JUDICIAL TRAINING & RESEARCH INSTITUTE, U.P.,
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Quarterly Digest

CONSTITUTIONAL, CIVIL, CRIMINAL & REVENUE LAWS
(Covering important judgments of Supreme Court and Allahabad High Court)

January – March, 2014

Volume: XXXIV **Issue No.: 1**

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Administrative Law

Binding force of departmental Circulars - Circulars cannot override statutory provisions

In the instant case, the Court's view, it is well settled that if the departmental circular provides an interpretation which runs contrary to the provisions of law, such interpretation cannot bind the Court. 1979 circular falls in such category. Moreover, the 1979 circular is with reference to the DPCO, 1979 whereas Courts are concerned with DPCO, 1987 and DPCO, 1995. The Court has not impressed by the argument of Mr. S. Ganesh that in view of the saving clause in DPCO, 1987, the circular is saved which is further saved by the saving clause in DPCO, 1995. **(Glaxo Smith Kline Pharmaceuticals Ltd. v. Union of India and others; AIR 2014 SC 410)**

Advocates Act

S. 38 – Punishment for professional misconduct - Respondent advocate filed vakalatnama without any authority and then filing fictitious compromises without any authority would constitute to be guilty of grave and serious professional misconduct

An advocate found guilty of having filed vakalatnamas without authority and then filing fictitious compromises without any authority deserved punishment commensurate with the degree of misconduct that meets the twin objectives- deterrence and correction. Fraudulent conduct of a lawyer cannot be viewed leniently lest the interest of the administration of justice and the highest traditions of the Bar may become casualty. By showing undue sympathy and leniency in a matter such as this where the advocate has been found guilty of grave and serious professional misconduct, the purity and dignity of the legal profession will be compromised. Any compromise with the purity, dignity and notability of the legal profession is surely bound to affect the faith and respect of the people in the rule of law. Moreover, the respondent advocate had been previously found to be involved in a professional misconduct and he was reprimanded. Having regard to all these aspects, court said that it would be just and proper if the respondent advocate is suspended from practice for a period of three years from today. **(Narain Pandey v. Pannalal Pandey; AIR 2014 SC 944)**

Duties and Ethics - Professional standards, duties and ethics of advocates

In the instant case, Court observed that the consideration of Lawyers and judges are equal partners in the administration of justice. Hence, duties and standards expected of advocates as an officer of the court and towards their

clients/litigants. (**Rameshwar Prasad Goyal in Re., Suo Motu Contempt petition; (2014)1 SCC 572)**

Code of Civil Procedure

Ss. 10 & 24 – Transfer application – Applicant filed suit for mandatory injunction in District Kanpur – Subsequent suit for recovery of money filed by defendant against applicant at Lucknow – Prayer for transfer of subsequent suit keeping the multiplicity of proceeding as well as s. 10 CPC – S. 10 CPC applies only in cases where the whole of the subject matter in both the suit is identical

Under s. 25 of Act 14 of 1882, the predecessor of s. 24 of the Code, the High Court and the District Court had been given power to transfer a suit pending in a subordinate Court to any other subordinate Court:

> "competent to try the same in respect of its nature and the amount or value of the subject-matter."

It would be clear from the language of the relevant part of s. 25 of Act 14 of 1882 extracted above, that the condition required to be satisfied for transfer of a suit pending in a subordinate Court to any other subordinate Court was that the transferee Court should have pecuniary jurisdiction to try the suit. In S. 24 of the Code of Civil Procedure 1908 (hereinafter referred to as C.P.C., the words “competent” to try or dispose of the same.

In nut shell, it can be said that the High Court or the District Court, in exercise of the power and jurisdiction under S. 24 of the Code, may either on the application of the parties or *ex debito justitiae*, transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same and it can withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and try or dispose of the same or transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, and, following have been held to be sufficient grounds for transfer:

(i) convenience of parties and situation of property,
(ii) bias of Judge hearing the case,
(iii) two suits involving common question,
(iv) avoidance of delay and unnecessary expenses, and
(v) preventing abuse of process of the Court.

Keeping in view the above said facts, the applicant cannot get any advantage/benefit of the provisions as provided under Section 10 CPC because

the fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue".

For the foregoing reasons, present application under Section 24 CPC moved by the applicant lacks merit and is dismissed. **(G.S. Electronics through its Prop. v. M/s Videocon Industries Ltd., Lucknow; 2014 (1) ARC 667)**

S. 39(3) – Ordinary jurisdiction – In reference to jurisdiction – Explained

In order to wriggle out of the clutches of the sub section (3), as in operation in the State of Uttar Pradesh, the learned counsel for the revisionist submitted that the use of the expression "ordinary jurisdiction" in sub-section (3) suggests that the transferee Court must in ordinary course have jurisdiction to try the suit. It has been submitted that since the Court of Additional District Judge in ordinary course does not have jurisdiction to try a suit, therefore, it is not a Court of competent jurisdiction.

The interpretation as suggested by the learned counsel for the revisionist
cannot be accepted in view of the clear language adopted by the State Legislature in sub section (3) which provides, in no uncertain terms, that it is not necessary for the transferee Court to have jurisdiction to try the suit. Accordingly, the expression "ordinary jurisdiction" used in sub section (3) is not in reference to the jurisdiction of a Court to try a suit in ordinary course, but is in reference to the pecuniary limits of that Court. As, admittedly, the Court of Additional District Judge is a Court of unlimited pecuniary jurisdiction, it cannot be said that the Court had no jurisdiction to proceed with the execution under s. 39 of the Code of Civil Procedure. **(Zaz Fashion v. M/s Ut Worldwide (Indian) Pvt. Ltd.; 2014 (1) ARC 205)**

O. 2, R. 2 - Bar of subsequent suit under - Applicability of bar - Principles reiterated

When cause of action is the same, suit must include whole claim and plaintiff cannot split up claim so as to omit one part and sue for the other- In present case, two consecutive suits filed based on same cause of action- Facts on which subsequent suit filed existed on date of filing of first suit - No fresh

cause of action arose in between two suits- Relief sought in second suit could have been sought in firs suit - Held, cause of action in both suits being the same and plaintiff having omitted to seek certain relief in he cannot file second suit seeking the same relief. (**SBI vs. Gracure Pharmaceuticals Ltd.; (2014) 3 SCC 595)**

O. 6, R. 17 – Amendment of pleading – Provision as exists today summarized

On critically analyzing both the English and Indian cases, some basic principles emerge which out to be taken into consideration while allowing or rejecting the application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;
(2) Whether the application for amendment is bonafide or malafide;
(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
(6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI, Rule 17. These are only illustrative and not exhaustive. (**Shashi Kant Pandey v. Mithilesh Kumar @ Ganga Devi and others; 2014 (122) RD 811)**

O. 6, R. 17 - Amendment of pleading – Two conditions for grant of permission must be fulfilled – Firstly, no injustice done to other side and secondly, the amendment be necessary for the purpose of determining the real question in controversy between the parties

Supreme Court in J. Samuel v. Gattu Mahesh; 2012(115) RD 533 (SC), held that the primary aim of the Court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the Court so that the Court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their plaints. The court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be

necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:

> "…no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement or trial."

Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit. (**Board of Director, Allahabad Agriculture Institute v. State of U.P. and others; 2014 (122) RD 695)**

O.7, R. 10 - Return of plaint for presentation in Court of competent jurisdiction - Represented plaint Should be treated as new plaint and trial even if concluded in Court having no jurisdiction has to be conducted denovo

If the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same. **(ONGC Ltd. v. M/s Modern Construction and Co.; AIR 2014 SC 83)**

O. 23, R. 3 – Nature of – Strict compliance of the provisions of O. 23, R. 3,

CPC is required

Having given thoughtful consideration to the arguments advanced by the learned Counsel for the revisionist, the Court is of the view that though the arguments of the learned Counsel for the revisionist appear to be attractive, but they cannot be accepted, inasmuch as, a compromise in writing, duly signed by the parties, as per the finding of the Court below, was not produced by any of the parties before it. Admittedly, no application was filed by plaintiff to withdraw the suit. The Court below, therefore, could not have dismissed the suit of the plaintiff-respondent on the basis of the alleged compromise. To enable a Court to decree or decide a suit or a case in terms of a compromise there has to be strict compliance of the provisions of Order XXIII, Rule 3 C.P.C. One of the mandatory condition as per Rule 3 of Order XXIII, C.P.C. is that the Court should be satisfied that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties. Where no such agreement or compromise, in writing and signed by the parties, is produced before a Court, the Court cannot record a compromise and pass a decree in terms thereof. A compromise application filed by parties to a suit not before the Court where the suit is pending, but before a Criminal Court in respect of some other proceedings, where some promise is made, may be utilized as a piece of evidence of an agreement to set up a defense. But for a Court to record a compromise and decide a suit in terms thereof, the compromise in writing and signed by the parties should be there before the Court where the suit is pending. So far as the plea of estoppels is concerned, the same has to be pleaded and proved. The proper course for the revisionist, therefore, is to raise the said plea and pursue the same as an issue before the Court below. (**Smt. Ratna Sharma v. Dr. Pradeep Kumar Sharma; 2014 (122) RD 808)**

O. 39 - Permanent Prohibitory Injunction – In view of the facts and law laid down by the Apex Court in the case of Kochunju Nair; AIR 1999 SC 2272 – Held, without a suit for partition, injunction cannot be granted against a co-owner

The Court do not find least error in the impugned order. Plaintiff was aware of the sale deeds as in the year 1983, he had filed suit still he did not mention the said fact in the plaint. The earlier suit had been dismissed in default. No mention regarding that was made in the plaint. All these things were brought on record by the defendants. Supreme Court in Kochunju Nair v. Koshy Alexander; AIR 1999 SC 2272, has held that without a suit for partition, injunction cannot be granted against a co-owner. In this regard reference may be made to 2008(3) ALJ 476 also. Accordingly, even if it is assumed that there

was no partition in between the plaintiff and his real brothers still purchasers of plaintiff's brother would be co-sharers. There being no relief for cancellation of the sale deed or for partition, no injunction could be granted to the plaintiff petitioner. (**Virendra Kumar v. Additional District Judge, Kannauj; 2014 (122) RD 330)**

O. 39, R. 1 and 2 and O. 43, R. 1(r) - Temporary injunction application – In suit for permanent injunction – Temporary Injunction granted – Order of temporary injunction is appealable under O. 43 R. 1 (r) CPC, therefore instead of adjudicating it liberty granted to petitioner to file an appeal

Through the instant writ petition the petitioners have challenged the order dated 9.4.2008 (Annexure No.11), passed by the Civil Judge (Senior Division), Lucknow on the application for temporary injunction registered as Application No.6-c filed in Regular Suit No.536 of 2008: Sudhir S. Halwasiya versus Rakesh Pandey C.E.O. Kaya Merico, whereby the trial court issued direction to the parties to maintain status quo on the spot, as also the order dated 10.4.2008, passed by the Civil Judge (South) (Junior Division), Lucknow on the application for temporary injunction registered as 6-c filed in Original Suit No.85 of 2008: Sudhir Halwasiya versus Surendra Kumar Setia, whereby the trial court has restrained the defendants from sub-letting out the property in dispute and handing over the possession to others.

The petitioners have also challenged the order dated 10.4.2008, passed on the application No.C-13 moved under Order 7 Rule 11 CPC for dismissal of the suit being under value and barred by the provisions of Order 7 Rule 11(b) and (d).

So far as the order of temporary injunction granted in Regular Suit No. 85 of 2008 is concerned definitely it is appellable under Order 43 Rule 1(r) CPC, therefore, instead of adjudicating upon it, court feel it appropriate to grant liberty to the petitioners to file an appeal, if they wish so, against the order of temporary injunction. Accordingly liberty is granted and the writ petition is disposed of with the direction to the learned Civil Judge (Jr. Div.), Lucknow to dispose of the Suit No. 85 of 2008 expeditiously with the cooperation of the parties without giving adjournment to either of the parties unless cogent reason is there.

Court also informed that the respondent has filed the suit for ejectment of petitioners/tenants on the ground of violation of terms of agreement, therefore, Court hereby observe that the said suit shall be decided on its own merit without being influenced with any observation made in this order.

(**Surendra Kumar Setia v. Civil Judge (SD), Lucknow; 2014(1) ARC 356)**

Code of Criminal Procedure

S. 2(g) – Inquiry relates to judicial act - Steps not to taken by police before or after registration of FIR - Even term 'preliminary inquiry' and 'inquiry' U/s. 159, relates to judicial exercise undertaken by Court and not by Police

The term inquiry as per Section 2(g) of the Code reads as under:

'2(g) – "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the Police which are either investigation after the stage of s. 154 of the Code or termed as 'Preliminary Inquiry' and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made.

Though there is reference to the term 'preliminary inquiry' and 'inquiry' under Ss 159, 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference. **(Lalita Kumari v. Govt. of U.P. & Ors.; AIR 2014 SC 187)**

S. 125 - Purposive interpretation needs to be given to provision of S. 125 – It is bounden duty of Courts to advance cause of social justice - Maxim – "*Construction ut res magis valeat guam pereat*" – And Mischief Rule of Interpretation

The purposive interpretation needs to be given to the provisions of s. 125, CrPC. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society. Of late, in this very direction, it is emphasized that the Courts have to adopt

different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose.

