—Determination of market value

While determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that at what percentage the deduction should be made varies from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds

of larger parcel of land are not available. This Court has also laid down that the court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act**. Union of India V. Gyagala Devamma, (2018) 8 SCC 48**

BACK TO INDEX

Limitation Act:

Sec. 14

The applicability of Section14 of the Limitation Act to an application filed under Section 34 of the 1996 Act. By applying the facts of the present case to the well settled position of law, we need to assess whether the learned Single Judge of the High Court was justified in condoning the delay for filing an application under Section 34 of the 1996 Act. **M/s. Simplex Infrastructure Ltd. V. Union of India 2018 (15) SCALE 590**

Sec. 17 does not extend or break the limitation period. It only postpones or defers the commencement of the limitation period. This is evident from the phrase "the period of limitation shall not begin to run".

Further, the exclusion of Section 17 is also necessarily implied when one looks at the scheme and object of the Arbitration Act.

First, the purpose of Arbitration Act was to provide for a speedy dispute resolution process. The Statement of objects and Reasons reveal that the legislative intent of enacting the Arbitration Act was to provide parties with an efficient alternative dispute resolution system which gives litigants an expedited resolution of disputes while reducing the burden on the courts. Article 34(3) reflects this intent when it defines the commencement and concluding period for challenging an Award. This Court in Popular Construction Case highlighted the importance of the fixed periods under the Arbitration Act. We may also add that the finality is a fundamental principle enshrined under the Arbitration Act and a

definitive time limit for challenging an Award is necessary for ensuring finality. If Section 17 were to be applied, an Award can be challenged even after 120 days. This would defeat the Arbitration Act's objective of speedy resolution of disputes. The finality of award would also be in a limbo as a party can challenge an Award even after the 120 day period.

Second, extending Section 17 of Limitation Act to Section 34 would do violence to the scheme of the Arbitration Act. As discussed above, Section 36 enables a party to apply for enforcement of Award when the period for challenging an Award under S.34 has expired. However, if Section 17 were to be extended to Section 34, the determination of "time for making an application to set aside the arbitral award" in Section 36 will become uncertain and create confusion in the enforcement of Award. This runs counter to the scheme and object of the Arbitration Act. **P. Radha Bai v. P. Ashok Kumar, AIR 2018 SC 5013.**

BACK TO INDEX

Motor Vehicles Act:

Quantum

Held: Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation for loss of future earnings would depend upon the impact and effect of the permanent disability on his earning capacity. The effect of the permanent disability on the earning capacity of the injured must be considered; and after assessing the loss of earning capacity in terms of percentage of the income e, it has to be quantified in terms of money, to arrive at the future loss of earnings suffered by the claimant. Hence, the compensation to be awarded is calculated as follows:

Minimum annual income of appellant = Rs. 8500x 12 = Rs. 1,02,000

Loss of future income at the level of his disability (i.e. 75 per cent) = 75 per cent of Rs. 1,02,000=Rs. 76500 per annum

Multiplier applicable (29years) = 17

Loss of future earnings = Rs. 76,500 x 17 = Rs. 13,00,500

Anat V. Pratap 2018 ACJ 2773

Quantum – Fatal accident

In appeal, the High Court applied a multiplier of 15 and increased the compensation to Rs. 1,85,000. However, interest was reduced to 8 per cent per annum.

Having considered the record, we are of the view that the assessment of income by the MACT at Rs 1,200 per month is on the lower side. Taking a realistic view, the income should have been assessed at Rs 2,500 per month having due regard to the nature of the business, the date of accident and all the circumstances of the case. The deceased was 38 years old and hence the correct multiplier would be 16. Following the decision of the Constitution Bench in *National Insurance Company Limited v Pranay Sethi 2017 ACJ 2700 (SC)*, an amount of 40 per cent is required to be added towards future prospects.Accordingly, the quantum of compensation is recomputed as follows:

Monthly income	Rs	2,500
Annual income	Rs	30,000
Deduction of one-third for personal expenses	Rs	10,000
Net annual income	Rs	20,000
Future prospects at 40%	Rs	8,000
Total income	Rs	28,000
Multiplier 16		
Total compensation for loss of dependency	Rs.	4,48,000
Addition for conventional heads in terms of Pranay Sethi	Rs.	75,000
Total compensation	Rs	5,23,000

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Sec. 149 – Liability of insurance company

The appeal filed by the legal representatives of the deceased (Satish) first, as mentioned earlier, they did not file any appeal challenging the award passed by the Tribunal determining the compensation amount payable to them at Rs.4,53,000/- (Four Lakh Fifty Three Thousand only) with interest at the rate of 6% per annum from the date of petition till the date of deposit. It is respondent No.1 Insurance Company who had

challenged the award in favour of the claimants and in those appeals, the claimants (including appellants in Civil Appeal No.9078 of 2017) filed cross objections which, however, came to be dismissed for non- removal of office objections.

Nevertheless, the High Court enhanced the compensation amount payable to them by invoking power under Order 41 Rule 33 of the Civil Procedure Code (C.P.C.). The Insurance Company has not challenged the said view taken by the High Court as it has already succeeded in getting a finding from the High Court that the liability to pay compensation amount was restricted to that of the owner of the offending vehicle, namely respondent No.2 herein.

Assuming that the legal representatives of the deceased (Satish) (appellant in Civil Appeal No.9078 of 2017) could ask for enhancement of the compensation amount in the present appeal whilst challenging the finding of the High Court to absolve the Insurance Company of its liability to pay the compensation amount, the question is whether the appellants are justified in claiming further enhanced compensation amount.

The Tribunal has found that no evidence regarding the income of the deceased (Satish) was produced by the claimants. That finding has not been over turned by the High Court. The High Court, however, relied upon the driving licence of the deceased and training certificate of the deceased issued by Bajaj Auto Limited and on that basis, determined the notional income of Satish (Deceased) at the time of accident at Rs.10,000/- per month. Neither the driving licence nor the certificate could per se be made the basis to assume or infer that the deceased (Satish) was gainfully employed at the relevant time and moreso was earning income of Rs.10,000/- per month. In other words, the reason assigned by the High Court for enhancing the notional income of the deceased (Satish) from Rs. 3000/- to Rs.10,000/- per month is irrational and tenuous. No tangible logic has been assigned to discard the just finding recorded by the Tribunal in the backdrop of lack of evidence regarding the monthly income of the deceased (Satish).

We are of the view that the High Court has already granted more than just compensation amount to the legal representatives of the deceased (Satish). In that, even if the claim of the appellants regarding future prospects, additional medical expenses and additional interest amount was to be accepted, on the basis of the notional income of Rs.5000/- (Rupees five thousand) per month, the question of awarding additional or further compensation amount to the appellants in M.F.A. No.5874 of 2011 does not arise. The appeal, however, would succeed to the limited extent that the amount of compensation determined by the High Court shall be first paid by the respondent No.1 Insurance Company with liberty to recover the same from the owner of the offending vehicle (respondent No.2 herein). We are inclined to allow the appeal to this limited extent. **Rani V. National Insurance Co. Ltd. 2018 ACJ 2430**

Sec. 149 – Third party risk

The insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered. In para (110), the Supreme Court summarised its conclusions as under:-

"110. The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents

caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them,

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the

Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso there under and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims," **Shamanna V. Divisional Manager, United Oriental Insurance Co. Ltd. 2018 ACJ 2163 : 2018 (8) Supreme 479**

Sec. 149 (2) – Driving licence

In the case of third party risks, as per the decision in National Insurance Company Ltd. v. Swaran Singh and others 2004 ACJ 1 (AC), the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered. In para (102), the Supreme Court summarized its conclusions as under:-

"(102). The summary of our findings to the various issues as raised in these petitions is as follows:

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefore would be on them,

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a

valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act.

(vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of 5 claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section

(7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal. **Shamanna V. Divisional Manager, United Oriental Insurance Co. Ltd. 2018 ACJ 2163 : 2018 (8) Supreme 479**

Sec. 149 (2) – Scope of

It is well established that if the owner was aware of the fact that the licence was fake and still permitted the driver to drive the vehicle, then the insurer would stand absolved. However, the mere fact that the driving licence is fake, per se, would not absolve the insurer. Indubitably, the High Court noted that the counsel for the appellant did not dispute that the driving licence was found to be fake, but that concession by itself was not sufficient to absolve the insurer. **Ram Chandra Singh V. Rajaram 2018 (36) LCD2463**

Sec. 163 –A – Claim application

Held: The issue which arises before us is no longer res integra and is covered by a recent judgment of three judges of this Court in United India Insurance Co. Ltd. v. Sunil Kumar & Anr.,1 wherein it was held that to permit a defence of negligence of the claimant by the insurer and/or to understand Section 163A of the Act as contemplating such a situation, would be inconsistent with the legislative object behind introduction of this provision, which is “final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims

of compensation on the basis of fault liability was taking an unduly long time". The Court observed that if an insurer was permitted to raise a defence of negligence under Section 163A of the Act, it would "bring a proceeding under Section 163A of the Act at par with the proceeding under Section 166 of the Act which would not only be self- contradictory but also defeat the very legislative intention". Consequently, it was held that in a proceeding under Section 163A of the Act, the insurer cannot raise any defence of negligence on the part of the victim to counter a claim for compensation. **Shivaji V. Divisional Manager, United India Insurance Co. Ltd. 2018 ACJ 2161: 2018(8) Supreme 454**

Sec. 166 – Determination of compensation

Held: In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life, and enjoy those thing and amenities which he would have enjoyed, but for the injuries. **Anant V. Pratap 2018 (36) LCD 2468**

Sec. 166 –Maintainability of claim application.

For arriving at the amount of compensation the monthly income should be assessed properly correct multiplier should be applied considering the age of the victim and compensation for future prospects should be reasonably provided as also reasonable rate of interest for delay in payment of compensation. **Santosh Devi V. Mahaveer Singh 2018(8) Supreme 452**

Sec. 168 –

Held: Section 168 of the Motor Vehicles Act, 1988 (for short 'the Act') mandates that "just compensation" should be paid to the claimants. Any method of calculation of compensation which does not result in the award of 'just compensation' would not be in accordance with the Act. The

word "just" is of a very wide amplitude. The Courts must interpret the word in a manner which meets the object of the Act, which is to give adequate and just compensation to the dependents of the deceased. One must also remember that compensation can be paid only once and not time and again. **Sebastiani Lakra V. National Insurance Company Ltd. 2018 (14) SCALE 20**

Ss. 168, 166

The law is well settled that deductions cannot be allowed from the amount of compensation either on account of insurance, or on account of pensionary benefits or gratuity or grant of employment to a kin of the deceased. The main reason is that all these amounts are earned by the deceased on account of contractual relations entered into by him with others. It cannot be said that these amounts accrued to the dependents or the legal heirs of the deceased on account of his death in a motor vehicle accident. The claimants/dependents are entitled to 'just compensation' under the Motor Vehicles Act as a result of the death of the deceased in a motor vehicle accident. Therefore, the natural corollary is that the advantage which accrues to the estate of the deceased or to his dependents as a result of some contract or act which the deceased performed in his life time cannot be said to be the outcome or result of the death of the deceased even though these amounts may go into the hands of the dependents only after his death.

As far as any amount paid under any insurance policy is concerned whatever is added to the estate of the deceased or his dependents is not because of the death of the deceased but because of the contract entered into between the deceased and the insurance company from where he took out the policy. The deceased paid premium on such life insurance and this amount would have accrued to the estate of the deceased either on maturity of the policy or on his death, whatever be the manner of his death. These amounts are paid because the deceased has wisely invested his savings. Similar would be the position in case of other investments like bank

deposits, share, debentures etc.. The tort-feasor cannot take advantage of the foresight and wise financial investments made by the deceased.

Deduction can be ordered only where the tort-feasor satisfies the court that the amount has accrued to the claimants only on account of death of the deceased in a motor vehicle accident. **Sebastiani Lakra v. National Insurance Company Ltd., AIR 2018 SC 5034.**

BACK TO INDEX

Negotiable Instruments Act:

Sec. 139 – Presumption of cheque

Held: Under Section 139 of the N.I. Act, once a cheque 8 has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability.

This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan. **T.P. Murugan (Dead) through LRs. V. Bojan, 2018 (8) Supreme 274**

BACK TO INDEX

Protection of Child from Sexual offences Act (POCSO):

Sec. 23 (2)

Where a child belongs to a small village, even the disclosure of the name of the village may contravene the provisions of Section 23(2) POCSO because it will just require a person to go to the village and find out who the child is. In larger cities and metropolis like Delhi the disclosure of the name of the city by itself may not lead to the disclosure of the identity of the child but any further details with regard to the colony and the area in which the child is living or the school in which the child is studying are enough (even though the house number may not be given) to easily discover the identity of the child. In our considered view, the media is not only bound not to disclose the identity of the child but by law is mandated not to disclose any material which can lead to the disclosure of the identity of the child. Any violation of this will be an offence under Section 23(4).

Sec. 23 of POCSO Act contains:

Procedure for media:

(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.

(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.

(4) Any person who contravenes the provisions of subsection (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both."

Sub-section (1) of Section 23 prohibits any person from filing any report or making any comments on any child in any form, be it written, photographic or graphic without first having complete and authentic information. No person or media can make any comments which may have the effect of lowering the reputation of the child or infringing upon the privacy of the child. Sub-section (2) of Section 23 clearly lays down that no report in any media shall disclose identity of a child including name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to the disclosure of the identity of the child. This clearly shows that the intention of the legislature was that the identity of the child should not be disclosed directly or indirectly.