In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law. Thus, while interpreting a statute the Court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's case which became the historical source of purposive interpretation. The Court would also invoke the legal maxim construction *ut res magis valeat guam pereat,* in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. **(Badshah v. Urmila Badshah Godse; AIR 2014 SC 869)**

S. 154, 2(d) & 200 – Complaint – What constitutes under

The person giving information to police which leads to lodging of the report u/s 154 of Code is the informant and person who files the complaint is the complainant. Both words into interchangeable. The word “complaint” is define under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant. (**Ganesh vs. Sharanappa; (2014) 1 SCC 87)**

S. 154—S. 166A, IPC—FIR—Recording of—Imperativeness—Not affected by introduction of S. 166A in Penal Code

S. 166A(c) lays down that if a public servant (Police Officer) fails to record any information to him u/s. 154(1) of the Code in relation to cognizable offences punishable u/ss. 326A, 326B, 354, 354B, 370, 370A, 376, 376A, 376B, 376C, 376D, 376E or sec. 509, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but may extend to two years and shall also be liable to fine. From this it cannot be said that registration of FIR is imperative and police officer has no discretion in the matter in respect of offences specified in the matter in respect of offences specified in the said section but as far as other cognizable offences are concerned, police has discretion to hold a preliminary inquiry if there is doubt about the correctness of the information. Such a presumption cannot be drawn in contravention to the unambiguous words employed in S. 154, Cr. P.C. The insertion of Sec. 166A was in the light of recent unfortunate occurrence of offences against women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country, thought it appropriate to expressly punish the police officers for their failure to register FIR in these cases. No other meaning than this can be assigned to for the insertion of the same. **(Lalita Kumari vs. Govt. of U.P.; 2014 Cr.L.J. 470 (SC)**

S. 154—FIR—Recording of—Objectives served—Sets criminal process in motion and is well documented—Protects information from any later embellishment—Documentation of first information also puts check on police power—Compulsory registration of FIR ensures transparency in criminal justice deliver system and judicial oversight

The registration of FIR either on the basis of the information furnished by the informant U/s. 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

a) It is the first step to 'access to justice' for a victim.
b) It upholds the 'Rule of Law' inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
d) It leads to less manipulation in criminal cases and lessens incidents of 'ante-dates' FIR or deliberately delayed FIR. Making registration of information relating to commission of a cognizable offence mandatory would help the society, especially, the poor in rural and remote areas of the country.

(Lalita Kumari vs. Govt. of U.P.; 2014 Cr.L.J. 470 (SC)

S. 154 –FIR – Nature and requirements of - There must be information and it must disclose a cognizable offence

A Two-Judges Bench of the Supreme Court in Lalita Kumari*;* (2008) 7 SCC 164, after noticing the disparity in registration of FIRs by police officers on case-to-case basis across the country, issued notice to the Union of India, the Chief Secretaries of all the States and Union Territories and Directors General of Police/Commissioners of Police to the effect that if steps are not taken for registration of FIRs immediately and the copies thereof are not handed over to the complainants, they may move the Magistrates concerned by filing complaint petitions for appropriate direction(s) to the police to register the case immediately and for apprehending the accused persons, failing which, contempt proceedings must be initiated against such delinquent police officers if no sufficient cause is shown. Pursuant to the above directions, when the matter was heard by the very same Bench, in view of the conflicting decisions of the Supreme Court on the issue of whether or not a police officer is obliged under law, upon receipt of information disclosing commission of a cognizable offence to register a case under Section 154 CrPC, referred the same to a larger Bench.

The issue that arose for consideration before this Constitution Bench was whether a police officer is bound to register a first information report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Criminal Procedure Code, 1973 (CrPC) or the police officer has the power to conduct a 'preliminary inquiry' in order to test the veracity of such information before registering the same? In this case larger bench has observed that there must be information and it must disclose cognizance offence. **(Lalita Kumari v. Government of Uttar Pradesh & others; (2014) 2 SCC 1)**

S. 154 - Constitution of India, Art. 21 - Registration of FIR before conducting investigation is procedure established by law - Compulsion to register FIR therefore does not offend Art. 21 also would not lead to arbitrary arrest

Conducting investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law. The plea that if despite the fact that the police officer is not *prima facie* satisfied, as regards commission of- a cognizable offence and proceeds to register an FIR and carries out an investigation, it would result in putting the liberty of a citizen in jeopardy and therefore police must have liberty to hold preliminary inquiry before registration of FIR goes against the very language of

S. 154. In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving *in*formation (i.e. FIR) about commission of such an offence, if the officer-in-charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance' with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register an FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 about the commission of a cognizable offence must be registered as an FIR. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action. S. 154(3) reveals the intention of the legislature to ensure that no information of commission of a cognizable offence is ignored or not acted upon which would result in unjustified protection of the alleged offender/accused. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. Sufficient safeguards are provided in the Code which duly protects the liberty of an individual in case of registration of false FIR. At the same time, s. 154 has been drafted keeping in mind the interest of the victim and the society.

Therefore, mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution. **(Lalita Kumari v. Govt. of U.P. & Ors.; AIR 2014 SC 187)**

S. 154 - Compulsory registration of FIR - Concept of preliminary inquiry in CBI manual - Cannot be read in S. 154

It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry before registration of FIR in the scheme of the Code of Criminal Procedure. In view of the above specific provisions in the Code, the powers

of the CBI under the DSPE Act, cannot be equated with the powers of the regular State Police under the Code. **(Lalita Kumari v. Govt. of U.P. & Ors.; AIR 2014 SC 187)**

S. 154—FIR—Registration—Preliminary inquiry before registration—Cases in which may be made

Some illustrative cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/ family disputes
(b) Commercial offences
(c) Medical negligence cases
(d) Corruption cases
(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

(Lalita Kumari vs. Govt. of U.P.; 2014 Cr.L.J. 470 (SC)

S. 154 - Information relating to commission of a cognizable offence - Recording of the FIR on receipt of such information is mandatory

It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that Court has to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

The condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

In view of the above, the use of the word ‘shall’ coupled with the Scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in-charge of the police station. Reading ‘shall’ as ‘may’, as contended by some counsel, would be against the

Scheme of the Code. Section 154 of the Code should be strictly construed and the word 'shall' should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

In Lallan Chaudhary (supra), this Court held as under:

> "8. Section 154 of the Code thus casts a statutory duty upon the police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information".

(Lalita Kumari v. Govt. of U.P. and others; 2014 (84) ACC 719)

Ss. 154 to 162, 173(8), 173(2), 169, 170, 220 and 482 – Non-maintainability of second FIR in case of further investigation, relating to same offence - Principle that second FIR in case of offences relating to same transaction is impermissible as laid down in T.T. Antony; (2001) 6 SCC 181, held, has never been diluted in any subsequent judicial pronouncement

Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 a d 173 CrPC, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

For vivid understanding, let us consider a situation in which A having killed B with the aid of C, informs the police that unknown persons killed B. During investigation, it revealed that A was the real culprit and D abetted A to commit the murder. As a result, the police officer files the charge-sheet under Section 173(2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted A was C and not D as mentioned in the charge-sheet filed under Section 173 of the Code. In such a scenario, uncovering of the later fact that C is the real abettor will not demand a second FIR rather a supplementary charge-sheet under Section 173(8) of the Code will serve the purpose.

A second FIR (which is not a cross-case) in respect of an offence or

different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. The said principle of law laid down in T. T. Antony, (200 I) 6 SCC 181 has never been diluted in any subsequent judicial pronouncements even while carving out exceptions.

To determine whether different offences ought to be treated as part of the same transaction, the "consequence test" laid down in C. Muniappan, (2010) 9 SCC 567, may be taken aid of. The said test prescribes that if an offence forming part of the second FIR arises as a consequence of the offence alleged in the first FIR then offences covered by both the FIRs are the same and, accordingly, the second FIR will be impermissible in law. In other words, the offences covered in both the FIRs shall have to be treated as a part of the first FIR. Furthermore, merely because two separate complaints had been lodged did not mean that they could not be clubbed together and one charge-sheet could not be filed.

If two FIRs pertain to two different incidents/crimes, a second FIR is permissible, which is not the case in present case. A second FIR would lie in the event for e.g. when pursuant to the investigation in the first FIR, a larger conspiracy is disclosed, which was not part of the first FIR (which is also not the case in present case). **(Amitbhai Anilchandra Shah v. Central Bureau of Investigation and Another; (2014) 1 SCC (Cri.) 309)**

Ss. 154, 190(1), 228—Magistrate cannot exclude or include any section into charge-sheet after investigation has been completed and charge-sheet has been filed

If a case is registered by the police based on the FIR registered at the Police Station under Section 154 Cr.P.C. and not by way of a complaint under Section 190 (a) of the Cr.P.C. before the magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the charge-sheet unless of course a complaint before the magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the charge-sheet, the matter goes to the magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the magistrate cannot exclude or include any section into the charge-sheet after investigation has been completed and charge-sheet has been submitted by the

police. **(State of Gujarat vs. Girish Radhakishan Vardem; 2014 (84) ACC 387 (SC)**

Ss. 156(3), 197, 190—Prevention of Corruption Act, S. 19 - In a complaint of corruption against public servant, direction to police to investigate u/s. 156(3) cannot be issued in absence of sanction to prosecute—Application of mind should be reflected in the order directing investigation u/s. 156(3) Cr.P.C.

A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure.

When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage. When a private complaint is filed before the Magistrate, he has two options. He may take cognizance of the offence under Section 190 Cr.P.C. or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.

Where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C., should be reflected in the order, though a detailed expression of his views is neither required nor warranted. **(Anil Kumar vs. M.K. Aiyappa; 2014 Cr.L.J. 1 (SC)**

S. 156 and 397(2)—Registering of FIR and investigation—Application for—Rejected—Revision against—Maintainability

An application under Section 156(3) Cr.P.C. was moved by Preeti Srivastava before the Court of Additional Chief Judicial Magistrate, Court No.27, Lucknow for directing the police station concerned to register an FIR and for investigating the matter this application was rejected by which Magistrate. Feeling aggrieved this criminal revision has been filed.

Considering the above decisions of the Apex Court and after a careful reading of the decision of Full Bench of this in Court Father Thomas (supra), it is abundantly clear that an order rejecting the application under Section 156(3) Cr.P.C. is also an interlocutory order and remedy of revision is barred.

From the above discussion, this criminal revision is liable to be dismissed, and is hereby dismissed as being barred under subsection (2) of Section 397 Cr.P.C. (**Preeti Srivastava vs. State of U.P.; 2014 (84) ACC 224 (All—L.B.)**

S. 157 – FIR – Recorded by police itself on basis on information received also has to be recorded and copy thereof should be sent into Magistrate

The Code contemplates two kinds of FIRs. The duly signed FIR U/s. 154(1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. **(Lalita Kumari v. Govt. of U.P. & Ors.; AIR 2014 SC 187)**

S. 157—Special report to Magistrate—Delay in sending

Does not in all cases make prosecution case doubtful. Sending of report is only on external check on working of police. **(Sukhwinder Singh vs. State of Punjab; 2014 Cr.L.J. 446)**

S. 174 – Inquest report is not a substantive evidence

Sub-section (1) of Section 174 Cr.P.C. only puts an obligation on the part of the IO to intimate the Executive Magistrate empowered to hold inquest but there is nothing in law which provides that investigation cannot be carried out without his permission in writing or in his absence. Even otherwise, the provision stands qualified "unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate." The object of the inquest proceeding is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what is the cause of death. More so, the inquest report

is not a piece of substantive evidence and can be utilised only for contradicting the witnesses to the inquest examined during the trial. Neither the inquest report nor the post-mortem report can be termed as basic or substantive evidence and thus, any discrepancy occurring therein cannot be termed as fatal or suspicious circumstance which would warrant benefit of doubt to the accused. **(Madhu alias Madhuranatha & Anr. v. State of Karnataka; AIR 2014 SC 394)**

S. 177 – Venue for trial for an offence – Is the court under whose territorial Jurisdiction crime has been committed

Chapter XIII of the Code deals with jurisdiction of criminal courts in enquiry and trials, which starts from Section 177 and concludes at Section 189. Sections which are relevant in the present controversy are Sections 177 and 178. Since rests of the Sections have no application, they are being eschewed from being discussed hereunder. Section 177 of the Code lays down a common law rule that the place of trial of an offence shall ordinarily be inquired into by a Court under whose territorial jurisdiction, the offence has been committed. This rule has got its cementing force in Halsbury's laws of England (Vol. IX para 83). Thus the ordinary venue for trial for an offence is the Court under whose territorial jurisdiction crime has been committed. This general rule, however, is subject to certain exceptions which are contained in Section 178 of the Code which ordains that where the local area regarding commission of offence is uncertain or where the offence is committed partly in one local area and in partly in other or where the offence is a continuing one and is committed in more than one local areas or where the offence consist of several acts and those acts were performed in different local areas then the Courts in all those local areas where any part of cause of action or any activity has been done will have the jurisdiction to try the accused. This has been so enacted to obliterate the dispute between different Courts in conducting trial of those offenses, which were committed under different local jurisdiction of various Courts or where offence is a continuing one. At this juncture it is pointed out that cause of action means every fact, which it will be necessary for the prosecution to prove to establish its allegations. **(Ravi Shanker Pal and others v. State of U.P. and another; 2014 (84) ACC 917)**

Filing of Charge sheet by Officer Superior to Officer In-charge of Police Station - No Illegality

In the present case, the investigation itself was entrusted to the Inspector of C.I.D. by the order of the Director General of Police. In such circumstances, in Court’s opinion, it shall not be necessary for the officer-in-charge of the police station to submit the report under S. 173(2) of the Code. The formation

of an opinion as to whether or not there is a case to forward the accused for trial shall always be with the officer-in-charge of the police station or the officers superior in rank to them, but in a case investigated by the Inspector of C.I.D., all these powers have to be performed by the Inspector himself or the officer superior to him. (**State of Bihar and another vs. Lalu Singh; (2014) 1 SCC 663)**

S. 190 – Meaning of Cognizance - Taking judicial notice of offence with a view to initiate proceedings

A Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons. **(Mrs. Sarah Mathew v. Institute of Cardio Vascular Diseases & Ors.; AIR 2014 SC 448)**

Ss. 190 and 193—Power of taking cognizance—Consideration of

Ordinarily, power of taking cognizance in the Cr.P.C. is vested into a Magistrate as per the provisions of section 190, but there are other provisions also, which have vested powers of taking cognizance in other Courts also, like, the Court of Session. One such provision under section 193 Cr.P.C. reads as under:

> "Section 193:- Cognizance of offences by Court of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

As per the provision, a Court of Session can take cognizance of an offence, which is completely different from taking cognizance of an offence as a 'Court of original jurisdiction', if the case has been committed to it by a Magistrate under the Code. In Kishun Singh vs. State of Bihar, 1993 (30) ACC 167 (SC), the terminology 'as a Court of original jurisdiction' was considered by the Supreme Court while it was considering the full bench judgment of the Patna High Court in S.K. Latfur Rahman and others vs. State of Bihar, 1985 Cr.L.J. 1238. It was held by Their Lordships that the terminology 'as a Court of original jurisdiction' indicated that the Court should be clothed with all

powers of a Magistrate, when it goes to take cognizance of an offence and in that context it was held that as soon as the case was committed the Court of Session, that Court was empowered to apply its mind to the case diary and to summon any other person, who had not been sent up by the police for trial at the very stage of applying its mind to reach a conclusion as to whether there was sufficient ground for proceeding against any accused persons by framing charges. We are not concerned with that issue as to whether the Court of Session could be empowered to summon an additional accused at the time of hearing under sections 227 and 228 Cr.P.C., because that judgment of the Supreme Court was over-ruled by a larger bench in Ranjit Singh vs. State of Punjab, 1998 (37) ACC 768 (SC), but that judgment of Ranjit Singh did not express any difference of opinion as regards the explanation given by Kishun Singh on the terminology 'as a Court of original jurisdiction'.