The phrase 'any other particulars' will have to be given the widest amplitude and cannot be read only ejusdem generis. The intention of the legislature is that the privacy and reputation of the child is not harmed.

Therefore, any information which may lead to the disclosure of the identity of the child cannot be revealed by the media. The media has to be not only circumspect but a duty has been cast upon the media to ensure that it does nothing and gives no information which could directly or indirectly lead to the identity of the child being disclosed.

No doubt, it is the duty of the media to report every crime which is committed. The media can do this without disclosing the name and identity of the victim in case of rape and sexual offences against children. The media not only has the right but an obligation to report all such cases. However, media should be cautious not to sensationalize the same. The media should refrain from talking to the victim because every time the victim repeats the tale of misery, the victim again undergoes the trauma which he/she has gone through. Reportage of such cases should be done sensitively keeping the best interest of the victims, both adult and children, in mind. Sensationalizing such cases may garner Television Rating Points (TRPs) but does no credit to the credibility of the media. **Nipun Saxena V. Union of India 2018 (15) SCALE 769**

BACK TO INDEX

Provincial Small Cause Court Act:

Ss. 15, 25

It is true that District Judge or Additional District Judge functioning as Small Causes Courts can take cognizance of all suits irrespective of their value. But use of the words "irrespective of their value" was in contradiction of the pecuniary value, which was given to Judge of Small Causes Courts presided by Civil Judge. The fact that District Judge or Additional District Judge can take cognizance of all suits irrespective of their value shall not whittle down or dilute the line of separation between two courts in taking cognizance of small cause cases.

The mere fact that District Judge or Additional District Judge can take cognizance of suits of unlimited value will not empower them to take cognizance of cases, which, according to statutory Scheme can be taken only by small causes courts presided by Civil Judge

The purpose of Section 15 is obvious that even though more than one court has jurisdiction to try the suit, it should be instituted in the Court

of lowest grade. For example, a small cause case can be instituted in Court of Small Cause presided by Civil Judge having valuation of upto Rs. 1 lakh as on date and small cause suit having valuation of more than Rs. 1 lakh can be instituted in the Court of District Judge or Additional District Judge. As per Section 15 of the Code of Civil Procedure, suit of less than Rs. 1 lakh valuation has to 43 be instituted in Small Causes Court presided by Civil Judge. Although, District Judge or Additional District Judge has unlimited pecuniary jurisdiction but under the legislative Scheme, the suit is not to be taken cognizance by the District Judge or Additional District Judge, which has valuation upto Rs. 1 lakh.

Even though if Section 15 of the C.P.C. is a provision, which regulate the institution of suits and does not affect the jurisdiction of Courts, reading the provision of Section 15 alongwith relevant provisions of the Provincial Small Cause Courts Act, 1887 and the Bengal, Agra, Assam Civil Courts Act, 1887, the legislative Scheme is clear that small cause cases should be taken cognizance by Small Cause Courts presided by Civil Judge upto the valuation of Rs. 1 lakh and cases having valuation of more than Rs. 1 lakh by District Judge or Additional District Judge, who have been invested with the power of Small Cause Courts. Unless the above legislative intent and Scheme is followed, there shall be confusion and inconsistency. The legislative provisions have to be interpreted in a manner, which may advance the object and purpose of the Act.

When clear dichotomy regarding taking cognizance of small causes suits presided by Civil Judge and by District Judge or Additional District Judge have been provided for, the said dichotomy and separation to take cognizance of cases has to be followed to further the object and purpose of legislation. **Om Prakash Agarwal (D) through LRS. V. Vishan Dayal Rajpoot 2018(14) 116**

BACK TO INDEX

Registration Act:

Sec. 17 – Scope of

Sec. 17(i)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration

Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act. Since, the deed of exchange has the effect of creating and taking away the rights in respect of an immovable property, namely, RCC building, it requires registration under Section 17. Since the deed of exchange has not been registered, it cannot be taken into account to the extent of the transfer of an immovable property. **Shyam Narayan Prasad V. Krishna Prasad 2018 (36) LCD 2230**

Sec. 17 (1-A) read with section 49-Transfer of Property Act, 1882-Section 53-A-Admissiblity of document in evidence-Document containing contract to transfer the right, title or interest in an immovable property for consideration-Required to be registered in order to get protection of its possession over stated property-An unregistered document will have no effect for purpose of section 53 of the Transfer of Property Act-Genuineness, Validity and binding nature of the document or the fact that it is hit by provisions of the 1882 Act or 1899 Act will have to be adjudicated. General power of Attorney executed by the original defendant No.1 in the instant case in favour or respondent No. 3-Being registered document, Trial Court was justified in observing that there was a legal, rebuttable presumption that same has been duly stamped-Trial Court rightly overturned the objection regarding marking and exhibiting these documents making clear that genuineness, validity and binding nature of documents would be decided at the appropriate stage.

The document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act.

When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act.

A document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance. It is received as evidence of a contract in a suit for specific performance and nothing more. The genuineness, validity and binding nature of the document or the fact that it is hit by the provisions of the 1882 Act or the 1899 Act, as the case may be, will have to be adjudicated at the appropriate stage as noted by the Trial Court after the parties adduce oral and documentary evidence. **Ameer Minhaj V. Dierdre Elizabeth (Wright) Issar, 2018(141) RD 557**

BACK TO INDEX

Right to Information Act:

Secs. 6(1) & 6(3)—Illiterate persons and the visually impaired persons or persons afflicted by other kinds of disabilities are not in position to get the information

It is obligatory on the part of the Central Public Information Officer or State Public Information Officer to render all reasonable assistance to the persons making the request orally to reduce the same in writing. As Court understand from the said proviso, it will be the duty of the officer to listen to the persons and to reduce it in writing and process the same.

Section 6(3) of the Act takes care of the apprehension of the persons for whose cause the petitioner espouses, by making the provision pertaining to appropriate competent public authority. On a careful reading of the same, Court does not find that there can be any difficulty for any person to find out the public authority as there is a provision for transfer. **Aseer Jamal v. Union of India, (2018) 10 SCC 437**

BACK TO INDEX

Specific Relief Act:

Sec. 16(c)

A plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract1. Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance. It is the duty of the plaintiff to plead and then lead evidence to show that the plaintiff from the date he entered into an agreement till the stage of filing of the suit always had the capacity and willingness to perform the contract. **Jagjit Singh (D) through LRS. Vs. Amarjit Singh 2018 (36) LCD 2787**

BACK TO INDEX

Transfer of Property Act:

Sec. 106-Notice terminating tenancy-Consequence of no objection by tenant-If the defendant does not raise any objection to the validity of quit notice at the first available opportunity, the objection will be deemed to have been waived.

Burden of proving ownership/title-In suit for eviction-Manner-In an eviction suit filed by landlord against tenant under the Rent Laws, when issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit-Explained.

It is a settled principle of law that in an eviction suit filed by the landlord against the tenant under the Rent Laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the Rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised

property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. **Apollo Zipper India Ltd. Vs. W. Newman and Co. Ltd., 2018(3) ARC 187 (S.C.).**

Sec. 122 – Gift – Definition of

Gift means to transfer certain existing moveable or immoveable property voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee.

A conditional gift with no recital of acceptance and no evidence in proof of acceptance, where possession remains with the donor as long as he is alive, does not become complete during lifetime of the donor. When a gift is incomplete and title remains with the donor the deed of gift might be cancelled. **Saojni Amma V. Velayudhan Pillai Sreekumar 2018 (14) SCALE 339**

BACK TO INDEX

Words and Phrases:

Consortium

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family.

With respect to a spouse, it would include sexual relations with the deceased spouse.3 Spousal consortium is generally defined as rights pertaining to the relationship of a husband wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."4 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training." **Magma General Insurance Co. Ltd. V. Nanu Ram and others 2018 ACJ 2782**

Filial consortium

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child.

An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child.

Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. **Magma General Insurance Co. Ltd. V. Nanu Ram and others 2018 ACJ 2782**

"Suitable"—Meaning and Scope

In English parlance, the word "suitable" is assigned the meaning as "appropriate, fitted for the purpose or acceptable". Concise Oxford Dictionary defines the word "suitable" as "well fitted for the purpose; appropriate". This ordinary meaning is to be given effect to as a general guide, unless this expression is given special meaning in a statute or rule in administrative instructions. In R. (Quintavalle) v. Human Fertilisation and Embryology Authority, (2005) 2 AC 561, the House of Lords remarked that 'the word "suitability" is an empty vessel which is filled with meaning by context and background'.

In service jurisprudence, where the word "suitable" is normally examined from the point of view as to whether a particular person is suitable to hold a particular post, it is construed as "fit" to hold that post. It would mean that the job profile and requirement of a particular post would be seen and then, going by the caliber, competence, attributes, skill and experience of the candidate, it would be ascertained as to whether such a

person would be able to discharge the duties of the post i.e. whether he is suited to carry out the functions of the post, to the satisfaction of his employer. **Union of India through Its Secretary V. Major General Manomoy Ganguly, (2018) 9 SCC 65**

PART – 2 (HIGH COURT)

BACK TO INDEX

Civil Procedure Code:

Sec. 9 – U.P. Zamindari Abolition and Land Reforms Act – S. 331 – Jurisdiction of Civil Court v. Revenue Court

The main point for consideration in all cases where on a definite cause of action two reliefs can be claimed is which of the two reliefs is the main relief and which relief or other reliefs are ancillary reliefs. Where from facts and circumstances of the case the relief for demolition and injunction is the main relief there could be no reason why the jurisdiction of the Civil Court should be barred. On the other hand, if it could be said that the main relief, that is to say, the real and substantial relief, could not that cause of action be of possession only then the suit will definitely lie in the revenue court. In Court's opinion was difficult to lay down any hard and fast rule that where the suit is brought against a trespasser the only relief which the plaintiff should claim as an effective relief is that of possession and he need not try to obtain an injunction order and get the constructions made by the trespasser demolished. The revenue courts have not been empowered to grant the reliefs of injunction and demolition and in case the defendant refuses to take away the materials from the land in dispute after the decree for possession has been passed against him the main object of the plaintiff would be frustrated. A Civil Court will, therefore, have the power to entertain the suit where the main relief sought by the plaintiff is that of injunction and demolition, a relief which could be granted by the Civil Court only. The relief of possession will be merely ancillary relief which the Civil Court could grant after having taken cognizance of the suit for injunction and demolition.

Supreme Court view that the determination of the question as to which out of the several reliefs arising from the same cause of action is the main relief will depend on the facts and circumstances of each case.

Further we are of the view that where, on the basis of a cause of action-

(a) The main relief is cognizable by a Revenue Court the suit would be cognizable by the Revenue Court only. The fact that the ancillary

reliefs claimed are cognizable by Civil Court would be immaterial for determining the proper forum for the suit;

(b) The main relief is cognizable by the Civil Court the suit would be cognizable by the Civil Court only and the ancillary reliefs, which could be granted by the Revenue Court may also be granted by the Civil Court. **Umar Daraj Khan V. Fateh Narain, 2018 (5) ALJ 566**

Ss. 10, 100 – Prayer to stay the proceedings of the suit in exercise of power under section 10, C.P.C. in view of the pendency of the second appeal

Mere filing of appeal would not be treated to be continuation of the proceedings. A second appeal before the High Court filed under Section 100 CPC is entertainable only if it involves a substantial question of law and the High Court is satisfied about the same. It is implicit that mere filing of an appeal could not be treated as continuation of the proceedings of the suit unless the High Court satisfies itself that a substantial question of law is involved therein and admits the appeal after formulating the question. A mere presentation of the memo of appeal before the High Court without the same being admitted, would not attract Section 10 CPC. **Smt. Riiorani Jain V. Deep Chand Jain alias Deelep Jain, 2018 (5) ALJ 436**

Sec. 11 – Doctrine of Res judicata

Held: The principle of Res judicata are also applicable in writ proceedings.

It is well-known that the doctrine of res judicata is codified in Section 11 of the CPC but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the CPC and in many other situations also principles not only of direct res judicata but of constructive

res judicata are also applied. If by any judgment or order any matter in issue has been directly and explicitly decided the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceeding between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided. **Dinesh Kumar V. State of U.P. 2018 (36) LCD 2594**

Ss. 16 and 17-Jurisdiction to hear suit-Court below deciding preliminary issue held it has jurisdiction to hear the matter-Legality of-Perusal of relief claimed in plaint clarifies the suit property situated in Ghaziabad as also and largely in Badaun-The suit in view of S.17, therefore, could have been filed either at Badaun or Ghaziabad-Proviso to S. 17 will not have any bearing in hand as the suit has been filed before Civil Judge(Sr. Div.) who has unlimited pecuniary jurisdiction-No error in order impugned.

From a perusal of the relief claimed in the plaint, it is clear that the suit property is situated in Ghaziabad, as also and largely in Badaun. The suit in view of Section 17 therefore, could have been filed either at Badaun of Ghaziabad.

Proviso to Section 17 will not have any bearing in the case at hand for the simple reason that the suit has been filed before the Civil Judge (Senior Division), who has unlimited pecuniary jurisdiction.

Moreover, in case, the suit could be filed either at Ghaziabad or Badaun and the plaintiff opposite party has chosen to file it at Ghaziabad, there is no illegality in such choice of plaintiff. Merely because, most of the property in suit is situated at Badaun, the same in may considered

opinion will not render the Court at Ghaziabad, wholly without jurisdiction. **Dilip Kumar Agarwal and another Vs. Kuldeep Kumar Vaish and 7 others, 2018(3) ARC 270**

Sec. 47 – Execution of decree – Non-consideration of objection – consequential final decree not shown to be illegal for any ground – Trial court did not err in drawing final decree

The preliminary decree for partition was affirmed by the Apex Court, the court concerned has proceeded with taking of steps for preparing a final decree. A partition scheme accordingly was prepared by the Amin to which no objection has been filed by the appellant. The appellant was a minor and the decree was nullity. This issue has rightly not been taken note of by the court below as the issue had already been addressed by the Apex Court upon an appeal preferred by the appellant herself. There is no objection to the partition scheme framed pursuant to the preliminary decree. The court below therefore was justified in endorsing the scheme of partition after observing that no objection to it had been filed. There is no illegality in the judgment dated 8.7.2016 directing the office to prepare scheme of partition and to draw the final decree. The consequential final decree has not been shown to be illegal for any other ground. The only ground of minority of appellant since has been decided against the appellant by the Apex Court. **Shreya Vidyarthi v. Ashok Vidyarthi, 2018 (6) ALJ 767**

Sec. 100 – Second Appeal

Where no substantital question of law involved in the matter observation made in the judicial order have to be given precedence and cannot be disbelieved merely on the assertion made by the parties subsequent to the said decision. **Jagdish Singh V. Amresh 2018 (36) LCD 2729**

O. 6, R. 17 – Amendment of pleadings – permissibility – suit for permanent prohibitory injunction

Sub section (2) of Section 16 of the said Act specifically provides that the provisions of Rule 17, Order 6 of I Schedule as substituted by Section 16 of the Code of Civil Procedure (Amendment Act) 1999 and by Section 7 of the said Act shall not be applicable to pleadings filed before commencement of Section 16 of Code of Civil Procedure (Amendment) Act 1999 and Section 7 of the said Act. Since in the instant case, written statement was filed in the year 1995, which was much before the commencement of Act No. 22 of 2002 w.e.f. 1.7.2002, consequently, the amended provision would not be applicable.

The findings of the revisional court that the amendment sought is necessary for the purpose of determining the real controversy between the parties is not under challenge. Even this Court is also of the opinion that the pleading relating to municipal number over. **Sanjeev Agrawal v. Nagar Palika Soron, 2018 (5) ALJ 593**

O.6, R. 17 – Amendment in written statement

The general principles of amendment under Order VI Rule 17 C.P.C. Is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and proper and all those amendments must be allowed which are imperative for determining the real question in controversy between the parties. Thus, an amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim. The Court always gives relief to amend the pleadings of the party, unless it is satisfied that the party applying for amendment was acting malafidely or that by his blunder he had caused injury to his opponent which cannot be compensated by an order of cost. **Vinod Kumar v. Chetan Prakash Verma, 2018 (6) ALJ 125**

O. 21, R. 36 - Provincial Small Cause Courts Act – S. 21 – Eviction decree

The possession of the premises in question having admittedly been handed over, the sole question that remains is regarding the payment of damages payable to the landlord in execution proceedings.

In the present case, it is not in dispute that out of three conditions imposed by this Court by order dated 21.4.2015. Two conditions were complied with and the only condition that undertaking shall be filed within 15 days for vacating the premises in question was admittedly not complied with. In view of the order dated 29.4.2016 passed by this Court in Matter under Article 227 No. 2921 of 2016 whereby the Bank was granted further time to vacate and hand over the possession of the premises in question by 1.8.2016 cannot be said that the condition for vacating the premises in question was not complied with. Once the time was extended for vacating the premises in question and the same was actually vacated within the time granted and not only this, affidavits were also filed in the execution proceeding that the premises will be vacated and an explanation for not filing the undertaking within time has been given and for this purpose even a review application (which was converted into modification application) was also filed on 12.5.2015, which remain pending in this Court and was disposed of by this Court vide order dated 11.8.2017, I find that no prejudice has been caused to the landlord-opposite party. The object of filing of undertaking is to ensure the compliance of order of vacation of the premises in question. Since the time, for vacating the premises in question within time granted, was extended by this Court vide order dated 29.4.2016 passed in Matter under Article 227 No. 2921 of 2016, I find that the object of undertaking from the Bank stood fulfilled. Further, in case the judgement and order dated 21.4.2015 passed in SCC Revision Defective No. 86 of 2015 was not uploaded, the litigant cannot be made to suffer for any fault or mistake on part of the Court and thus, it cannot be said that there had been any fault much less the deliberate fault on part of the Bank.

Punjab National Bank v. Anand Ganeriwal, 2018 (6) ALJ 66

O. 32, R.e 3-Nature and Scope of-Mandatory-Any decree against a minor passed without complying with the provisions of O. 32**,** R. **3 C.P.C. would be void and nullity-Not binding on the minor.**

O. 32, R. 7-Nature of-Mandatory-Any compromise entered into on behalf of a minor by his guardian without complying with the requirements of R. **7 would be voidable against the minor.**

O. 32, R. 7(1-A)-Scope of-Affidavit of the guardian of the minor and certificate of the pleader were necessary before any leave could be granted to the guarding of the minors to enter into compromise on their behalf-Non-compliance of –Suit decreed in terms of compromise-No finding that alleged compromise was beneficial for the minors-Alleged guardian was an illiterate pardanashin widow-Minors did not get anything in return of compromise-Compromise decree was voidable at the instance of the minors.

Any decree against a minor passed without complying with the provisions of O. 32, R. 3 would be void and a nullity and not binding on the minor.

The provisions of both O. 32, R. 3 and O. 32, R. 7 are mandatory in nature. Any decree passed against a minor without complying with the provisions of O. 32, R. 3 would be void and would not be required to be set aside and can be required to be set aside and can be challenged in collateral proceedings, but a decree passed against a minor without complying with the requirements of O. 32, R. 7 would, by virtue of O. 32, R. 7(2), be merely voidable against the minor who would be entitled to get it set aside on ground of non-compliance of O. 32, R.s 7(1) and (1-A).

The provisions of O. 32, R. 7 are also mandatory in nature and any compromise entered into on behalf of a minor by his guardian, without complying with the requirements of R. 7, would be voidable against the minor. **Prem Shanker Giri and others V. Deputy Director of Consolidation, Ballia and others, 2018(141) RD 436**

BACK TO INDEX

Compromise Decree:

Determination of shares in agricultural land-Compromise decree arrived at before Civil Court-Legality-Held, since Civil Court not

competent to decide question of shares in agricultural land-Therefore, impugned compromise decree without jurisdiction.

Since the Civil Court was not competent to decide the question of shares in agricultural land, any compromise decree arrived at before the Civil Court, for the purposes of determining the shares of the parties in agricultural land is wholly without jurisdiction. **Ram Kishun (since deceased) and others vs. Deputy Director of Consolidation and others, 2018(141) RD 631**

BACK TO INDEX

Constitution of India:

Arts. 16. 21, 309 – U.P. Fundamental Rules, R. 56 – Right to retire – is not supreme than right to life – when services are required in view of public interest, denial of voluntary retirement, permissible.

Decision of Government cater to needs of human life and carry objectives of public interest. Right to retire under Part III of Constitution cannot be supreme than right to life. It has to be interpreted along with rights of State Government in Part IV of Constitution as it is obligatory upon State Government to make endeavor under Art. 47 to look after provisions for health and nutrition. Fundamental duties itself are enshrined under Art. 51(A) which require observance. Right under Art. 19(1)(g) is subject to interest of general public and once service has been joined, right can only be exercised as per rules and not otherwise. Such conditions of service made in public interest cannot be said to be illegal or arbitrary or taking away right of liberty. Provisions of rule in question cannot be said to be against Constitutional provisions. In case of voluntary retirement, gratuity, pensions, and other dues etc, are payable to employee in accordance with rules and when there is requirement of services of employee, appointing authority may exercise its right not to accept prayer for voluntary retirement. In case all doctors are permitted to retire, in that situation, there would be chaos and no doctor would be left in Government hospitals, which would be against concept of welfare state and injurious to public interest. In case of voluntary retirement, there is provision in Rs. 56 that Government servant may be extended benefit of additional period of five years then actual period of service rendered by him there is

corresponding obligation to serve in dire need. In India, Government sponsored Medical Services to cater to needs of poorest of poor. In other States too, it is seen sometime that when a doctor is transferred from one place to another doctor forwards application resigning from post or seeks voluntary retirement as he does not want to move out and leave his lucrative private practice and joins duty only when he obtains posting back to place of his choice. In such scenario, people cannot be deprived of services of good doctors. In view of scarcity of doctors and unfortunate privatization and commercialization of noble medical profession, for maintaining efficiency of State Medical Services, decision taken by Government is permissible as per rules and cannot be interfered with. Thus, when services are required, denial of voluntary retirement is permissible under Rules applicable in State of Uttar Pradesh. **State of Uttar Pradesh v. Achal Singh, 2018 (6) ALJ614**

Art. 226 – CPC – S. 11 – Res-judicata – refusal to grant promotion – earlier writ petition challenging refusal dismissed – Decision attaining finality – subsequent petition challenging not grant of promotion not maintainable

Promotion Policy For Officers-2006, says -

"(a) The Officers shall be ranked in descending order of total marks obtained under the reckoning parameters and from the top of the said list a number equivalent to 75% (fraction of 0.5 and above being taken as 1) of the vacancies shall be taken out to constitute one part of the promotion list.

(b) Thereafter, the remaining officers shall be re-ranked in descending order of total marks obtaqined under the reckoning parameters (excluding the score in the written test) and from top of the said list a number equivalent to the balance number of vacancies.

There is no dispute to the fact that promotion from Scale III to Scale IV is based on the Parameters of marks in the qualifying examination, seniority, work record and interview. It is also not in dispute that vide 8th Amendment the interview was introduced in Normal Channel of Promotion from Scale III to IV. From the record it comes out it is

submitted that the petitioner has secured lesser marks than the cut off marks in all the three channels of promotion i.e. Normal Channel, Seniority Channel and Fast Track Channel.

The petitioner has admitted the fact that the earlier orders have not been challenged by him before the higher forum. Thus, the judgment and orders dated 6.10.2016 and 17.1.2017 have attained finality. In these backgrounds, it is clear that the issue of non-promotion of the petitioner on the post of Manager (Scale-IV) has set at rest, therefore, the plea of the petitioner challenging the issue of promotion for the year 2014-2015 is not sustainable. **Pankaj Prakash v. United India Insurance Company Ltd., 2018 (6) ALJ 579**

Art. 311 – Dismissal from services

The primary duty of disciplinary authority while imposing the penalty after considering the show cause notice is, to pass a reasoned and speaking order, an order which can be said to have been passed after giving due consideration to the plea raised in reply to the show cause notice. If the order does not contain these basics of a sound administrative/ quasi judicial exercise of power, no amount of an order of appellate authority can be said to have rectified the inherent flaw that has occurred in the root of the matter.

In the case of Allahabad Bank & Ors Vs. Krishna Narayan Tewari (2017) 2 SCC 308, the court held that if there is no proper appreciation of evidence by the disciplinary authority nor, he has recorded reasons for its conclusion and the appellate authority instead of recording its own findings, if simply reproduced the findings of disciplinary authority, such disciplinary authority and appellate authority have therefore, faltered in discharging their duties that resulted in miscarriage of justice. **Umesh Kumar Singh v. State of U.P., 2018 (6) ALJ 122**

BACK TO INDEX

Criminal Procedure Code:

Ss. 156(3), 2(d) - Registration of FIR and investigation of case-Application for-Disclosing serious cognizable offence-Application to be treated as complaint.

From the perusal of the aforesaid provision as well as Section 154, Cr.P.C., it is evident that the police can investigate into matters relating to commission of 'cognizable offences' brought to its notice under section 154, CrPC. Officer-in-charge of police station has power to investigate u/S. 156(1) in such case. Magistrate has power to take cognizance u/S. 190, CrPC on receiving the 'complaint'. Thus the matter relating to section 156(3) relates to power of Magistrate to order investigation by police in matters relating to cognizable offences police in matter relating to cognizable offences brought before it through complaint. Complaint has been defined in section 2(d), CrPC of as follows: "complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but does not include a Police report," Code of Criminal Procedure has given different type of powers to deal with such matters relating to commission of cognizable offences when brought before it.

In view of the aforesaid, the order dated 31.03.2018 passed by the Judicial Magistrate, Ballia cannot be sustained. Accordingly, the present criminal misc. Application succeeds and is allowed at the admission stae without issuing notice to the prospective accused persons as they have no right to be heard at pre-cognizance stage. The order dated 31.03.2018 is consequently set aside**. Sher Singh vs. State of U.P. and another, 2018(5) ALJ 630.**

Ss. 167(2), 197(8)-Statutory bail-Entitlement-Merely because CBI while forwarding charge sheet mentioned that investigation is open under S. 173(8)-Would not mean that charge sheet is incomplete-Recourse to S. 173(8) is always open to Investigating Agency-Cannot be said that Investigating Officer has created a camouflage depriving right of accused to statutory bail.