The very provisions of section 193 Cr.P.C. itself indicate that the Court of Session may also take cognizance of an offence, if it is empowered to do so by any other law for the time being in force. This provision is completely in consonance with the saving clause contained in section 5 of the Cr.P.C., which lays down that nothing contained in the Code shall in the absence of a specific provision to the contrary, affect any special or local law for the time being in force or any special jurisdiction or power conferred or any special forum or power conferred or any special forum of procedure prescribed by any other law for the time being in force. As such, if the special laws are in force, then the general laws could not be resorted to as regards the procedure of a trial or other things regarding a criminal offence made punishable either under the IPC or any other Act for the time being in force. **(Munna Lal vs. State of U.P.; 2014 (84) ACC 459 (All)**

S. 197—Previous sanction u/s. 197 CrPC when not warranted?

The question that has come up for consideration in this case is whether sanction under Section 197 Cr.P.C. is necessary from the State Government before prosecuting the Appellant, though he was removed from service following the procedure laid down in Jharkhand Police Manual.

The above-mentioned provision of 197 of Cr.P.C. clearly indicates that previous sanction is required for prosecuting only such public servants who could be removed by sanction of the Government. Rule 824 of the Jharkhand Police Manual prescribes different departmental punishments, including the punishment of dismissal and removal, to be inflicted upon the police officers up to the rank of Inspector of Police.

Rule 825, clauses (a) and (b) confers power on the Inspector General of

Police or the Deputy Inspector General of Police to pass orders for removal of police officers up to the rank of Inspector. Before passing the order of removal, the Inspector General of Police or the Deputy Inspector General of Police need not obtain prior approval of the State Government. A similar issue came up for consideration before this Court in Nagraj's case (supra), wherein this Court was called upon to examine the scope of S. 197 CrPC read with Ss. 4(c), 8, 26(1) and 3 of the Mysore Police Act, 1908.

Interpreting the above-mentioned provisions, a Three-Judge Bench of this Court held that an Inspector General of Police can dismiss a Sub-Inspector and, therefore, no sanction of the State Government for prosecution of the appellant was necessary even if he had committed the offences alleged while acting or purporting to act in discharge of this official duty. **(Fakhruzamma vs. State of Jharkhand; 2014 (84) ACC 700 (SC)**

S. 202—Inquiry—Object of

From the scheme laid down in Chapter XV of the Code obviously Section 200 requires a Magistrate taking cognizance on a complaint to examine upon oath the complainant and the witnesses present. Section 202 (1), however, enables a Magistrate to postpone the issue of process and to inquire into the case himself, or direct an investigation to be made by a police officer or other person for the purpose of deciding whether or not there is sufficient ground for proceeding. But scope of inquiry under Section 202 of the Code is for limited purpose of deciding whether or not there is a sufficient ground for proceeding against the accused. The object of inquiry under this section is for ascertainment of the fact whether the complaint has valid foundation calling for the issue of process to the person complained against or whether this is baseless one on which no action need be taken. **(Irshad Khan vs. State of U.P.; 2014 (84) ACC 95 (All)**

S. 202—Simultaneous inquiry—Power of Magistrate

It is manifest from bare reading of Section 202 of the Code that the learned Magistrate may either inquire into the case himself or direct an investigation to be made by a police officer or by such person as he thinks fit. Thus the Magistrate has discretionary power regarding as to whether he himself inquire into the case or direct an investigation to be made by a police officer or by such other person as he thinks fit. But certainly the Magistrate cannot resort to inquire into the case himself and also direct investigation by a police officer simultaneously. **(Irshad Khan vs. State of U.P.; 2014 (84) ACC 95 (All)**

S. 202—Report of police officer under—Cannot be challenged by filing a

protest petition

The investigation under S. 202 of the Code is ordered after taking cognizance of the offence but the investigation U/s. 156 of the Code by the police is at a pre-cognizance stage. The scope of investigation by the police officer as referred in Section 202 of the Code is of a limited purpose and is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further on the compliant made to him under Chapter XV of the Code. Thus, on the report submitted by the police officer that no incident as alleged in the compliant had taken place or that the accused had not committed the offence, the Magistrate may take his own decision as to whether there is sufficient ground for him to proceed further or not. Certainly, on submission of report by the police officer would not give rise to any right to the complainant to file a protest petition against the report submitted by the police officer after conducting investigation under S. 202 of the Code. Thus, the report of the police officer so directed under S. 202 of the Code cannot be challenged by filing a protest petition as has been done in this case. **(Irshad Khan vs. State of U.P.; 2014 (84) ACC 95 (All)**

S. 204 – Issuance of process - Magistrate has only to see as to whether allegations made in complaint are prima facie sufficient to proceed against accused

At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi and Others; (1976) 3 SCC 736, the Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have. **(Fiona Shrikhande v. State of Maharashtra and another; AIR 2014 SC 957)**

Ss. 204, 201 - Issuance of Summons and recall or review of order - Magistrate has no jurisdiction to recall or review said order in exercise of powers U/s. 201

Once the Magistrate taking cognizance of an offence forms his opinion that there is sufficient ground for proceeding and issues summons under S. 204, Cr.P.C., there is no question of going back following the procedure under S. 201, Cr.P.C. In absence of any power of review or recall the order of issuance of summons, the Magistrate cannot recall the summon in exercise of power under S. 201 once the decision is taken and summons is issued, in the absence of a power of review including inherent power to do so, remedy lies before the High Court under S. 482, CrPC or under Art. 227 of the Constitution of India
and not before the Magistrate**. (Devendra Kishanlal Dagalia v. Dwarkesh Diamonds Pvt. Ltd., and others; AIR 2014 SC 655)**

S. 216 and Dowry death - Addition/alteration of charge under S. 302, Supreme Court in Rajbir's case (AIR 2011 SC 568) directed all trial Courts to ordinarily add S. 302 to charge under S. 304B. Trial Court simply on basis of said directions framed additional charge U/s. 302 without adverting to evidence adduced in the case - Such framing of additional charge unjustified

Supreme Court in Rajbir's Case (AIR) 2011 SC 568) had directed the addition of a charge under Section 302, IPC to every case in which the accused are charged with Section 304-B. That was not, the true purport of the order passed by Supreme Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that Supreme Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court. It is common ground that a charge under Section 304B, IPC is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302, IPC or a dowry death punishable under Section 304B, IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to prima facie support a charge under Section 302, IPC the trial Court can and indeed ought to frame a charge of murder punishable under Section 302, IPC, which would then be the main

charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302, IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case. The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case, but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court. **(Jasvidner Saini & Ors. v. State (Govt. of NCT of Delhi); AIR 2014 SC 841)**

Alteration of Charge U/s 216 by High Court in revision – Consideration of

The appellant accused was charged by Assistant Sessions Judge u/ss. 336, 400 & 412 I.P.C. Aggrieved by framing of the charges under s. 412 I.P.C. the appellants had filed a criminal revision application before the High Court U/s 401 CrPC. The High Court while affirming the orders passed by the learned Assistant Session Judge, had dismissed the same and had leveled charge against the appellants under Section 120 IPC.

In the opinion of Hon'ble Supreme Court from perusal of complaint as-well-as the charges framed by the trial judge it reveals that at no point of time the appellants herein were charged under s. 120-B IPC. Thus the High Court ought not to have charged the appellants herein under Section 120-B IPC. (**Ravindra Alias Bala Jagariath Path vs. State of Maharashtra; (2014) 1 SCC 696)**

Ss. 216, 218, 228, 154 - Addition of sections in charge sheet - Correct stage for addition or subtraction of Sections of IPC in charge-sheet is at the time of framing of charge

In the case based on the FIR lodged before the police, the correct stage for addition or subtraction of the Sections will have to be determined at the time of framing of charge.

The complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. It is because the prosecution

cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the charge-sheet based on the FIR on which investigation had been conducted. The Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial Court only at the time of framing of charge under Sections 216, 218 or under Section 228 of the Cr. P. C., as the case may be, which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial Court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the Charge-sheet. **(State of Gujarat v. Girish Radhakrishnan Varde; AIR 2014 SC 620)**

Ss. 227 and 228—Framing of charge—Scope of—Guidelines for

In the case of Sajjan Kumar v. Central Bureau of Investigation, 2010 (71) SCC 611 (SC) the Apex Court has given some guide lines about the scope of Sections 227 and 228 of the Code, which are reproduced below: -

> "On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(Ahmad Ullah vs. State of U.P.; 2014 (84) ACC 12)

S. 227—Consideration of an application for discharge—At stage of consideration of discharge application court has to proceed with assumption that materials brought on record by the prosecution are true

It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In Court's opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

(State of Tamil Nadu vs. N. Suresh Rajan; 2014 (84) ACC 656 (SC)

S. 245 (2) – Discharge - Rejection of application – Legality of – Held, the only point to be considered by court below for disposal of discharge application is whether charge is groundless or not

The situation under Section 245 (2) of the Code is however, different sub-section (2) empowers the Magistrate to discharge the accused at any previous stage of the case, even before the evidence under Section 244 is led. To discharge an accused under section 245(2) of the Code, the Magistrate has to come to a finding that the charge is groundless. The Magistrate can take decision to discharge the accused under section 245(2) of the code even before the accused appears or is brought before him or the evidence is led under section 244 of the code. Since, at that stage, there is no evidence on record and, therefore, the question of consideration of any evidence does not arise. In this case, the learned Magistrate has rejected the application under section 245(2) of the Code for the reasons that the revision preferred by the accused, against the summoning order has been dismissed by the learned Sessions Judge, Bareilly and therefore there sufficient, primafacie, case against them and as such the charge against them is not groundless. The only point to be considered by the learned Magistrate for the disposal of the application under section 245(2) of the Code, if moved by the accused, is that whether the charge is groundless or not? The Magistrate can discharge the accused even when he appears in pursuance of the summons or warrants and even before the evidence is led under Section 244 of the Code. If he makes an application for his discharge and the Magistrate is satisfied at any previous stage of the case that the charge is groundless, for the disposal of a discharge application under section 245(2) of the Code, the Magistrate has to consider the allegations contained in the complaint. **(Nanhe Lal and others v. State of U.P. and another; 2014 (84)**

ACC 944)

Ss. 306 - Evidence Act, Ss. 133 and 114 Illustration (b) and 157 - Approver – Extent of culpability of the accomplice in an offence not material where magistrate tendering pardon believes that the accomplice was involved in or was privy to the offence - Court will presume that accomplice is unworthy of credit unless corroborated in material particulars

The first question that court has to decide is whether the High Court was right in coming to the conclusion that for being an approver within the meaning of Section 306, CrPC, a person has to inculpate himself in the offence and has to be privy to the crime, otherwise he removes himself from the category of an accomplice and places himself as an eyewitness. Section 306, CrPC provides that with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, the Magistrate may tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

Thus, the High Court failed to appreciate that the extent of culpability of the accomplice in an offence is not material so long as the magistrate tendering pardon believes that the accomplice was involved directly or indirectly in or was privy to the offence. The High Court also failed to appreciate that Section 133 of the Indian Evidence Act provides that an accomplice shall be a competent witness against an accused person and when the pardon is tendered to an accomplice under Section 306, Cr.P.C., the accomplice is removed from the category of co-accused and put into the category of witness and the evidence of such a witness as an accomplice can be the basis of conviction as provided in Section 133 of the Indian Evidence Act.

As a rule of prudence, however, as provided in Illustration (b) to Section 114 of the Indian Evidence Act, the Court will presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. **(State of Rajasthan v. Balveer @ Balli and another; 2014 (84) ACC 830)**

S. 319—Attractibility of

In the present case the investigation was pending against the applicant and after completing the investigation the supplementary charge sheet has been submitted against the applicant only. It is not a case in which the charge sheet has been submitted in exercise of power conferred U/s. 173(8) CrPC. In the present case at the time of the submission of the charge sheet dated 30.7.2008

bearing no. 161 of 2008 which was submitted against the six co-accused persons, the investigation was not closed. **(Shivswaroop vs. State of UP; 2014 (84) ACC 49 (All HC)**

S. 321—Withdrawal of prosecution—Certain guidelines for

The Apex Court in the case of Sheonandan Paswan v. State of Bihar and others, 1983 (20) ACC 424 (SC) has given certain guidelines, which would be material for the purposes of instant case: -

> "1. The withdrawal from the prosecution is an executive function of the Public Prosecutor.
>
> 2. The discretion to withdraw from the prosecution is that of the Public Prosecutor and none else, and so, he cannot surrender that discretion to someone else.
>
> 3. The Government may suggest to the Public Prosecutor that he may withdraw from the prosecution but none can compel him to do so.
>
> 4. The Public Prosecutor may withdraw from the prosecution not merely on the ground of paucity of evidence but no other relevant grounds as well in order to further the broad ends of public justice, public order and peace. The broad ends of public justice will certainly include appropriate social, economic.
>
> 5. The Court performs a supervisory function granting its consent to the withdrawal.
>
> 6. The Court's duty is not to reappreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied his mind as a free agent, uninfluenced by irrelevant and extraneous considerations. The Court has a special duty in this regard as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution."