Ss. 167(2), 197-Statutory bail-Entitlement-Filing of charge sheet without obtaining prosecution sanction-Is not illegal-Accused not entitled to bail on that ground.

Merely because the CBI in the instant case while forwarding the charge sheet makes a mention that investigation is open under Section 173(8), Cr.P.C. would not mean that charge sheet is incomplete. Even if, such a mention of Section 173(8), Cr.P.C. was not made in the charge sheet, the recourse to Section 173(8), Cr.P.C. was always available to the Investigating Agency. In this view of the matter, we again find ourselves unable to agree with the submission made by the learned counsel for the petitioner that in the instant case incomplete charge sheet has been filed.

Obtaining sanction for prosecution is a pre-condition of taking cognizance of an offence in terms of the provisions contained in Section 19 of the Prevention of Corruption Act, which provides that no court shall take cognizance of a n offence under the Prevention of Corruption Act said to have been committed by a public servant, except with the previous sanction of the authorities enumerated therein. There is not provision, neither any such provision has been brought to our notice by the learned counsel for the petitioner, which prohibits even filing of the charge sheet in absence of sanction for prosecution. We may further observe that not-Adherence to the provision of the C.B.I. Manual would not be deemed to be violation of any statute or any other provision made by or under a statute. **Ajay Kumar Srivastava Vs. State thru. Director CBI/Ac-1 New Delhi an others, 2018(6) ALJ 58**

Ss. 204(2), 244, 245(2)-Evidence of prosecution witnesses-Failure to lead-Effect-For purpose of prosecuting accused, production of entire witnesses as mentioned in list of S. 204, or under S. 244 is necessary-On failure of complainant to lead evidence under said sections, accused can invoke S. 245(2), to claim discharge.

Ss. 190, 195-Cognizance of offence-Bar under S. 195-Complaint in respect of forgery of documents-Maintainable only at instance of 'Court' as defined under S. 195-Criminal prosecution by way of complaint at instance of private complainant-Barred by S. 195 of Code.

Ss. 482, 245-Quaashing of proceedings-Accused facing allegations of forgery-Criminal proceedings prolonged for 23 years after filing of complaint-Despite numerous dated fixed in proceedings for recording evidence of prosecution, no witness produced in support of assertions made in complaint-Evidence of prosecution closed by Magistrate, without recording any finding of satisfaction-Successor Magistrate recalled and set aside order of earlier Magistrate, much against statutory mandate-Prolonged pendency of matter resulting in abuse of process of law-Allegations in complaint not disclosing any sort of criminal liability-Civil remedy also resorted to be complainant-Proceedings liable to be quashed.

The section 204 (2), Cr.P.C. uses the words, 'list of prosecution witnesses' which was filed by the complainant before summoning order passed on the complaint and section 244, Cr.P.C. also contemplates 'prosecution witnesses' meaning thereby that for the purposes of prosecuting the accused, entire witnesses as mentioned in the list of section 204 Cr.P.C. should have been produced by the complainant to prosecute the accused; specially when no prosecution witness from that list as mentioned above has ever been produced in order to enable the Magistrate to form an opinion to frame the charge against the accused under section 245(1), of Cr.P.C. which deals with entire evidence under section 244, Cr.P.C. and failure on the part of the complainant to lead the evidence under sections 244, r/w 204(2), Cr.P.C. the accused applicants having no other option except to invoke section 245(2), Cr.P.C. to claim discharge.

The documents in the form of agreements are the basis of Company Petition No.2 of 1994, pending before the Company Court being in High Court in original side, and the genuineness and forgery of those documents can very well be decided by the Company Court on the basis of the evidence led by respective parties and as such the instant criminal complaint pending before the court below is statutorily barred by sections 195/340 r/w 192, Cr.P.C. and the impugned criminal prosecution by way of criminal complaint in respect forgery of documents as alleged at the instance of 'Court' as defined under section 195, Cr.P.C. would be

permissible and the criminal prosecution by way of instant criminal complaint at the instance of private complainant would be impermissible in view of the fact that section 195 of Cr.P.C. provides that no Court shall take cognizance in respect of cheating and forgery etc. Can be instituted except on complaint in writing of that Court.

In view of the fact that the Magistrate concerned has ignored this aspect of the matter that criminal proceedings upon the impugned complaint prolonged for 23 years and the proceeding under section 244 even upon more than 100 dates were fixed during the span of 17 but in vain and no witness has been produced in support of the assertions made in the complaint and the Magistrate concerned did not take case of and rejected the application under section 245(2), Cr.P.C. without categorically recording and finding of satisfaction as contemplated under section 245(2), Cr.P.C.

The Magistrate waiting for more than 100 dates by affording opportunity to the complainant to legal evidence of witnesses under section 244, Cr.P.C. within the span of 17 years resultantly closed the evidence by means of an order dated 21.01.2015 and the same was recalled and set aside by successor Magistrate by means of an order dated 16.09.2016 dealing with the case against the statutory probilition as envisaged under section 362, Cr.P.C. It is admitted fact that the matter has been pending since 07.03.1994 more than 23 years. The pendency of the criminal proceedings against the applicant of such long time is nothing but an abuse of process of the Court.

The petitioners undisputedly are facing the agony of criminal trial since last 23 years and the continence of the criminal proceedings pursuant to the impugned complaint did not disclose any sort of criminal liabilities in resulting the abuse of process of the Court specially when remedy by way of arbitration clause, penalty clause and also by way of civil action for which civil remedy has been resorted to by the complainant himself is permissible under law**. M/s. Sumac International Limited, Lucknow and others vs. State of P.P., 2018(5) ALJ 580 Lucknow Bench.**

Ss. 460, 311-A- Curable irregularity-Ransom note in question sent for analysis to private handwriting expert without permission of Magistrate as required u/s. 311-A-No prejudice caused to accused on account of absence of order by Magistrate-Same would be curable irregularity and not illegality.

The first submission of the learned counsel for the revisionist to the fact that two State Forensic Science Laboratories have opined that the ransom note in question was not in the handwriting of the revisionist, the trial court has failed to exercise its jurisdiction in not discharging him, in the opinion of the Court, is not tenable. It is well known that opinion of an expert is not substantive evidence. It is but expert evidence, which the Court is not bound to accept. Expert evidence is to be analyzed along with other evidence evidence on record that is of a substantive character. Moreover, it is also well known that the Court is expert of experts and not expert evidence can tie down the hands of the Court. Therefore, the submission of the learned counsel for the revisionist of this score is not acceptable.

In the present case, the specimen signatures when asked for by the Investigating Officer were furnished by t he accused revisionist. In the opinion of the Court, the provisions of Section 311-A of the Code of Criminal Procedure are enabling in nature and confer power upon the Magistrate to direct an accused or any other person to give specimen signatures or that of his/her handwriting, but the same are not restrictive of the right of any person to give his specimen signatures, if he does so voluntarily, which precisely is the case here. The absence of an order under Section 311-A of the Code of Criminal Procedure, in case of specimen signatures being given by any person including the accused will not vitiate the analysis, where those specimen signatures have been given voluntarily.

Even otherwise, if it could be remotely argued that analysis of signatures forwarded to the expert taken or given voluntarily by the accused as in the present case without an order of the Magistrate concerned is not in accordance with law, the same in the opinion of the

Court would only be a curable irregularity and not an illegality that goes to the root of the matter. No prejudice has been caused or even alleged to have been caused to the revisionist on account of an order by the Magistrate not being secured by the investigating agency under Section 311-A of the Code of Criminal Procedure. Such an irregularity, if at all one that would be curable in accordance with the provisions of Section 460 of the Code of Criminal Procedure or on the analogy of it.

In the result, this Court does not find any force in this revision. This revision fails and dismissed in limine. **Baljor Singh v. State of U.P. and another, 2018(5) ALJ 401**

S. 378 (3) – Criminal appeal

"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal shall be entertained except with the leave of the High Court. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for grant of leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial

court could not be said to be perverse and, hence, no leave should be granted. **State of U.P. v. Riya Julla aslias Munna, 2018 (6) ALJ 49**

BACK TO INDEX

Fair Price Shop:

Suspension of licence –Legality of-Perusal of G.O. dated 29.07.2004-G.O. clearly stipulates that the delinquent had to be informed about the proposed punishment before an order of suspension is passed- If information is withheld it would violate the principles of natural justice-Rule of strict adherence would also be infringed-Licensing authority left with no other option but to inform the delinquent about the proposed punishment before an order of suspension is passed.

When the Government Order clearly stipulates that the delinquent had to be informed about the proposed punishment then there is no other option with the Licencing Authority but to inform about the same. This is not only because the Government Order stipulates it that way but the principles of natural justice would also be violated if the information is withheld. **Hublal Shah @ Hublal Sahu vs. State of U.P. and others, 2018(141) RD 180**

BACK TO INDEX

Indian Penal Code:

Ss. 302, 394, 419-Evidence Act (1 of 1872), Ss. 3, 27, 45-Robbaery and murder-Circumstantial evidence-Accused travelled in same train coupe of deceased, with fake identity-After strangulating deceased, accused robbed mobile phone and case carried by him-Dead body and bag of deceased thrown on rail tracks-Mobile phones of deceased recovered from possession of accused-Trolley bag recovered at instance of accused- Incriminating materials including rope used for strangulation, recovered from residence of accused-Trolley bag and contents therein identified by relatives of deceased-Specimen signature of accused found matching with reservation forms recovered from his residence- Chain of circumstances complete-Conviction, proper.

In this matter, as is evident from record, one dead body was found lying in between the rail tracks at Bhopatpur near Hathras junction.

Information was given to local police of this fact by railway department. Thereafter, local police reached at the place of occurrence and prepared inquest report against unkonwn body as well as other police papers. Postmortem on dead body of deceased was conducted as unidentified (unknown) body. It appears that during course of postmortem, brother-in-law and sister of deceased reached at mortuary on information and they identified dead body as body of Dr. Anurag Mittal. On this basis, present case crime number was registered at police station concerned in District Hathras. A missing report was also lodged at G.R.P., Kanpur Central by P.W.6 S.K. Agarwal, father-in-law of deceased. Local police also took assistance of S.T.F. Mobile numbers said to have been used by deceased during journey were kept under surveillance. It is also evident from record that deceased boarded Shramshakti Express from Kanpur in the evening of 27.08.2007 in First A.C. Coach, coupe - C on lower berth. On same day, one B.K. Singh was also travelling in same coupe on upper berth. Prosecution case is also that on surveillance, it was traced out that accused-appellant travelled on 27/28.08.2007 in said two berths coupe on upper berth in fake identity name i.e. B.K. Singh and in the intervening night of 27/28.08.2007, accused-appellant committed murder of deceased by strangulation and took mobile sets, Indian currency as well as American dollars possessed by deceased. Prosecution case is also that accused-appellant had thrown dead body of deceased from train and also the trolley-bag of deceased in which valuables and clothes of deceased were kept. It is also evident from record that on arrest of accused-appellant at Lucknow, mobile sets of deceased as well as American dollars said to have been possessed by the deceased, were recovered. Police also took search of the house of accused-appellant situated in District Unnao and recovered several SIMs and mobile sets including filled and unfilled railway reservation forms. Trolley-bag said to have been thrown by accused-appellant from train was also recovered on pointing out of accused-appellant. Clothes and other items kept in trolley-bag were put under test identification conducted by an Executive Magistrate, and P.W.5 Anita Mittal, wife of deceased correctly identified all items belonging to

deceased and recovered on pointing out of accused-appellant. Investigating officer also obtained reservation form filled by accused-appellant in fake identity name of B.K. Singh from reservation counter at Lucknow and after obtaining specimen signature of accused-appellant on the basis of order passed by Magistrate concerned, specimen signature and reservation forms recovered from house of accused-appellant as well as obtained from reservation counter were sent for expert opinion of handwriting expert. It is also evident from record that handwriting expert opinion was tendered by prosecution under section 293 Cr.P.C. Although officer preparing the report could not be examined, yet it was prepared by an officer of Director level and could be read in evidence. Narco test of accused-appellant as well as co-accused Prabhakaran Singh alias Prabhakaran (acquitted) was also conducted on request of investigating officer, yet no evidence has been adduced on behalf of prosecution nor the same has found basis for conviction in the impugned judgment and order.

On surveillance and on the basis of call details record, it was found that mobile Nos. 9415042119 and 9935903222 were being used by deceased on mobile handset nokia-6680 having IMEI No. 355664005184993 and other mobile handset nokia - CE-434 having IMEI No. 357608003187936 respectively. On surveillance, it was also found that mobile handset nokia - 6680, as mentioned above, was used by owner of mobile no.9918157750 on 28.08.2007 and by owner of mobile no.9919085524 on 29.08.2007. This fact has been proved by witnesses belonging to telecom department (mobile network operator) examined on behalf of prosecution. When investigating agency tried to search owner of mobile no.9918157750, it was traced out that owner of this mobile number is Brijesh Kumar Verma - accused-appellant. Owner of other mobile number used on 29.08.2007 on mobile handset of deceased could not be traced out. On the basis of call details record, it was also traced out that owner of mobile no. 9918157750 had used this number on 27.08.2007 in Unnao, Ajgain, Kanpur and thereafter upto Dhankaur within the Western Zone near Hathras Junction. Later on, this mobile number was used by its owner in handset nokia - 6680 on 28.08.2007 and thereafter it was used in

Dhankaur, Bevar, Kanpur and other places during journey by accused-appellant and lastly in Lucknow.