(Shiv Nath Arora vs. State of U.P.; 2014 (84) ACC 88 (All—LB)

S. 354 - Penology - Death sentence as a rule and life imprisonment as an exception or life imprisonment as a rule and death sentence as an exception - As found in CrPC, 1898 vis-a-vis CrPC, 1973 – Shift in said penological trend noticed and its effect considered

Under Section 367(5) of the Code of Criminal Procedure, 1898 (the old Code), the no al sentence to be awarded to a person found guilty of murder was death and imprisonment for life was an exception. The amending Act 26 of

1955 amended Section 367(5) of the old Code resulting in vesting of discretion with the court to inflict the sentence of life imprisonment or death each according to the circumstances and exigencies of the case. The present Code which was legislated in 1973 brought a shift in the then existing penological trend by making imprisonment for life a rule and death sentence an exception. It makes it mandatory for the court in cases of conviction for an offence punishable with imprisonment for life to assign reasons in support of the sentence awarded to the convict and further ordains that in case the court awards the death penalty, "special reasons" for such sentence shall be stated in the judgment. **(Deepak Rai v. State of Bihar; (2014) 1 SCC (Cri.) 52)**

S. 354(3) – Duty of court to "give special reasons" where death sentence awarded

Aggravating factors *qua* the crime and mitigating factors *qua* the criminal should be properly balanced so as to decide whether an offence of murder would fall under the rarest of rare category to be visited with the extreme punishment of death. The Court, under Section 354(3) of Cr.PC, has to give special reasons, in case death sentence is awarded. The very decision of the Court that a case falls under the rarest of rare category would ordinarily meet the requirement of special reasons under Section 354(3) of the Cr.PC since inclusion of a case in that category can be only on such finding. As held by the Constitution Bench of this Court in Bachan Singh vs. State of Punjab**;** (1980) 2 SCC 684, the finding would depend on facts and circumstances of each case. To quote:

"**201**. …As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard *both* to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and, therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special

reasons" can legitimately be said to exist."

(State of Rajasthan v. Jamil Khan; (2014) 1 SCC (Cri.) 411)

S. 357 - Award of compensation to victim(s) of crime or their dependants under S. 357 CrPC - Mandatory duty of criminal court to apply its mind to question of awarding compensation in every case – Power is not ancillary to other sentences but in addition thereto

The language of S. 357 CrPC at a glance may not suggest that any obligation is cast upon a court to apply its mind to the question of compensation in every case. Section 357(1) states that the Court "may" order for the whole or any part of a fine recovered to be applied towards compensation. S. 357(3) CrPC further empowers the court by stating that it "may" award compensation even in such cases where the sentence imposed does not include a fine. The legal position is however well established that cases may arise where a provision is mandatory despite the use of language that makes it discretionary. Section 357 CrPC confers a power coupled with a mandatory duty on the court to apply its mind to the question of awarding compensation in every criminal case. It is said so because in the background and context in which S. 357 CrPC was introduced, the power to award compensation was intended to reassure the victim that he or she is not forgotten in the criminal justice system. The victim would remain forgotten if despite the legislature having gone so far as to enact specific provisions relating to victim compensation, courts choose to ignore the provisions altogether and do not even apply their mind to the question of compensation. If application of mind to the question of compensation in every case is not considered mandatory, S. 357 CrPC would be rendered a dead letter. Further, the court must disclose that it has applied its mind to this question in every criminal case. The disclosure of application .of mind is best demonstrated by recording reasons in support of the order or conclusion. **(Ankush Shivaji v. State of Maharashtra; (2014) 1 SCC 285)**

Ss. 357 and 357-A—Court dealing with a criminal case—Jurisdiction of granting compensation may be inferred

Power of the Court to do complete justice cannot be limited on the ground of technicalities. Where Parliament makes provision for granting compensation to the victims of offence on the reference of the Court through the instrumentality of District Legal Services Authority, why cannot the trial court, not lacking inherent jurisdiction, order compensation to be paid by the accused in the same trial according to law providing compensation, where

preponderance of probability tips against the accused. The relief of compensation ordained by law under sections 357 and 357-A CrPC is based on the premise that legislature recognizes, through implicity, in jurisdiction of the Trial Court of a District/Additional District & Sessions Judges' to provide compensation which partakes of Civil Jurisdiction of the Court dealing with a criminal case. In the quandary, jurisdiction of granting compensation may be inferred in the Court that decides the case and the compensation must come from the person or persons who in all probabilities was/were responsible for the injury, and the compensation may be assessed and realised on the line claims in accident cases are awarded. **(Smt. Savitri Devi vs. State of U.P.; 2014 (84) ACC 81 (All)**

S. 362—Court not to alter judgment—No court when it has signed its judgment or final order—Shall alter or review the same—Except to correct a clerical or arithmetical error

Section 362 Cr.P.C. provides as under:-

> "362. Court not to alter judgment.-Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

In Hari Singh Mann Vs. Harbhajan Singh Bajwa and others, 2001 (42) ACC 75 (SC), Hon'ble the Apex Court has held as under:-

> "Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on Talab Haji Hussain's case (supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the

Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

(Hari Prakash vs. State of U.P.; 2014 (84) ACC 45 (All)

Ss. 432, 433 and 433-A – Remission/Commutation powers of executive - Reiterated, for adequate reasons, it is for the said authorities to exercise their power in an appropriate case

It is not in dispute that considering the heinous crime of committing rape and murder and throwing the dead body in a place surrounded by bushes and shrubs, the trial Court has awarded the sentence of death, however, the High Court, taking note of the fact that the accused is a young man of 33 years of age and also finding that the case does not come under the purview of the "rarest of rare" category, declined to confirm the sentence of death and altered the same to the imprisonment for life while upholding the conviction under both the counts.

The Court, in a series of decisions has held that life imprisonment means imprisonment for whole of life subject to the remission power granted under Articles 72 and 161 of the Constitution of India.

In view of the clear decisions over decades, the argument of learned senior counsel for the appellant-accused is unsustainable, at the same time, we are not restricting the power of executive as provided in the Constitution of India. For adequate reasons, it is for the said authorities to exercise their power in an appropriate case.

It is also relevant to point out that when death sentence is commuted to imprisonment for life by the Appellate Court, the concerned Government is permitted to exercise its executive power of remission cautiously, taking note of the gravity of the offence.

In view of the categorical and consistent decisions of this Court on the point, we are unable to accept the argument of learned senior counsel for the appellant-accused.

Learned senior counsel for the appellant also placed reliance on a decision of this Court in Writ Petition (Crl.) No. 34 of 2009 dated 07.09.2009

wherein the order passed by the Governor of the State of Uttar Pradesh for release on remission of the petitioners therein was set aside by a Division Bench of the High Court of Allahabad and the same was challenged before this Court by way of a writ petition. It was also pointed in the above said writ petition that a number of convicts who had undergone actual sentence of 14 years were directed to be released forthwith by this Court in SLP (Crl.) No. 553 of 2006 dated 09.05.2006. This Court, following the same, issued a similar order in the said writ petition for the release of the petitioners therein. As stated earlier, the case on hand relates to commuting the sentence of death into imprisonment for life and we have already preserved the right of the executive for ordering remission taking note of the gravity of the offence. Hence, the said decision is not helpful to the facts of this case and the contention of learned senior counsel is liable to be rejected. **(Bhaikon Alias Bakul Borah v. State of Assam; (2014) 1 SCC (Cri.) 107)**

S. 437—Bail application - Desirability of hearing on same day—Need of—Obligation upon courts

The law regarding the hearing of the bail applications on the same day and the power to release the accused on an interim bail, both have been expatiated upon comprehensively in the Full Bench decision of this Court in Amarawati and others Vs. State of U.P.; 2004 (57) ALR 290. A later decision of the Apex Court in Lal Kamlendra Pratap Singh Vs. State of U.P. 2009 (67) ACC 966 had further reiterated the view taken in Amarawati's case.

The need and desirability of hearing the bail applications on the same day is not difficult to gauge from the observations made by the Full Bench when it held that if on the application made under section 437 Cr.P.C., the Magistrate feels constrained to post-pone the hearing of the bail application, it should release the applicant on interim bail and if there are circumstances which impell the court not to adopt such a course, the court shall record its reason for its refusal to release the applicant on interim bail. **(Naval Saini vs. State of U.P.; 2014 (84) ACC 73 (All)**

S. 438—Anticipatory bail—Exercise of power under—Power u/s. 438 to be exercised only in exceptional cases

Provision makes it clear that the power exercisable under Section 438 of the Code is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty.

Recently, in Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730, this Court, (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis to a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 10, the Court held as under:

> "10. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as "absconder". Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail. In the case on hand, a perusal of the materials i.e., confessional statements of Sanjay Namdev, Pawan Kumar @ Ravi and Vijay @ Monu Brahambhatt reveals that the respondents administered poisonous substance to the deceased. Further, the statements of witnesses that were recorded and the report of the Department of Forensic Medicine & Toxicology Government Medical College & Hospital, Nagpur dated 21.03.2012 have confirmed the existence of poison in milk rabri. Further, it is brought to our notice that warrants were issued on 21.11.2012 for the arrest of the respondents herein. Since they were not available/traceable, a proclamation under Section 82 of the Code was issued on 29.11.2012. All these materials were neither adverted to nor considered by the High Court while granting anticipatory bail and the High Court, without indicating any reason except stating "facts and circumstances of the case", granted an order of anticipatory bail to both the accused. It is relevant to point out that both the accused are facing prosecution for offences punishable under Sections 302 and 120B read with Section 34 of IPC. In such serious offences, particularly, the respondents/accused being proclaimed offenders, we are unable to sustain the impugned orders of granting anticipatory bail. The High Court failed to appreciate that it is a settled position of law that where the accused has been declared as an absconder and has not cooperated with the investigation, he should not be granted anticipatory bail. **(State of M.P. vs. Pradeep; 2014 (84) ACC 415 (SC)**

Ss. 468, 469, 473—Bar to taking of cognizance

Bar applies if complaint is filed beyond limitation and not if cognizance is taken beyond limitation. Taking date of cognizance as material date would bring in uncertainty would be denying justice to diligent complainant for fault of Court. **(Mrs. Sarah Mathew vs. Institute of Cardio Vascular Diseases; 2014 CrLJ 586 (SC)**

S. 473 – Limitation for taking cognizance and Condonation of delay - S. 473 of the Code enjoins Courts not only to see whether delay has been explained but in addition to see whether it is requirement of justice to ignore delay

The role of the court acting under Section 473 was aptly described by the Court in Vanka Radhamanohari (Smt.) (1973 AIR SCW 3595) where this Court expressed that this Section has a non-obstante clause, which means that it has an overriding effect on Section 468. The Court further observed that there is a basic difference between Section 5 of the Limitation Act and Section 473 of the Cr.P.C. For exercise of power under Section 5 of the Limitation Act, the onus is on the applicant to satisfy the court that there was sufficient cause for condonation of delay, whereas, Section 473 enjoins a duty on the court to examine not only whether such delay has been explained but as to whether, it is the requirement of justice to ignore such delay. These observations indicate the scope of Section 473 of the Cr.P.C. Examined in light of legislative intent and meaning ascribed to the term 'cognizance' by this Court, it is clear that Section 473 of the Cr.P.C. postulates condonation of delay caused by the complainant in filing the complaint. It is the date of filing of the complaint which is material. **(Mrs. Sarah Mathew v. Institute of Cardio Vascular Diseases & Ors.; AIR 2014 SC 448)**

S. 482 - Quashment of criminal proceeding u/s. 482 – Consideration of

A given set of facts may make out a civil wrong as also a criminal offence hand only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in a complaint disclose a criminal offence or not. This proposition is supported by several judgments of the Court as noted in para 16 of the judgment in Rvindra Kumar Madhanla Goenka vs. Rugmini Ram Raghav Spinners (P) Ltd.; (2009) 11 SCC 529. **(Vijayander Kumar vs. State of Rajasthan; (2014) 3 SCC 389)**

S. 482—Scope of—Court will not allow application u/s. 482 to become a substitute of a regular trial

In the old criminal procedure, power of the Court for quashing proceedings in the subordinate courts was recognized vide Section 561-A which has now been reiterated in Section 482 of the Code. It says that nothing

contained in the Code shall be deemed to limit or affect inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Therefore, Section 482 does not confer any new power upon this Court but simply recognizes inherent power already vested in this Court, to pass any order in the interest of justice or to prevent abuse of process of the Court. Therefore, the extent of power vested in this Court is not in doubt but moot question is, "in what circumstances and when this Court would be justified in invoking its inherent jurisdiction, which is recognized by Section 482 of the Court."

The powers possessed by this Court as recognized vide Section 482 of the Code are very wide. The very plenitude of power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. It should not be exercised to stifle a legitimate and genuine prosecution. This Court being the highest court in the province should normally refrain from giving a prima facie decision in a case where facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court. When the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material, of course, the Court would abhor to interfere in the proceedings by invoking its power under Section 482 of the Code. **(Mahipal Singh vs. State of U.P.; 2014 (84) ACC 462 (All)**

Constitution of India

Art. 14 – Contract to collect parking fees – Cancellation of - Validity

In the instant case the Court is of the view that demarcation of a particular area for parking, provision for male/female washroom, drinking water facilities and the waiting shade for the persons awaiting the arrival of the vehicles are the conditions precedent for any contract being granted in respect of collection of the parking fees. It cannot be other way round i.e. a contract for collection is granted and thereafter contractor is provided time to make provision for the aforesaid facilities. This flows from the Government Order dated 18th July, 1993.

Since in the facts of the case the Nagar Panchayat Raya had not demarcated any area for parking of the vehicles at Raya- Sadabad Road, Raya-Baldev Road, Raya-Mant Road and further since it could not be demonstrated before the Court that any of the facilities, as required under the Government Order dated 18th July, 1993 were in existence at the aforesaid places, the Court hold that the decision taken to cancel the contract need not be interfered with

by the Court.

The Court may further record that under the terms of the contract itself it is provided that the contract shall be cancelled at any point of time without any notice or opportunity of hearing. The order impugned has done substantial justice and has rightly curtailed the realization of parking fee in absence of the facilities as required under the Government Order, referred to above being available. It is always open to the petitioner to make an application before the Nagar Panchayat for refund of the money deposited by him towards contract once it is found that the contract itself was illegally granted. **(Komal Singh v. State of U.P.; 2014(1) ALJ 300)**

Art. 14 – Appointment – Eligibility – Minimum qualification not fulfil – Rejection is proper - Parity cannot be claimed

In the present case, none of the petitioners possess requisite minimum qualification. Be that as it may, it cannot be doubted that if an illegal appointment has been made by authorities concerned, disobeying the provisions providing necessary minimum qualification, petitioners do not get a right to claim parity with such illegal act of the respondents. In Union of India & another Vs. Kartick Chandra Mondal & another (2010) 2 SCC 422, the Court has gone to the extent that even if some other persons similarly placed have been absorbed, that cannot be a basis to grant a relief by the Court which is otherwise contrary to statute.

In State of Karnataka & others Vs. Gadilingappa & others (2010) 2 SCC 728, the Court reiterated that it is well settled principal of law that even if a mistake is committed in an earlier case, the same cannot be allowed to be perpetuated.

It is well settled that if a wrong has been committed by the respondents in respect to some other persons that will not provide a cause of action to claim parity on the ground of equal treatment since the equality in law under Article 14 is applicable for claiming parity in respect to legal and authorized acts. Two wrongs will not make one right. **(Jitendra Kumar and others v. State of U.P. and others; 2014 (1) ALJ 346)**

Arts. 14 and 16 - Salary – Claim for –Even when their substantive post is that of a class IV, they were assigned the work of the post of clerk of a class III post claim for salary of the post of clerks - Petitioners entitled to be paid salary as that of clerks

The petitioners, who are 22+35 in numbers, were appointed on a Class IV posts in the Municipal Corporation, Ludhiana. Even when their substantive post is that of a Class IV, they were assigned C.W.P. No.1548 of 2006 (O&M)

3 the work of the post of Clerk of a Class III post. It is submitted that there are no service rules governing the posts of Clerks in any of the Municipal Corporation/Municipal Council, in the State of Punjab. The post of Clerk is a non- provincialised post and is filled up at the level of Municipal Corporation.

Prayer for payment of salary is made on the ground that even if the post of aforesaid petitioners was Class-IV, once they were assigned the work of Clerks for the period they worked, they are entitled to the salary of the post of Clerks.

In this case, it is denied that the petitioners had been working as Clerks, this contention of the respondents is in teeth of their own office orders which are produced by the petitioners alongwith this writ petition. Our attention is also drawn to the office order No. 731/ General Deptt. dated 28.11.1995, as per which eleven of the petitioners were allowed to continue to work as Clerks in the Engineering Wing. This office order further discloses that it had been passed on the basis of approval given by the Commissioner in his order dated 23.11.1995, after receiving the report of the Superintending Engineer (B&R). To the similar effect is the office order No. 250/J.V. Dated 03.7.2001, which, inter-alia, refers that the Commissioner vide his order dated 26.6.2001, after agreeing with the advise of the Local Advisor and as per the order passed by the Additional Commissioner dated 03.7.2001, has ordered that Class IV employees working in the Municipal C.W.P. No.1548 of 2006 (O&M) 4 Corporation are deployed as Clerks to work against the vacancies of the Clerk in their own pay scale be allowed to continue to work as such. This order pertains to 20 Clerks. Both these orders clearly demonstrate that the petitioners have been working as Clerks and that too under the orders of the Commissioner of the Municipal Corporation, who is the competent authority in this regard.

In these circumstances, the prayer of the petitioners to the effect that they be paid salary to the post of Clerks is allowed. **(Shammi Kapoor v. Municiapal Corpn., Ludhiana, through its Commissioner; 2014 (2) SLR 338 (P&H)**

Art. 16 and 235 – Evidence Act, Sec. 114 (e) – Dismissal from service on ground of concealment of fact that he was deserter from Indian Army and for which he was convicted and jailed – Dismissal was proper

The appellant had applied for the post of Peon notified by the Public Service Commission, hereinafter referred to as "the Commission", in 1987 and having qualified in the test conducted on 16.4.1988 and the consequential interview on 12.6.1989, he was posted as Peon in the Irrigation Department in the year 1992. In 1993, he obtained inter-

departmental transfer to the Judicial Department and was promoted to the post of Lower Division Clerk, when the said proceedings were initiated against him on account of an anonymous complaint received by the Registrar General of the High Court of Kerala, who had administrative control over the officers and ministerial staff of the subordinate judiciary. The appellant, aggrieved by the dismissal from service and the unsuccessful appeal, was before the learned Single Judge, who dismissed the writ petition by the impugned judgment. Hence this appeal has filed.

The appellant was dismissed from service and is categorized as "unfit for civil employment" cannot at all be disputed. The said order of dismissal and consequent is qualification has become final and the appellant cannot seek continuance in civil employment by reason merely of picking holes in an enquiry proceeding initiated for non-disclosure of such facts. The challenge based only on the validity of the charge, procedural irregularity, etc. are also found to be not sustainable. The further plea that the punishment is disproportionate cannot be countenanced, since the appellant was categorized as 'unfit' for public employment by reason of his dismissal from Armed Services and had not disclosed the said fact which resulted in his continuing in public employment for 20 years.

Court have to further notice, as has been pointed out in the counter-affidavit, that after obtaining employment, every employee has to be subjected to police verification. The police verification is primarily self declaratory in nature as to the personal details. It is on such self declaration before an authorized officer from the police that the verification is conducted and report filed with the appropriate authority. It looms large that no such declaration has also been disclosed on the police verification, since if so disclosed, necessarily proceedings would have been taken at that stage itself. Appellant having successfully evaded disclosure and having continued in employment for 20 years suppressing the fact of dismissal from Armed Services and consequent disqualification from civil employment, cannot turn around and be permitted to claim equity by reason of the long 20 years continued in employment or claim immunity by reason only of the original application submitted by the appellant having not been unearthed. We are of the definite opinion that the judgment of the learned Single Judge does not suffer from any infirmity and the same is liable to be upheld on all counts. **(Viswanathan K.C. v. D. Pappachan (Ker.); 2014(1) SLR 182)**

Art. 16 and 233(2) – Selection – A.P. Higher Judicial Service - Selectee was

working as assistant public prosecutor and could not be considered as advocate practicing at bar for seven years - High Court allowed the petition - Held that assistant public prosecutor is also an advocate and his selection cannot be set aside on the ground that he is working with Govt.

Before they could be appointed to the post in question, Writ Petition Nos.34683 of 2011 and 894 of 2012 had been filed in the High Court wherein their selection had been challenged on the ground that the appellants had been working as Assistant Public Prosecutors and as such, they should not have been considered as advocates having standing of seven years at the Bar and according to the submissions made in the petitions, challenging their selection, a person working as a Public Prosecutor cannot be said to be an advocate practicing at Bar because of his being in employment of the State of Andhra Pradesh. Moreover, Lakshmana Rao Yadavalli, the first appellant's selection had also been challenged on an additional ground that he had not completed 35 years of age at the time when the post in question had been advertised. According to the submissions made before the High Court, a person cannot be appointed to the post in question till he completes the age of 35 years.

After hearing the concerned parties, the aforestated petitions had been allowed and therefore, the present appellants who were respondents in the aforestated petitions have not been appointed to the post in question.

Ultimately, this Court came to the conclusion that the appellant in the said case had been practising as an advocate, therefore, he was eligible for the judicial post. Similarly, in the case on hand the appellants were practicing advocates though they were full time employees and therefore, they are eligible to be appointed as Judges.

In the case of Deepak Aggarwal (supra) this Court has held that simply because a person has been appointed as an Assistant Public Prosecutor and as such he is in employment of the Government, cannot be a ground for not selecting him to a judicial post on the ground that he was not an advocate practicing at the Bar. The ratio of the said judgment is that an Assistant Public Prosecutor is also an advocate who is practicing at the Bar.

In view of the aforestated legal position, in our opinion, the High Court was not right in considering the appellants as disqualified candidates as they were in full time employment of the Government. **(Lakshmana Rao Yadavalli & Anr. v. State of Andhra Pradesh & Ors.; 2014 (2) SLR 235 (SC)**

Arts. 21, 20(1), 14, 19, 32 and Arts. 72 & 161 - Judicial Review – When

permissible

Judicial Review, held, is available where mercy petition is rejected without considering the supervening circumstances of delay.

This right of judicial review on ground of non-consideration of supervening circumstances is available till last breath of death convict, till the noose is being tied on his neck- Merch jurisprudence is a part of the evolving standard of decency, which is the hallmark of the society - In the same manner that the death sentence itself is passed lawfully, execution of death sentence must also be in consonance with the constitutional mandate. Right to seek mercy U/Arts. 72/161 is a constitutional right and not at the discretion or whims of executive. Every Constitutional duty must be discharged with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values. However, clarified that whether non-consideration of any such supervening circumstance(s) will entitle death convict to commutation of death sentence must be appreciated based on facts of each individual case and no exhaustive guidelines can be framed in its regard. Criminal Procedure Code 1973, Ss. 413 to 415.

Inordinate delays caused due to circumstances beyond the control of death convict and that which is caused by the authorities for no reasonable ground is under, unjust and unfair. Whether delay is undue and unreasonable must be appreciated based on facts of each individual case and no exhaustive guidelines can be framed in this regard. Lastly, held, the Supreme Court should commute death sentence itself if above said ground is made out rather than remanding matter for reconsideration of mercy petition.

Held, thought no time-limit can be fixed for exercise of power U/Arts. 72 and 161, it is the duty of the executive to expedite the matter at every stage viz. calling for the record, others and documents filed in court, preparation of note for approval of the Minister concerned and ultimate decision of the President/Governor. Minister concerned is expected to follow its own rules rigorously which can reduce to a large extent the delay caused. Universal Declaration of Human Rights, 1948, United Nations Covenant on Civil & Political Rights, 1966. (**Shatughan Chauhan vs. Union of India; (2014) 3 SCC 1)**

Art. 136 - Review of death sentence - Manner, approach and scope - "Special reasons" adumbrated/mentioned by trial court needing further elaboration - Death sentence whether can be confirmed after making such elaboration

The Supreme Court has upon examination of both - the evidence on record and the reasoning of the courts below while sentencing the accused reached an independent conclusion that the facts and circumstances of the case do not warrant imposition of sentence of death. Therefore, it is not the absence or adequacy of "special reasons" alone which weighed in the mind of the Supreme Court while commuting the sentence. The facts in toto and procedural impropriety, if any, loomed large in exercising such discretion. Hence, the reliance placed on the aforementioned decisions is rejected. Further, it cannot be accepted that the failure on the part of the court, which has convicted an accused and heard him on the question of sentence but failed to express the "special reasons" in so many words, must necessarily entail a remand to that court for elaboration upon its conclusion in awarding the death sentence for the reason that while exercising appellate jurisdiction the Supreme Court cannot delve into such reasons.

The appellate jurisdiction vested in the Supreme Court by virtue of Article 136 of the Constitution is not plain statutory but expansive and extraordinary. The Court exercises its discretion and grants leave to appeal in cases where it is satisfied that the same would circumvent a grave miscarriage of justice. Such jurisdiction is not fettered by rules of criminal procedure but guided by judicially evolved principles. An appeal by special leave under Article 136 of the Constitution is a continuation of the original proceedings. Thus, jurisdiction of the Supreme Court in appeal under Article 136 of the Constitution though circumscribed to the scope of earlier proceedings is neither fettered by the rules of criminal procedure nor limited to mere confirmation or rejection of the appeal. The Supreme Court while considering the question of correctness or otherwise of the sentence awarded by the courts below exercises discretionary jurisdiction under Article 136 of the Constitution and hence can not only examine the reasons so assigned under Section 354(3) Cr.PC but also substantiate upon the same, if need so be **(Deepak Rai v. State of Bihar; (2014) 1 SCC (Cri.) 52)**

Art. 141 - Law of Precedent - Ratio decidendi must be understood in background of facts of case. Ratio decidendi is not to be discerned from stray word or phrase read in isolation

In Som Mittal v. Government of Karnataka**;** (2008) 3 SCC 574, it has been observed that judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by

way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation. **(Arasmeta Captive Power Co. Pvt. Ltd. and another v. Lafarge India Pvt. Ltd.; AIR 2014 SC 525)**

Arts. 164 and 226 – Transfer - Respondent transferred only to accommodate another employee in Kolkata – Transfer order was actuated by mala fide and transfer order contrary to guidelines - Unless over whelming reason to depart from the same - Transfer order bad in law

It is trite that transfer orders should not normally be interfered with by courts of law as it is the prerogative of the employer to transfer an employee, based on the exigencies of work. In the case of Shilpi Bose (supra) the Court considered whether a transfer made by a competent authority on the request of Government servants should be interfered with by the Court.

In the case of Shilpi Bose (supra) the appellant before the Supreme Court and another person sought a mutual transfer. The authority accepted the representations of the employees and transferred them in public interest. The High Court held that the establishment was not empowered to transfer primary school teachers on their request. However, the Supreme Court concluded that there was no justification for this inference drawn by the High Court that, transfers cannot be made with a view to accommodate employees. It is in these circumstances that the Supreme Court held that when a competent authority issues a transfer order with a view to avoid hardship to a public servant, it should not be interfered with by the Court merely because the transfer order was passed on the request of the employees concerned.

The Court observed that when a transfer order is passed against an employee to wreak vengeance against him, such an order of transfer requires to be struck down. The Court noted that though a transfer causes plenty of difficulties and dislocation in the family set-up of the concerned employee it cannot be the sole reason for setting aside the transfer order. In the case of Rajendra Singh (supra) the Supreme Court concluded that no Government servant has a vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. A Government servant is liable to be transferred for administrative exigencies from one place to another. The Court further held that transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary.

The Court further held that the scope of judicial review of transfer orders is limited and an order of transfer can be questioned if it is vitiated

because of the violation of some statutory provisions or it suffers from mala fides. We have already noted that the transfer order is contrary to the guidelines for the reasons mentioned earlier. In our opinion, the guidelines must be implemented strictly unless there is an overwhelming reason to depart from the same. **(Member Secretary, Central Silk Board v. Swapan Kumar Chakraborty; 2014(2) SLR 442(SC)**

Art. 226 – Registration of Births and Deaths Act, S. 16 – Date of birth – Correction of – Validity

A combined reading of the pleadings of the parties would show that correctness, genuineness or authenticity of the birth certificate (Annexure p, I), has not been doubted by the respondent-board. The facts of the case are hardly in dispute. Specifically pleaded and undisputed case of the petitioner is that, when he was intending to apply for the passport, he got issued the birth certificate (Annexure P-l), from the office of Sub-Registrar, Births and Deaths, Sonepat. From the birth certificate (Annexure P-I), it came to the notice of the petitioner that his date of birth has been wrongly recorded in the school record, which in turn, came to be recorded as such in his detailed marks card of the 12th class, issued by the respondent-board.