Admitted and specimen signature of accused-appellant when analyzed, same were found made by one person.

If established facts from entire evidence adduced by prosecution in the present matter are summarized, then following facts emerge:

(i) Deceased travelled by Shramshakti Express on 27.08.2007. He boarded train at Kanpur for Delhi in first A.C. coach in coupe C on lower berth.

(ii) Accused-appellant also travelled by same train in same coupe in fake identity name of B.K. Singh.

(iii) Signature and handwriting on reservation forms filled by accused-appellant in fake identity name of B.K. Singh were found same in all documents i.e. reservation forms, forms recovered from house of accused-appellant as well as specimen signature. Thus, it is established that accused-appellant in fake identity name travelled in said coupe on upper berth of same train on the day of incident.

(iv) Mobile sets said to have been used by deceased were also taken by accused-appellant after committing murder of deceased throwing dead body in between rail tracks.

(v) Mobile sets said to have been recovered from possession of accused appellant belonged to deceased which were earlier being used by deceased, is also established by prosecution evidence.

(vi) Accused-appellant replacing his SIM (mobile no.9918157750) in the mobile handset Nokia - 6680 of deceased started using it from the night of 28.08.2007 and said SIM (mobile no.9918157750) was in the name of accused-appellant. Call details record (C.D.R.) proved by prosecution from witnesses examined in the matter clearly and cogently establish this fact.

(vii) Trolley-bag said to have been recovered on pointing out of accused-appellant and other items kept in it including rope said to have been used in committing the crime were identified correctly under test

identification parade conducted by P.W.13 Shyam Mohan Pathak by P.W.5 Anita Mittal.

(viii) Test identification parade conducted in the matter and memo prepared in this respect is admissible in evidence and every precaution / measure was followed by Magistrate concerned while conducting test identification parade. Number of similar items had been kept mixing with items found in trolley-bag while conducting the test identification parade.

(ix) P.W.5 Anita Mittal and P.W.7 Dr. Kanika Gupta had contacted deceased from their mobile phones in the night when Dr. Anurag Mittal (deceased) started his journey. This fact is also established from the statement of P.W.7 Dr. Kanika Gupta and C.D.R. and also from the statement of P.W.5.

(x) From prosecution evidence, it is also evident that Indian currency said to have been looted from possession of deceased by accused-appellant was used by accused-appellant in purchasing laptop and motorcycle.

(xi) 8000 American dollars said to have been looted from possession of deceased, have also been recovered from possession of accused-appellant, which were possessed by deceased, although there is no evidence to show how the said foreign currency was in possession of deceased.

(xii) Recovery of mobile sets, which were belonging to deceased, from possession of accused-appellant and trolley-bag including other items kept in it is admissible under Section 27 of Evidence Act as it is based on disclosure statement of accused-appellant when he was in police custody.

Thus, circumstances emerged from prosecution evidence, as discussed here-in-above, clearly indicate hypothesis of the guilt of accused-appellant for committing murder of deceased. Circumstances established from prosecution evidence are also consistent and fully established. Chain of evidence is also complete and same does not leave any reasonable ground for a conclusion regarding innocency of accused. Since mobile sets said to have been used by deceased in the intervening night of 27/28.08.2007 were found in possession of accused-appellant and

the same were used by him since 28.08.2007 at several places replacing his SIM in said mobile sets; accused appellant was travelling in same coupe on upper berth in fake identity name i.e. B.K. Singh; trolley-bag and others items belonging to deceased have been recovered on pointing out of accused-appellant, which were identified by wife of deceased and same is admissible in evidence; reservation forms filled by accused-appellant and handwriting on forms recovered from house of accused-appellant as well as specimen signatures made by accused-appellant were found same; recovery is in lieu of disclosure statement, which is admissible under section 27 Evidence Act, thus, on close scrutiny of prosecution evidence and comparing the same with the findings recorded by Trial Court on each and every issue, we are of the view that findings of Trial Court are in accordance with law and evidence. Presumption drawn by court below on the basis of circumstances established by prosecution about hypothesis of guilt of accused is based on correct appreciation of evidence. Chain of circumstantial evidence is complete and has been cogently and firmly established by prosecution. Defence evidence adduced by prosecution is of not such nature which rebuts the presumption drawn against accused-appellant by learned trial court. **Brijesh Kumar V. State of U.P., 2018 (6) ALJ 416.**

Sec. 326-A (as inserted by Amendment Act 13 of 2013)-Voluntarily causing grievous hurt by acid-Ingredients-Factum of injury caused by acid is relevant and not nature or extent thereof-Plea that only grievous injury would qualify for an offence u/S. 326-A-Not tenable-If any person found to have caused grievous hurt to another by throwing, administering or using in any manner, any acid, such person may be said to have committed an offence u/S. 326-A.

Ss. 326-A. 326-B (as inserted by Amendment Act 13 of 2013)-Causing grievous injury by throwing acid-Distinction between S. 326-A and S. 326-B-Actual injury is essential for S. 326-A-Mere attempt to cause such injury is sufficient to constitute offence u/S. 326-B, though no injury is caused.

This shift of legislative intent, clearly expressed does not allow for any further debate whether the nature and extent of injury caused by throwing, administering or otherwise using acid, is relevant for the purpose of inferring whether offence is serious or not. That differentiation is irrelevant and or extraneous. The legislature has in its wisdom, categorized all injuries caused by use of acid to constitute a separate/special offence. Therefore, the submission advanced by learned counsel for the applicant, that only if a grievous injury would qualify for an offence under section 326-A, cannot be accepted and is rejected.

In view it appearing at present that an injury had been caused by use of a substance that at present appears to be acid, the applicant is liable to be proceeded against under section 326A and not 326B I.P.C. It will however remain open to the applicant during trial, to contest both the injury as also the cause of injury (being acid). Further, it would remain the burden of the prosecution to establish that the applicant had used the acid with intent to cause injury and or the knowledge, that its use is likely to cause such injury.

Thus, sections 326-A and 326-B are mutually exclusive. While for the purpose of section 326-A, an actual injury of the description given in that section, by throwing, administering or otherwise using acid, is a necessary ingredient, the mere attempt to cause such injury with intent or knowledge that such injury is likely to be caused is sufficient to constitute and offence under section 326-B, though no injury may have been caused.

Thus, Section 326-A creates a special offence in case of injury caused by use of acid while section 326-B carves out a special exception to the general law regarding attempt to commit an offence by treating it as a separate offence. **Maqbool V. State of U.P. and another, 2018(5) ALJ 740.**

Sec. 366-Evidence Act(1 of 1872), Sec. 3-Kidnapping with intention to marry-Appreciation of evidence-Allegation that accused persons enticed away minor prosecutrix and induced her for entering into wedlock with himself-Marriage certificate issued by Arya Samaj

proving that accused enticed victim from her lawful guardianship-Love letters allegedly written by prosecutrix placed on record to prove consent but prosecutrix being minor on date of occurrence her consent not lawful-Statement of prosecutrix regarding her kidnapping and forced marriage established against accused-Conviction of accused, proper.

Here the peculiarity of this case is that despite incident being witnessed by the two persons, namely, Vishal and Vinod, none has been produced by the prosecution and the only eye- account testimony ofthe factum of enticing away to the victim is the victim herself. No plausible reason has been given for not producing the aforesaid two persons-Vishal and Vinod as prosecution witnesses, so as to strengthen claim of informant that all the aforesaid accused were involved in the kidnapping of the victim. Therefore, to believe and act upon testimony of the victim alone that she was surrounded by the accused and then Anil placed some white cloth on her mouth which rendered her unconscious, need independent corroboration. But, in so far as the complicity of accused Sonu alias Rahul S/0 Anand Kumar in enticing away the victim is concerned, the same is very much vindicated by the documents placed on record by the accused Sonu alias Rahul S/o Anand Kumar himself when he filed paper per list 2238 Kha, which establishes that accused Sonu away the victim and induced her for entering into wedlock with himself. Love letter purportedly written by the wictim in the name of accused Sonu alia Rahul S/o Anand Kumar has been placed on record by the accused per list 284 Kha. Contention has been raised by appellant Sonu that this love letter invariably proves consent of the victim, in accompanying him and also claim that she was major on the date of occurrence, but as held above, the date of birth of the victim is 10.06.1092, therefore, she being minor on the date of occurrence (27.08.2006), her consent is not consent in the eye of law. Therefore, consent is not lawful. Exhibit Kha-2 is the marriage certificate issued by Arya Samaj, which also process the fact that the accused enticed the victim away from the lawful guardianship of her parents and induced the victim to enter into wedlock. Thus, the statement

of the victim P.W.2 regarding her kidnapping and forced marriage by accused Sonu alia Rahul S/o Anand Kunar stands proved and established against accused Sonu alia Rahul S/o Anand, whereas other offence concerning rape is not proved against him by any independent testimony or circumstance of this case, therefore, complicity of accused Sonu alia Rahul with intention to commit rape on the victim is not established. The statement of the victim regarding the manner of commission of rape on her by Sonu alia Rahul S/o Anand Kumar does not sound well and there is not specific particular given that she was forcibly raped by Sonu alia Rahul. On medical examination of the victim no injury of any sort was noted by the doctor on the person of victim and doctor witness has ruled out possibility of gang rape being committed on the victim. All the accused are relatives and cousin brothers, brother-in-law and statement of the vicitim that one after one committed rape on her in a room in Lucknow, hardly inspires confidence. The victim has also stated that accused Anil did not sexually assault her. The factum of commission of rape at the stage of statement under Section 164, Cr.P.C. before the Magistrate is on the face an improvement and she could not come out with specific description of rape being committed by a number of accused. The victim has also testified that she did not make any statement to the concerned Magistrate and daroga ji that Sonu and Sanjay both committed rape on her considering the dignity and honour of her family. **Satyapal Singh vs. State of U.P. and others, 2018(6) ALJ 530.**

Sec. 384 – Scope of

Held: Sec. 384 provides an appeal to the High Court against the order of the District Judge, Sec. 388(2) provides that in case the order is passed on the succession application by a court inferior to the court of District Judge, such an appeal would lie to the Court on District Judge. Sec. 384 (3) and Sec. 388(3) Proviso are also similarly worded. Sec. 384 (3) provides that an order of the District Judge passed under Part – X is final subject to the appeal, as provided under Sub-Sec. 1 and also subject to the provisions, as to reference or appeal or review, as provided and

applied by Sec. 141 of the C.P.C. Similarly, Sec. 388(3) provides that an order passed by a court inferior to the District Judge shall be final subject to an appeal to the District Judge and subject to the provisions as to reference or appeal or review, as provided and applied by Sec. 141 of C.P.C.

By invoking Sec. 141, the provisions of C.P.C. are made applicable and thus any revision, if maintainable, would be as per the provisions of C.P.C. Sec. 384 (3) or Sec. 388 (3) by themselves do not provide for any revision. They only provide for a revision, as provided under the C.P.C. **Ram Kumar V. Shoola Devi 2018 (36) LCD 2609**

BACK TO INDEX

Indian Succession Act:

Sec. 264-Civil Procedure Code, 1908-Section 24-Grant of probate-Deceased left behind two sons and five daughters-Eldest daughter instituted original suit seeking partition of her 1/7 share in properties of the deceased-Defendant No. 7 objected to grant of Letters of Administration and denied signature of deceased on the alleged Will-Also that filing of suit has been suppressed in the proceedings under the Act of 1925-Legality of the Will or right of deceased over the property in respect of which Letters of Administration are claimed cannot be adjudicated by the Probate Court—Such issues can be gone into only by a Court having original civil jurisdiction-Proceedings pending in the previously instituted original suit ought not be stayed-In an application under section 10 of the Civil Procedure Code a suit instituted prior in point of time cannot be stayed-What can be stayed is the subsequent suit-Jurisdiction under section 151, C.P.C. not required to be invoked in a manner which is inconsistent with the specific provisions contained in the Code-In order to avoid multiplicity of proceedings and to avoid further complications present proceedings ought to be consolidated along with the original suit-Court of District Judge has jurisdiction to adjudicate civil dispute on original side and also having jurisdiction to grant probate in terms of section 264 of the Act

In a proceeding for the grant of probate or for the grant of Letters of Administration with a Will annexed, the Court exercising testamentary jurisdiction is not concerned with title to property. In determining whether probate should be granted, the Court determines only upon genuineness and due execution of the Will. Determinations on issues of title are alien to probate proceedings.

This is a fit case where proceedings of instant case be consolidated and transferred to a Court having jurisdiction to try original civil disputes also by invoking jurisdiction under section 24 of the Code of Civil Procedure. As the Court of District Judge has the jurisdiction to adjudicate civil dispute on the original side and is also a Court having jurisdiction to grant probate in terms of section 164 of the Indian Succession Act, 1925, it is directed that records of present case be remitted to the Court of District Judge, Varanasi, whereupon the two proceedings i.e., the present probate petition as well as Original Suit No. 667 of 2013 shall be tried together by the Competent Court. **Rai Sharwan Kumar V. In the matter of Goods of Late Rai Bharat Kumar, 2018(141) RD 85**

BACK TO INDEX

Motor Vehicles Act:

Quantum –

Held: Where deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. *In regard to bachelors, normally, 50 per cent is deducted as personal and living expenses*, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically.

The multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thamas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years,

M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years. **Mishri Lal Yadav v. Oriental Insurance Co. Ltd. 2018 ACJ 2856**

Ss. 14, 147 – Liability of insurer – Expiry of driving license – Accidence occurred six days after expiry of license of bus driver – in surer challenging its liability to compensate claimant on that ground – As per terms of policy, insurer would be liable, in case driver held effective driving license at time of accident and was not disqualified from holding such license – Driver at no point of time disqualified from holding license – proviso to S. 14 stipulates that, driving license would remain effective for 30 days from its expiry – Driving license held to be effective on date of accident – Insurer cannot be exonerated from its liability to compensate claimants

"Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed there under, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has 5 lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry."

the appellant insurer would be liable to pay the claimants the insured amount awarded by the tribunal. The accident occurred within thirty days of expiry of the licence, therefore, under the proviso to Section

14 of The Act, it remained effective. It dis-entitles the insurer to take a plea that the licence was not valid. **Oriental Insurance Co. Ltd., Lucknow v. Smt. Santosh Kumari, 2018 (6) ALJ 585**

Ss. 166 (1), 140 – Hindu Succession Act, S. 15 (1) (b) – Claim petition – maintainability – Accidental death of claimants elder brother, brother's wife and their three minor children – legal heirs of first category i.e. parents of deceased alive – claimant cannot institute proceedings on sole ground of dependency to exclusion of legal heirs – fact of dependency also not proved on basis of any evidence in claim petition claimant not entitled to compensation on account of loss of depenedency – parents of deceased however entitled to compensation on account of no fault liability in terms of S. 140

In the case of death of a person in motor accident, claim for the benefit of family members upon whom the succession opens as a legal heir or dependent, the courts of law have to bear in mind very clearly the object of welfare legislation. A legal heir who is a dependent family member in normal course is the person recognized under law within the scope of Section 166(1) or 163-A of the Act. A mere dependent while the legal heirs bonded in a family are alive, cannot institute proceedings on the sole ground of dependence to the exclusion of legal rights of the legal heirs as is the case at hand. To be a legal heir under the succession laws and thus legal representative is one thing to say but it is all together different when a person is not a legal heir nevertheless he claims to be legal representative on the ground of dependence. Suffice it to say that succession of claim opens under the succession laws to the immediate legal heirs in the family but to prove a case solely on the ground of dependence, it would firstly not oust the claim of legal heirs defined under succession laws and secondly the sole dependence has no legal sanctity under the Motor Vehicles Act, 1988. **New Indian Assurance Co. Ltd. v. Ram Swaroop Sahu, 2018 (5) ALJ 748**

BACK TO INDEX

NDPS Act :

Ss. 8, 21, 42. 50 – Illegal possession of charas – search and seizure – search without warrant

As per provisions of Section 57, after arrest of the appellants and sealing of the contraband, the information regarding the same has to be forwarded to immediate superior officer within 24 hours but there is no evidence to establish and prove the same. Mere deposition of the prosecution witnesses in this context is not sufficient enough to establish the same. It is true that the compliance under the aforesaid provisions of the Act, 1985 is directory but compliance does affect the bonafide of the arrest and seizure may be said that non compliance may not vitiate the trial and prejudice the accused but it is a definite requirement of law and if it has not been observed in letter and spirit, it will be presumed that important piece of evidence, which could have been in furtherance to the other proof of the alleged recovery has not been produced by the prosecution. If compliance of the provisions of Section 57 of the Act, 1985 was made, a copy of the report should have been filed. It would have been better proof of the fact that the recovery officer made this recovery of the seized contraband after arrest of the appellants. Mere statement of the prosecution witnesses is not sufficient enough to establish the compliance of the aforesaid section. As such in view of the aforesaid and also in absence of compliance of the said section of the Act, prosecution has to suffer.

non compliance of Sections 50, 55 and 57 of the Act, 1985 creates a doubt in the alleged recovery or contraband from the accused-appellant. There is no evidence to establish proper link between the sample and the recovered material. Non production of "Malkhana' register and oral or documentary evidence, do create a reasonable doubt in the proper procedure to be followed as per the provisions of the Act, 1985 in the circumstance the prosecution has failed to establish its case against the accused-appellants. **Daya Ram Gupta v. State of U.P., 2018 (6) ALJ 75**

BACK TO INDEX

Provincial Small Cause Court Act:

Sec. 25

Held: It is trite that the ratio decidendi is to be understood on a reading of the entire judgment keeping in mind the issues involved, argued, considered and decided. Every observation made in a judgment is not part of its ratio. It is true that even a general observation or obiter dicta of the Supreme Court is to be given considerable weight. We have no doubt that the Act, 2005 does not prescribe any further appeal or revision to the High Court or any other Court against an order of the sessions Court under sec. 29 specially and this is evidence from the bare perusal of the Act, but, it is also a fact that the provisions of Sec. 397 of Cr.P.C. were not taken into consideration in the aforesaid judgment, obviously for the reason that the maintainability of a revision under the said provision was not an issue involved therein. **Dinesh Kumar Yadav V. State of U.P. 2018 (36) LCD 2546 (FB)**

Held: That reassessment of the evidence by Revisional Court in a Revision under Sec. 25 of the Act on the ground that trail Court erroneously recorded a finding cannot be done. In case the argument of landlord was to be accepted it would require reassessment of the evidence, which was not permissible under revisional jurisdiction. **Smt. Viplapuri V. Judge, Small Causes Court/ Additional Civil Judge (SD) 2018 (36) LCD 2588**

BACK TO INDEX

Recovery of Loan:

Respondent Board sanctioned Loan to the petitioner institution-Loan agreement executed between the parties -Petitioner defaulted-Recovery proceedings initiated-Petitioner instituted civil suit- Court directed payment of security amount-Writ petition filed by the petitioner in sum and substance arises from same cause of action of which proceedings of the suit were registered-Writ petition instituted on same cause of action not maintainable-Plea of Damdupat raised by the petitioner rejected-Hindu law did not recognize any rule of limitation for recovery of debts-Financial institutions cannot apply customary law-Applying the rule of Damdupat to the scheme and agreement in issue would alter the rates of interest set in the

agreement-This will be contrary to intendment of the statute-Damdupat customary law of Hindus does not govern affairs of other religious communities-Application of Damdupat to scheme in issue and loan agreement would violate Articles 14 and 15 of the Constitution of India and inconsistent and good conscience-Petitioner held liable to pay interest liability arising out of the contract.

Financial institutions like banks, cannot apply customary laws of parties to financial transactions at the instance of the parties, contrary to the norms of financial prudence, RBI guidelines, terms of loans agreements and other provisions of fiscal regulations. The rate of interest chargeable on bank loans are to be fixed by the stipulations of Damdupat, it would produce adverse macro economic consequences. The oversight of loans, interests on loans disbursed by banks and other financial institutions, by the RBI undertaken on statutory mandate cannot be displaced by the rule of damdupat. The wisdom of contemporary bodies of expert knowledge, working under statute, cannot be substituted by customs like Dadupat of a sect or a religious groups. The autonomy of financial institutions granted by law, cannot be curbed except by procedure laid down by statute.

Applying the rule of Damdupat to the scheme and agreement in issue would alter the rates of interest set in the agreement. Damdupat is the customary law of Hindus and does not govern the affairs of other religious communities. The rule of Damdupat will cause a reduction in the amount of interest which is payable. However, this benefit will accrue only to a particular class which adopts Damdupat as a customary law, to the exclusion of others. This classification is unreasonable and discriminatory.

The application of Damdupat to the scheme in issue and the loan agreement in controversy would violate Article 14 and Article 15 of the Constitution of India. Damdupat would create a discriminatory regime which would be contrary to the intent and terms of the policy at hand. Applying Damdupat to the scheme in issue would be inconsistent with principles of equity, justice and good conscience. We hold the rule of Damdupat is not applicable to the schemes of Khadi Gramodyog and the

financial assistance, provided thereunder. **Rao Shivnath Singh Memorial Khadi Gramodyog Samiti and another vs. State of U.P. and others, 2018(141) RD 59**

BACK TO INDEX

Registration Act:

Surrender-Of share of immovable property of the value of more than Rs. 100/- in suit for partition-A transfer of 1/4th share in lieu of liability of interest of Rs. 4500/- Transfer of share in lieu of sale consideration of Rs. 4500/- Document was compulsorily registrable under section 17(1)(b) and (c) of Registration Act, 1908 read with section 54 of the Transfer of Property Act 1882-Document is unregistered-Not admissible in evidence under section 49 of Registration Act, 1908-Document is a transfer deed-Not a family settlement.

Document dated 29.12.1973, being a transfer of ¼ share in immovable property of the value more than Rs. 100/-, was a compulsorily registrable document under section 17(1) (b) and (c) of Registration Act, 1908 as well as section 54 of Transfer of Property Act, 1882. Admittedly deed dated 29.12.1973 is an unregistered document as such it is inadmissible in evidence under section 49 of Registration Act, 1908. **Purushottam V. Board of Revenue and others, 2018(141) RD 600**

Sec. 17-Registration of decree-The decree for declaration on basis of oral partition which had been acted upon earlier-Necessity-A decree recognizing the pre-existing rights of the parties in an immovable property is not required to be registered.

A decree recognizing the pre-existing rights of the parties in an immovable property is not required to be registered. **Nitish Agrawal V. Smt. Usha Agrawal and others, 2018(3) ARC 229**

Ss. 34 (3) and 35 - Registration of sale-deed-Cancellation of by Registrar-Power thereof-The Registering Authority become functus officio once the registration is completed and the document is registered-If at any stage, subsequent thereto any information is

received by the Registrar qua an offence having been committed under the Act which may in a given circumstance include impersonation at the time of registration the Registrar can with the permission of the Inspector General lodged a F.I.R.- The only remedy available to a person aggrieved by wrongful registration of a document is to file a suit for cancellation thereof.

The Registering Authority become functus officio once the registration is completed and the document is registered.

In the circumstances as noticed above, the only remedy available to a person aggrieved by wrongful registration of a documents is to file a suit for cancellation thereof. **Anil S/o Aadalat V. State of U.P. and others, 2018(3) ARC 231**

BACK TO INDEX

Stamp Act:

Stamp Duty - Determination of value of land bought by sale-deed-Held, value of land on date when sale-deed executed alone to be seen-Future potential of land not to be looked into-Impugned order quashed-Petition allowed.

The value of the land on the date when the sale deed was executed alone had to be seen and the future potential of the land had not to be looked into. **Subhash Kumar and others V. Chief Controlling Revenue Authority/Board of Revenue and other, 2018(141) RD 633**

BACK TO INDEX

Statutory Provisions:

The U.P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 2018[1] (U.P. Act No. 32 of 2018)

An Act further to amend the Uttar Pradesh Public Services (Reservation for Physically Handicapped Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993

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[1] *U.P. Public Services (Reservations for Physically Handicapped, Etc.) (Amendment) Act, 2018, LLT Part IV 83*

It is enacted in the sixty ninth Year of the Republic of India as follows :-

1. Short title and commencement. - (1) This Act may be called the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment), Act, 2018.

(2) It shall be deemed to have come into force on July 23, 2018.

2. Amendment of Section 2 of U.P. Act 4 of 1993.- In Section 2 of the Uttar Pradesh Public Services (Reservation for Physically Handicapped Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 hereinafter referred to as the principal Act, for clause (e) the following clause shall be substituted, namely -

"(e) Physical disability means the disabilities as specified in the schedule appended to this Act."

3. Amendment of Section 3.- In Section 3 of the principal Act, in sub-section (1) for clause (ii) the following clause shall be substituted, namely-

"(ii) In such public services and posts as the State Government may, by notification, identify not less than four per cent, of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely-

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf blindness in the posts identified for each disabilities."

BACK TO INDEX

The Uttar Pradesh Plastic and other Non-Biodegradable Garbage (regulation of Use And Disposal) (Amendment) Act, 2018 [2]

[U.P. Act 35 of 2018]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Uttar Pradesh Plastic and Other Non-Biodegradable Garbage (Regulation of Use and Disposal) Act, 2000

It is hereby enacted in the Sixty ninth Year of the Republic of India as follows :-

1. Short title and commencement.- (1) This Act may be called the Uttar Pradesh plastic and other Non-Biodegradable Garbage (Regulation of Use and Disposal) (Amendment) Act, 2018.

(2) It shall be deemed to have come into force on Jule 15,2018.

2. Amendment of Section 1 of U.P. Act 29 of 2000.- In section 1 of the The Uttar Pradesh plastic and other non-biodegradable garbage (regulation of use and disposal) (amendment) Act, 2000, hereinafter referred to as the principal Act, in sub-section (1) including heading and long title, for the words, "Regulation of use and disposal" the word "Regulation" shall be substituted.

3. Insertion of new Section 6-A.- After Section 6 of the principal Act, the following section shall be inserted, namely-

"6-A. Power of entry and inspection.- (1) Subject to the provisions of this sections, any person empowered by notification by the State Government, in this behalf, shall have the right to enter, at all reasonable times with such assistance as he considers necessary, any place,-

(a) for the purpose of performing any of the functions entrusted to him by the State Government; or

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[2] Received the assent of the Governor on September 7, 2018 and published in the U.P. Gazette, Extra., Part I, Sec. (Ka), dated 10th Septermber, 2018, pp.2-3.

(b) for the purpose of determining whether and if so in what manner, any such function is to be performed or whether any provision of this Act or the rules made thereunder or any notice, order or direction served, made or, given under this Act is being or has been complied with; or

(c) for the purpose of examining any record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed and for seizing such record, register, document or other material, object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder.