Once the respondent-board has the power and competence to carry out the change/correction in the date of birth, as envisaged under Rule 69.2, coupled with the material fact that the authenticity and genuineness of the birth certificate (Annexure P-l) is not doubted, the plea raised by the respondent board does not stand the test of judicial scrutiny. No other reason is forthcoming either in the impugned communication (Annexure P-I0) or in the written statement, filed by the respondent-board nor any such reason have been put into service by the learned counsel for the respondent-board, during the course of argument.

After considering the peculiar facts and circumstances of the present case,
coupled with the reasons aforementioned and the enunciation of law, as discussed herein above, this court is of the considered view that, respondent board has erred in law, while refusing to entertain the request of the petitioner for correction of his date of birth. Consequently, impugned communication dated 25.1.20 12 (Annexure P-10), is hereby set aside. Respondent-board is directed to consider the application of the petitioner for correction of his date of birth, in accordance with law and the observations make therein before. (**Parveen Malik v. Central Board of Secondary Education; (2014) 1 SLR 143)**

Art. 226 – Writ jurisdiction – Leave - Child care leave – Petitioner sought sanction of Child Care Leave for the complete period of 730 days - Claim of the petitioner for sanction of Child Care Leave for a period of 730 days was not bonafide - Writ Court cannot sit in appeal over a decision taken in administrative exigency – Grant of Child care Leave is a concession and not a right - No interference in the decision of the respondent - Authorities in denying to the petitioner the sanction of Child care Leave

A perusal of the same would make it apparent that the State Govt. has taken a decision to allow Child Care Leave to women govt. employees subject to a maximum period of two years during their entire service tenure for taking care of the two eldest surviving children below the CWP No.1481 of 2011 (O & M) -5-age of 18 years. Even the grant of such Child Care Leave is not mandatory and has been left to the discretion of the appropriate authority. The Notification dated 5.2.2010 makes it clear that such Child Care Leave may be availed of in more than one spell. The memo dated 5.2.2010 (Annexure P-3) itself further clarifies that even though, the decision has been taken to allow Child Care Leave to facilitate the women govt. employees to take care of the children at the time of need but the same does not mean that Child Care Leave should disrupt the functioning of the offices/institutions/schools etc. The memo still further clarifies that Child Care Leave cannot be demanded as a matter of right and under no circumstances can any employee proceed on Child Care Leave without prior sanction of leave by the competent authority.

In the present case the application dated 20.9.2010 submitted by the petitioner for sanction of Child Care Leave has been placed on record at Annexure P-2. In terms thereof, the petitioner has sought sanction of Child Care Leave for the complete period of 730 days in one go. No suggestive material has been referred to or appended along with the petition, wherefrom this Court could take notice of a medical condition of the child of the petitioner so as to justify the claim of sanction of Child Care Leave over a period of 730 days as on 20.9.2010 i.e the date the application was submitted. The clear inference that can be drawn from the pleadings on record is that the claim of the petitioner for sanction of Child Care Leave for a period of 730 days i.e. the maximum entitlement under the memo dated 5.2.2010 (Annexure P-3) was not bonafide. Be that as it may, the question would arise as to whether this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India would act as a Court of Appeal to sit CWP No.1481 of 2011 (O & M) -6- in judgement over a decision taken by a competent authority not to sanction Child Care Leave to an employee in citing the relevant administrative exigency i.e. the interest of the students?

The Writ Court cannot sit in appeal over a decision taken in administrative exigency. It was for the respondent-Department to consider the feasibility of granting Child Care Leave over a long period of time i.e. 730 days as claimed by the petitioner. Even otherwise, the grant of Child Care Leave is a concession and not a right. The plea of discrimination would also not be available to the petitioner. The concept of equality and protection against arbitrary action as envisaged under Article 14 of the Constitution of India is a positive concept. Such concept cannot be used as a tool in a negative manner to perpetuate an illegality. **(Anoopika Randhawa v. State of Haryana & Others; 2014 (2) SLR 19 (P&H)**

Art. 226 - Transfer of investigation – Petition against - Investigation of case transferred from civil police to economic offence wing at dictate of political masters on application of accused - Legality of

Practice of transferring investigation from one investigating agency to other at behest of accused deprecated. Without there being anything more, investigation cannot be transferred from one investigating agency to other on behest of accused. No reason has been assigned for transferring investigation. Even while taking administrative decision authority concerned is obliged to record reasons- Transfer of investigation from local police to another machinery by a non-speaking order cannot be sustained. On cases which can be termed as "economic offence" can be referred for investigating to EOW.

In this case, alleged offence committed by accused cannot be said to be covered by G.O. dated 18.9.1972. There must be cogent evidence to infer existence of bias and mala fide motive resulting into miscarriage of justice. Burden to prove bias or mala fide upon person moving application to transfer investigation, not discharged. **(Prema Devi v. State of U.P. and others; 2014 (84) ACC 948)**

Arts. 226 and 300-A - Disciplinary proceedings - Retirement – Pension - Disciplinary proceedings against a Government employee after his retirement, does not automatically come to an end in case the enquiry is not concluded within two years of its inception and can continue beyond the period of two years

The provisos and the causes of Rule 9(4) are interrelated provisions and have to be read together as a whole. The intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also to what not has been said See: Nagar Palika Nigam v. Krishi Upaj Mandi Samiti; AIR 2009 SC 187, Principles of Statutory Interpretation, Justice, G.P. Singh, 13th Edition, page

64. From careful scrutiny of Clauses (a) and (b) of third proviso to Rule 9(4), it is apparent that aforesaid clauses nowhere provide that if the departmental proceeding is not concluded within the period of two years, the same would come to an end automatically. The aforesaid clauses only provide that if departmental proceeding is not concluded within a period of one year or two years, 50% of the amount of pension and entire amount of pension wit held shall stand restored to the delinquent employee, respectively. If the meaning of clause (b) of third proviso to Rule 9(4) is expanded to mean that Governor would not have any right to pass final order with regard to imposition of punishment as prescribed under clause (c), such an interpretation would bring clause (c) in conflict with clause (b) of third proviso to Rule 9(4) of the 1976 Rules and, therefore, such an interpretation cannot be accepted. Clauses of third proviso to Rule 9(4) have to be read as a whole and an attempt has to be made to reconcile them so that any repugnancy can be avoided.

Thus, clauses (a) and (b) of third proviso to Rule 9(4) have to be read subject to clause (c) of third proviso to Order 9, Rule (4). In other words, the withholding of pension as provided in clauses (a) and (b) of third proviso to Rule 9(4) of the Rules is provisional and tentative and is subject to the final order which may be passed by the Governor under clause (c) of third proviso to Rule 9(4). In view of preceding analysis, Court's answer to the questions referred for court's opinion is as follows:

The disciplinary proceeding initiated by the State Government against a Government employee after his retirement, does not automatically come to an end in case the enquiry is not concluded within two years of its inception and can continue beyond the period of two years. The Governor is not precluded from passing final order in relation to payment of pension to a Government employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its institution. **(State of Madhya Pradesh and another v. Puranlal Nahir; 2014 (2) SLR 72 (MP)**

Art. 311, Expunction Adverse remark of corruption - Officer earning goods remarks in subsequent year cannot be ground to expunge earlier

The court said, the reasons given for expunging the remarks on "corruption" and substituting the same by "good remarks" is shocking and untenable to say the least. Simply because the appellant allegedly showed improvement and earned good entries in the subsequent years cannot be a ground to erase the earlier remarks recorded 7 years ago thereby treating him as a good officer even for the earlier period. **(Vinod Kumar v. State of Haryana**

and others; AIR 2014 SC 33)

Art. 311 - Industrial Disputes Act, Sch. 2 Item 6 - Dismissal from service and imposition Penalty after retirement - Permissibility – Conflict between (2007) 1 SCC 663 and 2011 AIR SCW 6577 - Question referred to larger Bench

It is the case of the appellant that in the charge sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 31.65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 15 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if disciplinary authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our discussion above of Jaswant Singh Gill [(2007) 1 SCC 663] and Ram Lal Bhaskar (2011 AIR SCW 6577), this issue needs to be considered authoritatively by a larger Bench. The court, therefore, was of the opinion that present appeal be decided by a Bench of three Judges. **(Ch. Cum Man. Director Mahanadi Coalfields Ltd v. Rabindranath Coubey; AIR 2014 SC 234)**

Consumer Protection Act

S. 2(d) and (o)—Transaction with State or its instrumentalities—Disputes relating to government service/service matters, held, not covered

It is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the forum under the Consumer Protection Act. A government servant does not fall under the definition of a "consumer" as defined under s. 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Consumer Protection Act. The government servant cannot approach any of the forum under the Consumer Protection Act for any of the retiral benefits. **(Jagmittar Sain Bhagat vs. Director, Health Services, Haryana; (2013) 10 SCC 136)**

S. 2(1)(g) – Surveyor's Report – Significance of

It is well settled law that a surveyor's report has significant evidentiary value, unless is proved otherwise which the complainant has failed to do so in the case. This view was taken in the case of D.N. Badoni v. Oriental Insurance Co. Ltd.; (2012)1 C.P.J. 272(NC). The report of the surveyor has got infinite value and commission has no reason to discard the same. (**Mrs. Sunanda Kishor Bhand v. United India Insurance Company Limited; 2014(1) CPR 415 (NC)**

Ss. 2(g) 15, 17 – Deficiency in service - No deficiency can be attributed for dishonouring cheques not issued by authorised person

In this case, Complainant No. 2/Respondent No. 2 had saving bank account with OP which was converted into joint account with Complainant No. 1/ Respondent No. 1 and was operated jointly by both the complainants. That account bearing ID No. 2471 and new no. 30412013450 (30412010003450) was also being operated by Smt. Saroja Goenka as authority holder of the complainant. It was further alleged that complainant No. 1 had also another saving bank account with the OP which was later on converted into joint account with complainant no. 2 Complainant no. 1 during visit to India in the months of January and February 2009 issued 11 cheques out of which, one cheque was cancelled by the complainant himself and 8 cheques were cleared by OP, but two cheques dated 5.2.2009 bearing No. 345677 and 345678 worth Rs. 2,500/- and Rs. 3000/-, respectively were dishonoured by OP for the reason signatures incomplete. Alleging deficiency on the part of OP, complainants filed complaint before district forum. OP resisted complaint and submitted that A/c. No. 2471 was an individual account of Complainant No. 1 and was never converted into joint account of Complainant Non. 2. It was further submitted that Complainant no. 1 was only a nominee in the A/c having no authority to operate the said account, but OP in order to avoid inconvenience cheques issued by Complainant No. 1 pertaining to Complainant No. 2's account which were presented at the counter or received through local clearing were honoured but two cheques of outstation branches were returned as signatures did not tally and there was no deficiency in service and prayed for dismissal of complaint. Learned District Forum after hearing both the parties dismissed complaint. Appeal filed by the Complainants was allowed by learned State Commission against which, this revision petition has been filed.

As account of Complainant No. 2 was an individual account and Smt. Saroja Goenka was also the authorized signatory of Complainant No. 2, Complainant No. 1 had no authority to issue cheques. No doubt, Bank cleared 8

cheques pertaining to account of Complainant No. 2 issued by Complainant No. 1 which were local station cheques, OP was not stopped from dishonouring outstation cheques issued by Complainant No. 1 who had not authority to sign cheques of bank account of complainant No. 2. Merely because some local cheques were cleared to facilitate the complainants, no deficiency can be attributed on the part of OP for dishonouring outstation cheques which were not issued by the authorized person of Complainant No. 2's saving bank account.

In the light of above observation it becomes clear that as Complainant No. 1 had no authority to issue cheques pertaining to Complainant No. 2's saving bank account, OP has not committed any deficiency in dishonouring some cheques issued by Complainant No. 2 and learned District Forum rightly dismissed complaint, but learned State Commission committed error in allowing appeal and impugned order is liable to set aside. **(Syndicate Bank, Bahadurpura Branch v. Kamal Kishore Sharma, Rep. by their G.P.A. Holder Shri Rahul; 2014 (1) CPR 598 (NC)**

Ss. 15, 17, 19 and 21 – Interference of National Commission – Scope of "to"

Under Section 21 (b) of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. **(M/s Lakshya Graments, Though its Proprietor, Sh. Shakti Swaroop v. National Insurance Company Limited; 2014 (1) CPR 630 (NC)**

Ss. 15, 17, 21(b) – Group Insurance Policy – Repudiation of claim on ground of concealment of pre-existing decease from insurer

Referring to the decision in the case of Carter v. Boehm, (1766) 3 Burr. 1905, the Apex Court noted:-

> "Insurance is a contract of speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the assured only; the underwriter trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstances does not exist. The keep back such circumstance is a fraud and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived and the policy is void; because the risqué run is really different from the risqué understood and intended to be run at the time of the agreement…….. The policy would be equally void against the underwriter

if he concealed…… Good faith forbids either party, by concealing what he privately knows, to draw the other into a bargain from his ignorance of the fact, and his believing the contrary."

Bearing in mind the aforenoted principle governing a contract of insurance, we may advert to the facts at hand. As stated above, for returning the finding that the deceased /insured had obtained the insurance policy by suppressing the information sought for by the Insurance Company, the State Commission has tabulated the answers given by the insured against questions No.3,4,9(a) and (b). Briefly put, the information sought for against these questions was whether the insured had been treated for or told that he was suffering from diabetes, etc. and whether he had been treated or told that he had any liver disease. All the questions were answered in the negative. Additionally, the State Commission has also observed that the insured had given a good health declaration, wherein he had stated that he was in sound health; did not have any physical defect/ deformity; was performing his routine activities independently and that he had never suffered or was suffering or was hospitalized or in critical illness or a condition requiring medical treatment for a critical illness, as on date. National Commission in complete agreement with the State Commission that having regard to the fact that admittedly the deceased was suffering from "diabetes mellitus" for which ailment he was on regular medication for over three years, it was not possible to even comprehend that the insured would not know that he was suffering from diabetes as stated by him in answer to question No.3. Undoubtedly, these were "material facts" and being within the knowledge of the insured only, he was obliged to disclose the same correctly in the questionnaire issued to him for the purpose of obtaining the policy in question. Having suppressed the said facts while answering the questionnaire, National Commission of the opinion that the Insurance Company was within its rights to repudiate the claim of the Complainant. In the view of the matter, there was no question of any deficiency of service on their part.

The decision of the State Commission is based on proper appreciation of the evidence on record and correct application of the aforesaid principle of law. The impugned order does not suffer from any illegality or material irregularity warranting our interference. (**Mrs. Shnyni Valsan Pombally v. State Bank of India; 2014(1) CPR 429 (NC)**

Ss. 21(b) – Duty of Appellate Court – Appellate Court while deciding an Appeal is required to deal with all the arguments raised by the appellant

Complainant/respondent booked flat with OP/petitioner and made payment of Rs.2,32,500/- on 22.5.2006. OP assured to handover the possession of the flat

within one and half or two years. Possession of flat has not been handed over within stipulated period. Complainant filed complaint before District Forum with a prayer to refund deposited amount with interest. OP contested complaint and submitted that complainant has not paid even a single installment except the earnest money despite several notices. So, earnest money has been forfeited. It was further submitted that District Forum had no territorial jurisdiction to entertain the complaint and prayed for dismissal of complaint. Learned District Forum after hearing both the parties allowed complaint and directed OP to refund deposited amount with 6% p.a. interest and awarded Rs.5,000/- as costs. Appeal filed by the petitioner was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed.

National Commission has observed that appellate Court while deciding an appeal is required to deal with all the arguments raised by the appellant and as learned State Commission has not dealt with arguments of the appellant, it would be appropriate to remand the matter back to the learned State Commission for disposal by speaking order after dealing with all the contentions and arguments raised by the petitioner. Consequently, revision petition filed by the petitioner is allowed and impugned order dated 23.8.2013 passed by the learned State Commission is set aside and matter is remanded back to the learned State Commission for deciding it by speaking order after giving an opportunity of being heard to the parties. (**M/s. Media Video Ltd., Real Estate Div. v. Mr. K.S. Saini; 2014(1) CPR 541 (NC)**

S. 24A – Time for filing consumer's complaints – Consideration of

Petitioners have admittedly purchased the tractors during the period ranging from 11.1.2000 to 27.2.2001, whereas consumer complaints have been filed in the year 2004. Thus, on the face of it, consumer complaints filed before the District Forum were barred by limitation and no application under Section 24-A of the Consumer Protection Act 1986 (for short, 'Act') was filed before the District Forum. It is well settled principle of law that any relief can be claimed under the Consumer Protection Act, 1986 within two years from the date on which the cause of action accrues.

The provision of S. 24-A is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action. (**Dattu Krishna Kadam v. Same Deutz – Fahr India Pvt. Ltd. (Formerly, Same Greaves Tractors Pvt. Ltd.); 2014(1) CPR 334 (NC)**

Contempt of Court Act

Contempt of Court - Claim of family pension - Department allegedly not complying with the directions passed – What constitutes

To hold anyone liable for contempt- Court has to arrive at a conclusion that the Respondents have wilfully disobeyed the order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the Court is normally made on admitted and undisputed facts.

In the present case not only there has been a shift in the stand of the Petitioner with regard to the basic facts on which commission of contempt has been alleged even the said altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the Respondents have wilfully disobeyed the order of this Court. No case of commission of any contempt of this Court's order is made out. Contempt Petition dismissed. **(Noor Saba Vs. Anoop Mishra and Anr.; 2013(6) AWC 6439(SC)**

Criminal Trial

Ss. 300, 394 – Murder and robbery – Proof of

In this case, from the evidence on record it appears that Deoki Nandan Agarwal was done away with in the night of 7/8.2.2000. The crime was discovered by Vinod Kumar, an employee of the Devyan company, who had found the main gate open. The post mortem report of late D.N. Agarwal shows that 9 ante-mortem injuries were found on his body as given earlier in the judgment.

The argument by the counsel for the accused Pradeep Kumar that Devendra alias Babloo had left the employment of Sri Agarwal, as a driver in the 'Devyan Company' some time back and that he has been falsely implicated in the case because he was a friend of Devendra Kumar alias Babloo, does not repose confidence for the reason that there is no explanation whatsoever by these two accused Devendra alias Babloo and Pradeep Kumar as to how their finger prints were found on the Almirah and on the telephone receiver particularly when appellant Devendra alias Babloo had come out with the case that he was not in the employment of Deoki Nandan Agarwal since a long time and Pradeep Kumar had never ever been in the employment of the firm.

As regards the explanation of the accused Devendra alias Babloo regarding his employment in the firm of Deoki Nandan Agarwal is concerned, suffice it to mention here that the account book of the firm showed that he was employed as a driver even immediately before the said incident and that accused he was the driver of the firm of Deoki Nandan Agarwal, who had taken advance from him. His

signatures appeared on the vouchers wherein it is mentioned that the advance may be deducted from his salary. If he was not a employee of the firm of Deoki Nandan Agarwal, there could not have been the question of deduction from his salary because he was an employee of Deoki Nandan Agarwal.This explanation how the finger prints of accused Devendra alias Babloo could have been found on the Almirah and its handle he after committing the murder of his employer he opened the Almirah as he had access into the firm as well as to the residential part in which Deoki Nandan Agarwal slept, being his driver. It might be that during the incident some telephone calls had come and Pradeep Kumar may have cut the calls by lifting the receiver of the instrument having his finger prints on it.

The finger prints lifted from the door of the Almirah and its handle as well as from the telephone receiver were examined by the Finger Print Expert. The finger prints on the Almirah and its handle matched with the finger prints of accused Devendra alias Babloo whereas finger prints on telephone receiver tallied with the finger prints of accused Pradeep Kumar son of Banarsi Das. After the arrest of the accused persons two iron rods (Sariya), lock and key were got recovered on the pointing out of accused Devendra from the Nali near the shop of barber in Mohalla Bajigran. A part of the jute rope which was used for tying the hands and legs of Deoki Nandan Agarwal, who was later on killed by the accused persons was also recovered from the house of accused Devendra.Accused Devendra alias Babloo, driver of the deceased had not only taken Raj Kamal, the younger son of the deceased to Delhi on 2.2.2000 but had also confessed to the crime, therefore his statement that he was not in employment is incorrect.

It also appears from the record that at the time of arrest of accused Pradeep Kumar a token no. 50 for keeping a cycle in the Bus stand was recovered from him. He had stated that after committing the murder of Deoki Nandan Agarwal they had taken the 'Atlas Cycle' of the company which can be identified by the word of Deoyan Company written on its mud-guard and was recovered on his pointing out at the Bus stand. No explanation whatsoever has come forward, as stated above regarding recovery of these items from the possession of the accused, hence it is clearly established from the attending circumstances and their statements on record that these two accused had in fact done away with Deoki Nandan Agarwal (since deceased). **(Pradeep Kumar and etc. v. State of U.P.; 2014 (1) ALJ 53)**

Evidence—Collected by improper or illegal means—Admissible if relevant and its genuineness is proved

It is a settled legal proposition that evidence collected even by improper or illegal means is admissible if it is relevant and its genuineness stands proved. However, the court may be cautious while scrutinizing such evidence. **(Madhu vs. State of Karnataka; 2014 (84) ACC 329 (SC)**

Grant of sanction—Legal proposition summarised

The legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law.

(C.B.I. vs. Ashok Kumar Aggarwal; 2014 (84) ACC 252 (SC)

Independent witness—No prohibition that a policeman cannot be a witness or cannot be relied upon if his testimony inspires confidence

In Pradeep Narayan Madgaonkar & Ors. v. State of Maharashtra; AIR 1995 SC 1930, this Court dealt with the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court held that though the same must be subject to strict scrutiny, however, the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought.

Thus, a witness is normally considered to be independent unless he springs from sources which are likely to be tainted and this usually means that

the said witness has cause to bear such enmity against the accused so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence. **(Madhu vs. State of Karnataka; 2014 (84) ACC 329 (SC)**

Dowry Prohibition Act

S.2—Dowry—What constitutes—Demand of money made after marriage was therefore to complete transaction of dowry—Demand made even though was for business had connection with marriage and therefore constitutes dowry

Section 2 of the Dowry Prohibition Act, 1961, so far as it is material to this case, states that dowry means any property or valuable security given or agreed to be give neither directly or indirectly by one party to a marriage to the other party to the marriage at or before or at any time after the marriage in connection with the marriage of the said party. Thus, the emphasis is on property or valuable security given 'at or before' or 'at any time after' the marriage in connection with marriage. The amount or things demanded must, therefore, have a nexus with the marriage. In instant case brothers of the deceased, have clearly stated that the accused were unhappy by the quality and quantity of the dowry and the deceased was being taunted and beaten-up for that. The words 'insufficient and inferior quality of dowry' are important. They indicate that the transaction of giving dowry was not complete. Sufficient quantity of dowry was not given and that transaction was sought to be completed by asking for more money after the marriage for the business of the appellant. This demand has a connection with the marriage. As such it constitutes dowry. **(Surinder Singh vs. State of Haryana; 2014 Cr.L.J. 561 (SC)**

Evidence Act

S.3—Circumstantial evidence—Whether conviction can be based solely on circumstantial evidence—Held, "Yes" if circumstances from which conclusion of guilt is to be drawn should be fully established

The Court has dealt with the case of circumstantial evidence time and again. It has consistently been held that a conviction can be based solely on circumstantial evidence. The prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are complete in themselves. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The facts so

established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable or point to any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. The evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable. **(Madhu vs. State of Karnataka; 2014 (84) ACC 329 (SC)**

S. 3—Testimony of hostile witness—Admissibility of—Cannot be discarded in full, part of his evidence which supports the prosecution case can be taken into consideration by the Court

It is settled law that the testimony of the hostile witness need not be discarded in toto and that portion of testimony in the chief-examination which supports the prosecution case can be taken for consideration. **(Veer Singh vs. State of U.P.; 2014 (84) ACC 681 (SC)**

S. 32—Dying declaration – Admissibility of

Doctor's endorsement about fitness of deceased, absence not material when doctor who examined deceased himself states on oath that deceased was fit to make statement. Moreso as in present case deceased died 5 days after getting burned and had received only 34% burns. **(Anjanappa vs. State of Karnataka; 2014 Cr.L.J. 368 (SC)**

S. 35 – Marriage certificate – Issued by advocate exercising power of marriage officer – Advocate never authorized by any provision to register any marriage or to act as marriage officer – Marriage certificate issued by him would be void document – Cannot be relied upon as proof of marriage of parties – Consequently parties not entitled to any protection on basis of said void document

No advocate has been delegated or assigned any powers of the Marriage Officer, therefore, the Advocate Kamta Prasad is not a person authorized to act as a Marriage Officer and to register any marriage. The marriage certificate as such is a nullity and a void document. In view of the facts and circumstances, as there is no reliable proof of marriage of the petitioners, their marriage cannot be recognized in law specially in exercise of writ jurisdiction. Accordingly, the protection which has been claimed in this writ petition cannot be extended to any of them. No case for exercise of discretion in favour of the petition has been made out. **(Satyam Kumar & Another v. State of U.P. & Others; 2014 (1) ALJ 204)**

S. 113-B—Words "Shall Presume"—Leave no option to the court but to presume

The evidentiary value of the identification is stated in section 113-B of the Evidence Act, 1872. The key words in this section are "shall presume" leaving no option with Court but to presume an accused brought before it of causing a dowry death guilty of the offence. However, the redeeming factor of this provision is that the presumption is rebuttable. Section 113-B of the Act enables an accused to prove his innocence and places a reverse onus of proof on him or her.

The presumption under section 113-B of the Act is mandatory may be contrasted with section 113-A of the Act which was introduced contemporaneously. Section 113-A of the Act, dealing with abetment to suicide, uses the expression "may presume". This being the position, a two-stage process is required to be followed in respect of an offence punishable under section 304-B of the I.P.C.: it is necessary to first ascertain whether the ingredients of the section have been made out against the accused; if the ingredients are made out, then the accused is deemed to have caused the death of the woman but is entitled to rebut the statutory presumption of having cause a dowry death. **(Suresh Kumar vs. State of Haryana; 2014 (84) ACC 360 (SC)**

S. 112 – DNA test – Significance of - Result of a genuine DNA test is scientifically accurate

As stated earlier, the DNA test is an accurate test and on that basis it is clear that the appellant is not the biological father of the girl-child. However, at the same time, the condition precedent for invocation of Section 112 of the Evidence Act has been established and no finding with regard to the plea of the husband that he had no access to his wife at the time when the child could have been begotten has been born during the continuance of a valid marriage. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that respondent No. 2 if the daughter of the appellant. At the same time, the DNA test reports, based on scientific analysis, in no uncertain terms suggest that the appellant is not the biological father. In such circumstance, which would give way to the other is a complex question posed before court.

Court may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in court's

opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue.

In court's opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the work community to be correct, the latter must prevail over the former. **(Nandla Wasudeo Badwaik v. Lata Nandlal Badwaik & anr.; 2014 (1) Supreme 27)**

S. 134—Evidence of sole eye-witness of the occurrence—Reliability of

Legal system has laid emphasis on value, weight and quality of evidence rather than on quantity multiplicity or plurality of witnesses. It is not the number of witnesses but -quality of their evidence which is important as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. Evidence must be weighed and not counted. It is quality and not quantity which determines the adequacy of evidence as has been provided under Section 134 of the Evidence Act. As a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. **(Veer Singh vs. State of U.P.; 2014 (84) ACC 681 (SC)**

Hindu Marriage Act

Ss. 1 & 2 - Applicability

Appeal was filed by Husband against order passed by Bombay High Court questioning maintainability of Petition for a decree of judicial separation. Whether High Court was right in setting aside order of family Court and holding Petition filed by wife to be maintainable and whether provisions of Hindu Marriage Act were applicable to parties.

It has been held that the Act was applicable to Hindus domiciled in India even if they resided outside India - Section 2(1) of Act, contemplated application of Act to Hindu by religion in any of its forms or Hindu within extended meaning i.e. Buddhist, Jaina or Sikh and, applied to all such persons domiciled in country who were not Muslims, Christians, Parsi or Jew, unless it was proved that such persons were not governed by Act under any custom or usage. Therefore, Section 2 of Act, would be applicable to Hindus when Act extended to that area in terms of Section 1 of Act.