(2) Every person handling any non-biodegradable plastic material or non-biodegradable garbage shall be bound to render all assistance to the person empowered under sub-section (1) for carrying out the functions under that sub-section and if he fails, he shall be liable to be punished under this Act.

(3) If any person willfully delays or obstructs any person empowered under sub-section (1), in the performance of his functions, he shall be liable to be punished under this Act.

(4) The provisions of Code of Criminal Procedure, 1973, shall, so far as may be, apply to any search or seizure under the authority of a warrant issued under Section 94 of the said Code.

(5) Any non-biodegradable garbage, plastic or non-biodegradable material seized under this section shall be disposed of in the manner as the State Government may, by notifications, specify."

4. **Amendment of Section 7.-** For section 7 of the principal Act, the

following section shall be substituted, namely -

"7. The State Government may, by notification, impose restriction or prohibition on the use, manufacture, sale, distribution, storage, transport, import or export of such plastic or other non-biodegradable material or its like as it thinks fit within the State of Uttar Pradesh."

5. **Amendment of Section 8.-** For Section 8 of the principal Act, following section shall be substituted, namely -

"8. (1) Whoever uses in contravention or abets the use in contravention of Section 7, shall be punished, in the event of first conviction with imprisonment for a term, which may extend to one month or with fine which shall not be less than one thousand rupees and which may extend to ten thousand rupees and in the event of second or subsequent conviction, with imprisonment for a term which may extend to six months or with fine which shall not be less than five thousand rupees and which may extend to twnty five thousand rupees.

(2) Whoever manufactures, sales, distributes, stores, transports, imports or exports or abets the manufacture, sale, distribution, storage, transport, import or export in contravention of Section 7, shall be punished in the event of first conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than ten thousand rupees and which may extend to fifty thousand rupees and in the event of second or subsequent conviction with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty thousand rupees and which may extend to one lakh rupees.

(3) Whoever contravenes or abets the contravention of Section 3 or Section 3-A shall be punished in the event of first conviction with fine which shall not be less than one thousand rupees and which may extend to twenty five thousand rupees and in the event of second or subsequent conviction with imprisonment for a term which may extend to one month or with fine which shall not

be less than five thousand rupees and which may extend to fifty thousand rupees".

6. Amendment of Section 12.- In Section 12 of the Principal Act,-

(a) for the words "by such officers of the local authority", the words "by such officers of the State Government or the local authority" shall be substituted.

(b) for the words "as he thinks fit", the words "as may be specified by notification by the State Government" shall be substituted.

7. Insertion of new Section 13-A.- After Section 13 of the principal Act, the following section shall be inserted, namely:-

"13-A.For carrying out the purposes of this Act, in any area, the State Government may, by notification, confer such powers and duties of a local authority as provided in this Act, on a body or an authority constituted by the State Government and such body or authority shall be deemed to be a local authority under this Act for such area."

8. Amendment of Schedule.- In the Schedule to the principal Act,-

(a) for the word "PLASTIC", the words "PLASTIC AND OTHER NON-BIODEGRADABLE MATERIAL" shall be substituted;

(b) after entry at Serial Number 5, the following serial number and entry shall be inserted, namely-

"6. Thermocol".

9. Repeal and saving.- (1) The Uttar Pradesh Plastic and other Non-Biodegradable Garbage (Regulation of Use and Disposal) (Amendment) Ordinance, 2018 (U.P. Ordinance 10 of 2018) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have been done are taken under the corresponding provisions of the principal Act as amended **by this Act as if the provisions of this Act were in force at all material times.**

The Uttar Pradesh Fighters of Democracy Honour (Amendment) Act, 2016 *

[U.P. Act 36 of 2018]

BACK TO INDEX

(As passed by the Uttar Pradesh Legislature)

An Act to amend the Uttar Pradesh Fighters of Democracy Honour Act, 2016 in the sixty ninth year of the Republic of India as follows :-

It is hereby enacted -

1. Short title.- This Act may be called the Uttar Pradesh Fighters of Democracy Honour (Amendment) Act, 2018.

2. Amendment of Section 6 of U.P. Act No. 9 of 2016.- In Section 6 of the Uttar Pradesh Fighters of Democracy Honour Act, 2016, in sub-section (1), the following proviso shall be inserted at the end, namely-

"Provided that those Fighters of Democracy who were declared as such and getting honour money and dies before the commencement of this Act i.e., March 22, 2016, the successor wife or husband thereof, as the case may be, shall be given honour money and facilities under this sub-section with effect from the sanction of their application made for this purpose as sanctioned to the successor wife or husband as the case may be, of the deceased Figher of Democracy under this Act."

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* Received the assent of the Governor on September 7, 2018 and published in the U.P. Gazette, Extra., Part I, Section (Ka), dated 10th September, 2018, pp.2-3. Current Civil Legislation/Lucknow Law Times 2010.218/25.10.2018 – 102.

Ministry of Law and Justice (Deptt. Of Justice) National Legal Services Authority), Noti. No. F.No. L/61/10/NALSA, dated October, 22, 2018 and published in the Gazette of India, Extra., Part III, Section 4, dated 25th October, 2018, pp. 6-10, N. 398. [Advt. III/4/Exty./319/18]L] *

In exercise of the powers conferred by section 29 of the Legal Services Authorities Act, 1987 (39 of 1987) and in pursuance of the provisions in section 4 of the Act to make available free and competent legal services to the persons entitled thereto under section 12 of the said Act, the Central Authority hereby makes the following regulations further to amend the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, namely -

1. Short title, extent and commencement. – (1) These regulations may be called the National Legal Services Authority (Free and Competent Legal Services) Amendment Regulations, 2018.

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

2. In the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 (hereinafter referred to as the principal regulations), in Regulation 2, in sub-regulation (1) -

(i) for clause (ea), the following clauses shall be substituted, namely -

'(ea) "Monitoring and Mentoring Committee" means the Committees set up under Regulation 10;

(eb) "Panel Lawyer" means a legal practitioner empanelled as a Panel lawyer under Regulation 8;';

(ii) In clause (f), for the words "as such", the words "under the 'National Legal Services Authority Scheme for Para Legal Volunteers' and empanelled" shall be substituted.

(iii) in clause (fa), for the bracket and figure "(6)", the bracket and figure "(9)" shall be substituted.

3. In the principal regulations, in Regulation 4,-

(i) in sub-regulation (1) after the words “manned by”, the words “a Retainer Lawyer on rotational basis and” shall be inserted;

(ii) sub-regulation (2) and sub-regulation (5) shall be omitted;

4. In the principal regulations, for Regulation 5, the following regulation shall be substituted, namely -

“5. Proof of entitlement of free legal services. –A self-certificate of the applicant, along with self-attested copy of relevant documents or certificates, if any,that he falls under the categories of persons entitled to free legal services under Section 12 of the Act shall ordinarily be sufficient.”

5. In the principal regulations, for Regulation 7, the following regulation shall be substituted, namely -

“7. *Scrutiny and evaluation of the application for free legal services*.- (1) The application for legal services, for eligibility of the applicant and existence of a prima facie case to prosecute or to defend, shall be scrutinized by the Member-Secretary or Secretary, as the case may be, or any officer, deputed by him:

Provided that a defendant in a civil case and an accused or a convict in a criminal case shall be deemed to have prima facie case to defend or to file an appeal against his conviction and sentence :

Provided further that in case, there is some difficulty to determine the prima facie case to prosecute, the Member-Secretary or Secretary may for this purpose, seek opinion from a panel lawyer having more than seven years standing at the Bar:

Provided further that in case of the Supreme Court Legal Services Committee, the Secretary shall seek opinion from an Advocate having more than fifteen years standing at the Bar.

(2) A decision on application for legal services shall be taken immediately, but not more than seven days from the date of receipt of the application.

(3) If the applicant is not covered under the categories mentioned in section 12, he or she shall be advised to seek assistance from any other body or person rendering free legal services either voluntarily or under any other scheme.

(4) The Legal Services Institution shall maintain a list of such agencies, institutions or persons who have expressed willingness to render free legal services.

(5) Any person aggrieved by the decision or order of the Member-Secretary or the Secretary, as the case may be, he may prefer appeal to the Executive Chairman or Chairman of the Legal Services Institution and the decision or order in appeal shall be final.

(6) In case the Member-Secretary or Secretary of the Legal Services Institution decides to provide legal services through a panel lawyer, the choice of the panel lawyer, if expressed by the applicant, may be considered.

6. In the principal regulations, for Regulation 8, the following regulation shall be substituted, namely -

"8. *Selection of legal practitioners as panel lawyers.* – (1) Every Legal Services Institution shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which the applicant-legal practitioners may prefer to be entrusted with.

(2) The applications received under sub-regulation (1) shall be scrutinized and selection of the panel lawyers shall be made by the Executive Chairman or Chairman of the Legal Services Institution in consultation with the Attorney General [for the Supreme Court], Advocate General [for the High Court], District Attorney or Government Pleader [for District and Taluka level] and the Monitoring and Mentoring Committee set up under regulation 10:

Provided that the Executive Chairman or Chairman of the Legal Services Institution may also suo motu empanel any legal practitioner;

(3) No legal practitioner having less than three years‟ experience at the Bar shall ordinarily be empanelled.

(4) District Legal Services Authorities and Taluk Legal Services Committees shall get the panel approved from the Executive Chairman of the State Legal Services Authority.

(5) The Executive Chairman or Chairman of the Legal Services Institution shall take into consideration the competency, integrity, suitability, and experience of lawyers for the empanelment.

(6) There may be representation of the Scheduled Castes, the Scheduled Tribes, women and differently a bled lawyer in the panel.

(7) The Executive Chairman or Chairman of the Legal Services Institution may maintain separate panels for dealing with different types of cases like Civil, Criminal, Constitutional Law, Environmental Law, Labour Laws, Matrimonial disputes, Juvenile Justice, etc.

(8) The Member-Secretary or Secretary, as the case may be, may assign a case to a panel lawyer of a subject matter other than for which he has been empaneled.

(9) The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority, as the case may be, prepare a list of legal practitioners from among the panel lawyers to be designated as Retainers.

(10) The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman;

(11) The strength of Retainer lawyers shall not exceed, -

(a) twenty in the Supreme Court Legal Services Committee;

(b) fifteen in the High Court Legal Services Committee;

(c) ten in the District Legal Authority;

(d) five in the Taluk Legal Services Committee.

(12) The honorarium payable to Retainer lawyer shall not be less than, -

(a) rupees forty thousand per month in the case of Supreme Court Legal Services Committee;

(b) rupees twenty five thousand per month in the case of State Legal Services Authority or High Court Legal Services Committee;

(c) rupees fifteen thousand per month in the case of District Legal Services Authority;

(d) rupees ten thousand per month in the case of the Taluk Legal Services Committee:

Provided that the honorarium specified in this sub-regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.

(13) The panel prepared under sub-regulation (2) for the period of three years shall also be reviewed and updated periodically by the Executive Chairman or the Chairman, as the case may be, keeping in view the performance of the panel lawyers.

(14) The Legal Services Institution shall be at liberty for withdrawing any case from a Retainer Panel Lawyer during any stage of the proceedings.

(15) If a panel lawyer is desirous of withdrawing from a case he shall state the reasons thereof to the Member-Secretary or the Secretary, as the case may be, and the panel lawyer may be permitted to do so by an order.

(16) The panel lawyers shall not ask for or receive any fee, remuneration or any valuable consideration in any manner, from the person to whom he has rendered legal services under these regulations.

(17) If the panel lawyer engaged is not performing satisfactorily or has acted contrary to the object and spirit of the Act and these regulations, the Legal Services Institution shall take appropriate steps including withdrawal of the case from such lawyer and his removal from the panel.

(18) The panel lawyers shall undergo training periodically as per modules prepared by the National Legal Services Authority and the State Legal Services Authority.

(19) The participation in the training programme shall be a relevant consideration for the retention or continuation of panel lawyers.

7. In the principal regulations, for Regulation 9, the following regulation shall be substituted, namely -

"9. *Legal services by way of legal advice, consultation, drafting and conveyancing.* - (1) The Executive Chairman or Chairman of the Legal Services Institution may maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice and other legal services like drafting and conveyancing.

(2) The Executive Chairman or Chairman of the Legal Services Institution, as the case may be, may maintain a separate panel of retired senior bureaucrats, senior executives, retired police officials, doctors, engineers, psychiatrists, marriage counsellors, chartered accountants, educationists and other experts of the specialised field for legal services and honorarium payable to them shall be decided by the Executive Chairman of State Legal Services Authority or the Chairman of the Supreme Court Legal Committee, as the case may be.

(3) The Member-Secretary may send a request to Senior Advocates to volunteer their pro bono professional services for rendering advice as and when required.".

8. In the principal regulations, for Regulation 10, the following regulation shall be substituted, namely -

"10. *Monitoring and Mentoring Committee.* - (1) Every Legal Services Institution shall set up a Monitoring and Mentoring Committee for close monitoring of the court based legal services rendered and the progress of the cases in the legal aided matters and to guide and advise the panel lawyers.

(2) The Monitoring and Mentoring Committee at the level of the Supreme Court shall consist of, -

(i) a sitting or retired judge of the Supreme Court or a Senior Advocate as may be nominated by the Chairman, Supreme Court Legal Services Committee;

(ii) Secretary, Supreme Court Legal Services Committee;

(iii) a renowned Academician or an Advocate-on-Record having ten years of practice to be nominated by the Chairman of the Supreme Court Legal Services Committee;

(iv) The Legal Service Counsel-cum-Consultant, Supreme Court Legal Services Committee.

(3) The Monitoring and Mentoring Committee at the level of the High Court shall consist of, -

(i) a sitting or retired Judge of the High Court or a Senior Advocate as may be nominated by the Chairman, High Court Legal Services Committee;

(ii) Secretary, High Court Legal Services Committee.

(4) The Monitoring and Mentoring Committee at the State or District Legal Services Authority shall consist of, -

(i) Member-Secretary or Secretary of the Legal Services Institution, as the case may be;

(ii) one serving judicial officer from the State Higher Judicial Service;

(iii) one retired judicial officer or one Advocate of fifteen years‟ standing or more.

(5) The Monitoring and Mentoring Committee at the Taluk Legal Services Committee shall consist of, –

(i) Chairman of the Taluk Legal Services Committee;

(ii) one retired judicial officer;

(iii) one advocate of 10 years standing or more.

(6) The members of the Monitoring and Mentoring Committee shall render their services on the days as may be required and fixed by the Executive Chairman or Chairman of the Legal Services Institution and the members except serving Judicial Officers shall be paid the honorarium as fixed by the Executive Chairman.

9. In the principal regulations, for Regulation 11, the following regulation shall be substituted, namely -

“11. *Procedure of the Monitoring and Mentoring Committee*.- (1) Whenever court based legal aid is provided to an applicant, the Member-Secretary or Secretary as the case may be, shall send the details in Form II to the Monitoring and Mentoring Committee at the earliest.

The Legal Services Institution shall provide adequate staff and infrastructure to the Monitoring and Mentoring Committee for maintaining the records of the day-to-day progress of the legal aided cases.

The Monitoring and Mentoring Committee shall assist the Legal Services Institution in organising training programmes for panel lawyers from time to time to enhance the skill of the panel lawyers.

The Monitoring and Mentoring Committee shall mentor the panel lawyers and guide them in providing quality legal services.

(5) The Monitoring and Mentoring Committee shall maintain a register for legal aided cases for monitoring the day-to-day progress of the

case and the end result (success or failure) in respect of cases for which legal aid is allowed and the said register shall be scrutinised every month by the Member-Secretary or Secretary or the Chairman, as the case may be.

(6) The Legal Services Institution may request the Presiding Officer of the court to allow access to the registers maintained by the court for ascertaining the progress of the cases.

(7) The Monitoring and Mentoring Committee shall keep a watch on the progress of the case by calling for reports from the panel lawyers within such time as may be determined by the Committee.

(8) If the progress of the case is not satisfactory, the Committee may advise the Legal Services Institution to take appropriate steps.

(9) The Committees shall meet at least once in a fortnight.

(10) The Monitoring and Mentoring Committee may meet as and when the meeting is convened by the Member-Secretary or the Secretary as the case may be.

10. In the principal regulations, in Regulation 12, for the words "Monitoring Committee" occurring at both the places, the words "Monitoring and Mentoring Committee" shall be substituted.

11. In the principal regulations, in Regulation 13, for the words "Monitoring committee, the words "Monitoring and Mentoring Committee" shall be substituted.

12. In the principal regulations, in Regulation 15, for the words "Monitoring committee, the words "Monitoring and Mentoring Committee" shall be substituted.

13. In the principal regulations, in Regulation 13, for the words “Monitoring committee, the words “Monitoring and Mentoring Committee” shall be substituted.

14. In the Form II of the principal regulations, in the heading, for the words “Monitoring committee, the words “Monitoring and Mentoring Committee” shall be substituted.

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* 2018 LLT 859

Competition Commission of India, Noti. No. L-3(2)/Regn (Amdt.)/2018/CCI, dated December 6, 2018 and published in the Gazette of India, Extra., Part III, Section 4, dated 7th December, 2018, pp. 2-3, No. 474 *

In exercise of the powers conferred by Section 64 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following amendment in the Competition Commission of India (General) Regulation, 2009 (2010-CCL-III-124[45]), namely -

1. **Short title and commencement**.- (1) These regulations may be called the Competition Commission of India (General) Amendment Regulations, 2018.

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

2. In Competition Commission of India (General) Regulations, 2009, after Regulation 46, the following section shall be inserted, namely -

"46-A. Authorizing an Advocate to accompany any person summoned by the Director General – (1) An Advocate may accompany any person summoned by the DG to appear before him, subject to the following conditions, namely -

(a) The Advocate shall not be allowed to accompany such person, unless a request in writing accompanies by a Vakalatnama or Power of Attorney is duly submitted to the DG, prior to commencement of the proceedings.

(b) The Advocate shall not sit in from of the person so summoned.

(c) The Advocate shall not be at a hearing distance and shall not interact, consult, confer or in any manner communicate with the person, during his examination of oath.

(2) No misconduct on the part of the Advocate, accompanying the person summoned during continuance of his presence before the DG shall be permitted. In case of any

misconduct, the DG for reasons to be recorded in writing shall forward a complaint to the Commission. The Commission, if satisfied with the complaint of the DG, may pass necessary order debarring the Advocate, guilty of misconduct, from appearing in the proceedings before the DG as well as before the Commission in future or till such time as the Commission deems necessary.

(3) In the event of being committed by any Advocate, the Secretary, if so directed by the Commission, shall forward a complaint to this effect in writing to the Bar Council of the State of which the Advocate is member.

Explanation – For the purposes of this Regulation, the term 'Misconduct' shall have the same meaning as assigned to it in explanation to sub-regulation (4) of Regulation 46".

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* 2018 LLT 881

BACK TO INDEX

U.P. Consolidation of Holding Act:

Sec. 29-C – Scope

In view of Sec. 29-C of the Act, 1953, a land vesting in the Gaon Sabha can be utiliz3ed only for the purpose for which it was earmarked in the final consolidation scheme and only on failure of the said purpose, it can be utilized for other prescribed purposes. There is no recital in the reference or the order dated 30.05.2005 that the purpose for which the land had been earmarked in the final consolidation scheme hand failed. Therefore, the purpose of the land could not have been changed by the D.D.C. **Usha Devi V. Deputy Director of Consolidation 2018 (36) LCD 2847**

BACK TO INDEX

U.P. Panchayat Raj Act:

Sec. 95(1)(g)- U.P. Panchayat Raj (Removal of Pradhans, Up-Pradhans and Members) Enquiry Rules, 1947-Rule 3-Financial and administrative power of Pradhan-Ceasure of-Irregularity in complaint-Plea of- Sustainability of-Held, Gram Pradhan has no locus standi to challenge any irregularity in complaint filed against him.

Sec. 95(1)(g)- U.P. Panchayat Raj (Removal of Pradhans, UP-Pradhans and Members) Enquiry Rules, 1947-Rule 5 and 6- Financial and administrative power of Pradhan-Ceasure of-District Magistrate has to form only prima facie satisfaction as to whether any ground exists-For institution of formal and final enquiry against Pradhan-Once he is prima facie satisfied on grounds-He shall cease financial-Petition dismissed.

The Gram Pradhan has no *locus standi* to challenge any irregularity in the complaint filed against him under Rule 3 of the Rules, 1997.

Under Rule 5 of the Rules, 1977, the District Magistrate has to form only a prima facie opinion as to whether any ground exists for institution of a final and formal inquiry against the Gram Pradhan under Rule 6 of the Rules 1947 and in case he is prima facie satisfied as stated above, the financial and administrative powers of the Gram Pradhan shall be ceased under 1-proviso of section 95(1)(g) of Act, 1947 read with Rule 5 of

Rules, 1947. **Tilak Singh V. State of U.P. and others Respondents, 2018(141) RD 32**

BACK TO INDEX

U.P. Prohibition of Ragging in Educational Institutions Act:

Ss. 3, 4(2) – Principles of natural justice

The requirement of recording reasons can be regarded as one of the principals of natural justice which governs exercise of powers by administrative authorities. However, a confirming authority may not be required to record reasons in the context of Army Rules. **Indian Institute of Technology v. Abhinav Kumar, 2018 (6) ALJ 98**

BACK TO INDEX

U.P. Zamindari Abolition and Land Reforms Act:

Sec. 122-B(4-F)-Benefit of-No formal declaration is required when the benefit is to be extended to a person who had been in possession from before a cut-off date provided under the provision-Such villager becomes as Asankrmaniya Bhumidhar automatically-If two villagers or individuals claim right over the land then they had to approach the proper Court of competent jurisdiction.

Revenue Entries-In Khasra and Khatauni-To be filed up regularly as per the provisions of the U.P. Land Record Manual-Directions issued to all the Districts of U.P. to direct the Lekhpal and Tehsildars accordingly.

When two tenure holders claim that they were in possession illegally over certain plots of land which belonged to the Gaon Sabha then Administrative Authorities had no power to adjudicate upon the matter. When a person claims to be in possession from before a certain cutoff date which had been provided by the provisions of Section 122-B (4F) of the U.P.Z.A. & L.R. Act then it is to be deemed that he is a Bhumidhar with non-transferable rights as per the provisions of the Section 122-B(4F) of the U.P.Z.A. & L.R. Act. No formal declaration is required when the benefit of Section 122-B (4F) of the U.P.Z.A. & L.R. Act is to be extended to a person who had been in possession from before a cut off date which is provided under Section 122-B(4F) of the U.P.Z.A. & L.R. Act. That villager becomes a Bhumidhar with non-transferable rights automatically.

When two villagers were claiming possession over Gaon Sabha land then the Administrative Authorities could not have adjudicated as to who was in possession and, therefore, the proper course open for the petitioners was to approach the Civil Court or the relevant Court under the Land Laws for getting their rights adjudicated. Thus, the petitioners cannot be given any relief by this Court.

It is time that the Authorities under the U.P.Z.A. & L.R. Act and the U.P. Revenue Code, 2006, start functioning in the manner they are required to function under the relevant laws. They should fill up the khasras & khatuanis regularly in the manner it is provided in the U.P. Land Record Manual. Revenue Authorities then the Revenue Authorities shall continue to give reports arbitrarily and shall give favourable reports to villagers who would have the resources to please them. I am, therefore, convinced that Revenue entries in khasras & khataunis should be filled up regularly as per the provisions of the U.P. Land Record Manual. Paragraphs A-55 to A-62 of Chapter A-V of the Land Record Manual are a complete guide to how to Maps are to be corrected and how khasras are to be filled.

A direction is, therefore, being issued to the State Government that Khasra entries should be regularly and religiously filled in by the Revenue Authorities, namely, the Lekhpals and the Tehsildars thrice every year. The Maps shall also be corrected as per the changes. If entries are made properly in the Revenue Records then there would be absolutely no occasion for any villager to say that he had been in possession over the Gaon Sabha land before a certain cutoff date and not somebody else.

Furthermore, if in any particular Fasli year wrongful possession is found then the Gaon Sabha and the State Authorities should take action under Section 67 of the U.P. Revenue Code immediately, unless, of course, they want the illegal occupant to continue. **Berendra and another vs. State of U.P Through Secretary (Revenue and Finance), Lucknow and others, 2018(141) RD 589**

Sec. 143-Use of holding for industrial or residential purposes-Declaration for-Grounds for-Held, surrounding of land from three sides by densely populated dwellings-No ground for making declaration-Petition disposed of.

Bhumidhari Land-Right of Bhumidhar-Held, no prohibiation on any Bhumidhari on putting his Bhumidhari land to use for any purpose other than agricultural purpose.

Having observed as above, it is also relevant to point out that as per the report of the Tehsildar and in terms of the assertions made the learned Counsel for the petitioners the land is question is surrounded human dwellings and in fact is has been rendered non-cultivable. There is no prohibition on any bhumishar on putting his bhumidhari land to use other than agricultural or animal husbandry has been using the said land for any purpose other than agricultural or animal husbandry etc., he would be entitled to such a declaration, nonetheless in absence of any such material on record which shows the land to have been in use for any non-agricultural purpose. **Ram Prakash V. State of U.P. and another, 2018(141) RD 628**

BACK TO INDEX

Words and Phrases:

Reasons substitute subjectivity by objectivity

An order passed by an authority should be a reasoned one and the objection taken by a person should be dealt with because reasons are like a live wire which connect the mind of the decision making authority and the decision given by him and if this wire/link is broken i.e. to say no reasons are given in the impugned order then it will not be possible to know as what was going in the mind of the decision making authority on the basis of which he has come to the conclusion and passed the impugned order.

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an

application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. The inscrutable face of the sphinx' is ordinarily incongruous with a judicial and quasi-judicial performance. **Siddharth Tiwari V. Union of India 2018 (36)LCD 2361**

Regular Inquiry

Regular inquiry means opportunity to submit reply to charge-sheet and also to lead evidence in defence. Even if the delinquent employee does not cooperate, it shall always be incumbent on the inquiry officer to record oral evidence to substantiate the charges. If the enquiry is not done in the manner as stated herein above then in that circumstances the enquiry conducted is in utter disregard to the principles of natural justice and the impugned order passed on the basis of enquiry report, suffers from substantial illegality and violative of principles of natural justice and the order of punishment vitiates. **Yatendra Kumar V. State of U.P. 2018 (36) LCD 2894**