Therefore, Act would apply to Hindu outside territory of India only if

such a Hindu was domiciled in territory of India except under certain contingency, raising of alternative plea was permissible but facts of present case did not permit husband to take that course. In order to succeed, Husband had to establish that he was a domicile of Australia and, he could not be allowed to make out a third case that in case it was not proved that he was a domicile of Australia, his earlier domicile of choice, that was Sweden, was revived. Domicile of origin was not necessarily place of birth. In domicile of choice one was abandoned and another domicile was acquired but for that, acquisition of another domicile was not sufficient.

Residence, for a long period, was an evidence of such an intention so also change of nationality. There was no material to substantiate Appellant Husband's claim of being domicile of Australia. Both husband and wife were domicile of India and, hence, would be covered by provisions of Act - Appeal dismissed. **(Sondur Gopal Vs. Sondur Rajini; 2013(6) AWC 5627(SC)**

S. 5 - Special Marriage Act, S. 4 - Requirements of marriage - Formality, publicity, exclusivity

Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the "Consortium Omnis Vitae" Which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship. **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

S. 13(1)(iii) – Grounds of divorce

The issue of consideration was whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of mere existence of one spouse's mental illness which includes schizophrenia under Section 13(1) (iii) of the Hindu Marriage Act, 1955.

The High Court has rightly examined the evidence on record and correctly found fault with the findings recorded by the trial court with regard to the aliment attributed to the respondent for seeking dissolution of marriage

under the ground of "unsound mind" which is a non-existent fact. It was also justified in holding that a husband cannot simply abandon his wife because she is suffering from mental sickness. Section 13(1) (iii) of HMA, 1955 does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realized Marriage is highly revered in India and we are a Nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. But it can be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born out of their union. The welfare of the child must be the prime consideration for both the parties. (**Kollam Chandra Sekher vs. Kollam Padma Latha; (2014) 1 SCC 225)**

Hindu Minority and Guardianship Act

S. 8 – Power of natural guardian – cancellation of sale deed – Suit for – Holder of property of minor – Mother, natural guardian executed sale deed without obtaining permission from District Judge, improper – Sale deed liable to be cancelled

In this case simple dispute is that the plaintiff was the recorded tenure holder of disputed agricultural plots. Since he was minor, his mother was natural guardian who sold it to the defendants without obtaining any permission from the learned District Judge as required under Section 8 of Hindu Minority and Guardianship Act, 1956. It is admitted case between the parties that while executing the sale deed plaintiff's mother did not obtain any permission from the District Judge. The plaintiff after attaining majority, filed suit for cancellation which has already been decreed by the learned first Appellate Court.

In view of the provisions textual Hindu law which is the general law is no more in force and Hindu Minority & Guardianship Act, 1956 is a special law which has got an overriding effect over any other law. In this aspect of the matter, a study of U.P. Zamindari Abolition and Land Reforms Act shows that

there is no such provision in the entire Act which deals with the powers of natural guardian. Since the Act is silent on the point of rights of minor and powers of natural guardian is special law i.e. Hindu Minority & Guardianship Act, 1956 and Section 4 of Guardian and Wards Act shall prevail and prior permission must have been obtained of the learned District Judge under Section 8 of the Act. In view of the law as discussed in this case, the second appeal is dismissed. **(Badri Vishal and others v. Raj Narain; 2014 (2) ALJ 333)**

Indian Penal Code

Ss. 120-B and 302/149 - Death sentence for comparatively young accused and having no criminal antecedents - When warranted

The mitigating circumstances in respect of comparatively young age of the 'appellants holds no ground, their army background and their custodial behaviour fail to outweigh the aggravating factors in the present case. The argument that the appellants are not "antisocial elements" fails into inception in the light of the effect of the occurrence reflected through the abstinence of the villagers from deposing against them at the trial.

The instant case falls into such category of the rarest rare cases where culpability has assumed the proportion of extreme depravity and the appellant-accused are perfect example of a bloodthirsty, scheming and hardened criminals who slew seven innocent lives to quench their thirst for revenge and such revenge evolving out of a fellow citizen's refusal to abstain from resorting to machinery of law to protect his rights. The entire incident is extremely revolting and shocks the collective conscience of the community. The acts of murder committed by the appellants are so gruesome, merciless and brutal that the aggravating circumstances far outweigh the mitigating circumstances. Herein, A-I and A-2 have committed a cold-blooded murder in a preordained fashion without any provocation whatsoever. The victims were five innocent children and wife of the informant who were sleeping unaware when the appellants came and locked them inside their house while it was set ablaze. Further, wrath of A- I and A-2 is reflected in their act of first gagging the informant, thereafter attempting to bum him alive and later, when he tried to escape, firing at him thereby leaving no stone un turned in translating their threats into reality. As a result of the aforesaid incident, having witnessed the threats of burning given by A-I to the informant tuned into reality, none but the family of the deceased informant came forth to depose against the appellant-accused persons during the trial. The crime, enormous in proportion having wiped off the whole family, is committed so brutally that it pricks and shocks not only the judicial conscience but even the collective conscience of the society. It demands just punishment from the Court and the Court is bound to respond within legal parameters. The demand for justice and the award of punishment have to be in consonance with the legislative command and the discretion vested in the courts. **(Deepak Rai v. State of Bihar; (2014) 1 SCC (Cri.) 52)**

S. 300—Murder

Accused alleged to have burnt his wife to death on her refusal to

transfer property. Parents of deceased however turning hostile and putting out theory of accident. No such state of accidental death made by accused in statement u/s. 313. Insincerity of parents stands exposed. Dying declaration inculpating accused made by deceased proved by consistent evidence of doctor and police officer recording it and even by history sheet recorded by doctor. Refusal to transfer property to accused was motive for crime. Conduct of accused of absconding and his failure to explain cause of death supporting prosecution case. Accused liable to be convicted. **(Anjanappa vs. State of Karnataka; 2014 Cr.L.J. 368 (SC)**

S. 300—Murder—Discrepancies in evidence—Inquest report and post-mortem report

Failure to state that body of deceased smelt of kerosene, discrepancy does not shake prosecution case when fact that accused poured kerosene and set deceased ablaze is proved by other evidence. **(Anjanappa vs. State of Karnataka; 2014 CrLJ 368 (SC)**

Ss. 300, 325—Murder or voluntarily causing hurt

Accused persons allegedly assaulted deceased and gave innumerable blows to him. Fight between deceased and accused persons ensued on very trifle matter. Intention of killing any particular person, absent. Deceased though had received eleven injuries, death likely to have been caused as result of solitary wound. Evidence unclear as to whose blow could have resulted into that injury. Act on part of accused persons could be voluntary act of causing grievous injury to deceased. Conviction for murder altered to conviction for offence of causing voluntary hurt. **(Mohan vs. State of U.P.; 2014 Cr.L.J. 69 (All)**

Ss. 300, 325, 32—Murder—Proof

Accused alleged to have assaulted deceased with sword after co-accused hit him with stone. Presence of two eye-witnesses on spot at time of occurrence in a place like a bus stand is not doubtful. Medical evidence supports ocular evidence. Role played by co-accused, father of accused was restricted to throwing a stone towards deceased. No evidence showing that there was any pre-concert between accused and his father to kill deceased. Motive based in illicit relationship between accused and wife of deceased cannot be attributed to co-accused. Co-accused guilty of causing grievous hurt to deceased punishable u/s. 325. His conviction altered from S. 302 r/w. S. 34 to S. 325. Conviction of accused u/s. 302 is proper. **(Manoj vs. State of Karnataka; 2014 Cr.L.J. 60 (SC)**

S. 302, 301 - Murder - Death Sentence - Criminal history of the convict – Consideration of

Mere pendency of criminal cases, as such, held, is not an aggravating circumstance to be take note of while awarding death sentence, since the accused has not been found guilty and convicted in those cases- Even if Crime Test have been fully satisfied, to award the death sentence, prosecution has to satisfy the R-R test- Maybe, in a given case, the pendency of large number of criminal cases against the accused person might be a factor which could be taken note of in awarding a sentence but in any case, is not a relevant factor for awarding capital punishment. Thus, the same would be relevant in imposing a non-remittable minimum term of RI, as in present case.

Appellant fired a shot with country made pistol at right temporal area of one year old child which killed the child- Appellant involved in twenty-four criminal cases, of which three were for murder and two for attempting to commit murder. In such circumstances, if appellant is given a lesser punishment and let free, he would be a menace to the society- Since presence of accused could be a continuing threat to society, the same calls for a longer period of incarceration- This is a fit case where 20 yrs of rigorous imprisonment without remission, to appellant, in addition to the period which he has already undergone, would be an adequate sentence- Criminal Procedure Code, 1973, Ss 432 and 433-A.

Maybe, in a given case, the pendency of larger number of criminal cases against the accused person might be a factor which could be taken note of in awarding a sentence but, in any case, is not a relevant factor for awarding capital punishment- Thus, the same would be relevant in imposing a non-remittable minimum term of RI, as in present case. (**Birju vs. State of Madhya Pradesh; (2014) 3 SCC 421)**

S. 302/120-B - Criminal conspiracy of murder

The essential ingredients of Criminal Conspiracy are:

(i) an agreement between two or more persons;
(ii) agreement must relate to doing or causing to be done either
(a) an illegal act; or
(b) an act which is not illegal in itself but is done by illegal means.

What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of

the accused, is not sufficient to constitute an offence. The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them between the parties. Agreement is essential.

In above case Hon'ble Supreme Court observed that prosecution has successfully established involvement of appellants in crime and manner in which crime has been committed, established conspiracy- Appellants did not furnish any satisfactory explanation of circumstances under which they were present at place of occurrence- Manner in which they fled away after commission of crime clearly indicates their involvement in offence to conduct a conspiracy. (**Gulam Sarbar vs. State of Bihar (Now Jharkhad); 2014(3) SCC 401)**

Ss. 302 and 376 – Rape and murder of minor – Sentence - Death sentence - Principles for imposition of death sentence, restated

Any murder would cause a shock to the society but all murders may not cause revulsion in society. Certain murders shock the collective conscience of the Court and community. Heinous rape of minors followed by murder is one such instance of a crime which shocks and repulses the collective conscience of the community and the Court. Such crimes arouse extreme revulsion in society. While culling out the rarest of rare cases on the basis of aggravating and mitigating factors, Court is of the view that such crimes, which shock the collective conscience of the society by creating extreme revulsion in the minds of the people, are to be treated as the rarest of rare category. **(State of Rajasthan v. Jamil Khan; (2014) 1 SCC (Cri.) 411)**

Ss. 302/34, 25 - Arms Act S. 25 – Conviction and sentence - Legality of - considering the fact that his age at time of occurrence would have been below 15 years – He is eligible for benefit of provisions of Juvenile Justice Act - Sentence set aside

So far as the appellant Virendra is concerned, a direct role of firing on

the deceased Munna Singh on the chest with his country made pistol has been assigned to this appellant. Also Digvijay Singh had stated in the first information report itself that Satya Brat alias Poori Lal, (who has died during trial) had fired with his SBBL gun on the back of the head of the deceased Munna Singh. The said description of the injuries is corroborated by the medical evidence. Court also finds that the FIR has been lodged at 12.30 p.m. on 7.3.79 within 50 minutes of the incident which took place at 11.40 a.m., and therefore, it is extremely prompt and can be relied upon.

The appellant Virendra was also arrested on 7.3.1979 itself at 3.00 P.M near the tube well of Puttu Singh along with his father Anant Swarup and on the pointing out of the appellant Virendra, a country made pistol was recovered from the adjoining wheat field, with which he claimed to have fired upon the deceased. Thus there was evidence against this appellant Virendra also under section 27 of the Evidence Act. This appellant Virendra was also rightly convicted under section 25 of Arms Act after sanction for his prosecution was obtained from the District Magistrate concerned.

Court thought that there was sufficient evidence which was corroborated by the circumstances and medical evidence for showing the participation of the appellant Virendra in this crime and for recording his conviction under section 25 of the Arms Act as well as under section 302 read with section 34 I.P.C.

In this case, Court need to point out that court find some difficulties in sending back the appellant Virendra to jail, who has been on bail since 14.2.1983 at this stage because court note that age of this appellant Virendra on 31.1.1983 was 19 years, which has been confirmed by the trial judge in his observations on the disclosure of the appellant regarding his age in his statement under section 313 Cr.P.C. The appellant Virendra who would now be about 50 years old, would have been below 15 years in age on 7.3.1979, the date of incident, and would thus be eligible for the benefit of the provisions of the Juvenile Justice Act.

In this view of the matter, whilst upholding the conviction of the appellant Virendra under section 302/34 I.P.C and 25 of Arms Act, court set aside the sentence awarded to the appellant Virendra. As held above, the conviction and sentence of the appellant Anant Swarup under section 302/34 IPC awarded by the trial Judge is set aside and he is acquitted of the offence for which he has been convicted. Accordingly the appellants who are on bail need not surrender to their bail. Their bail bonds and sureties are discharged. **(Girja Shankar @ Ram Shankar and others v. State of U.P.; 2014 (84) ACC 936)**

S. 304-A – Criminal negligence – For brining an action under section 304-A the negligence should be 'gross negligence'

There is no gainsaying that negligence in order to provide a cause of action to the affected party to sue for damages is different from negligence which the prosecution would be required to prove in order to establish a charge of 'involuntary manslaughter' in England, analogous to what is punishable under Section 304A, IPC in India. In the latter case it is imperative for the prosecution to establish that the negligence with which the accused is charged is 'gross' in nature no matter Section 304A, IPC does not use that expression. What is 'gross' would depend upon the fact situation in each case and cannot, therefore, be defined with certitude. Decided cases alone can illustrate what has been considered to be gross negligence in a given situation.

The court propose to revert to the subject at an appropriate stage and refer to some of the decided cases in which the Court had an occasion to examine whether the negligence alleged against the accused was gross, so as to constitute an offence under Section 304-A of the IPC. **(Sushil Ansal v. State Through CBI; 2014 (2) Supreme 134)**

S. 304-B—Evidence Act, S. 113-B—Presumption—Court shall presume that person causing cruelty has committed dowry death

For the presumptions contemplated under these Sections to spring into action, it is necessary to show that the cruelty or harassment was caused soon before the death. The interpretation of the words 'soon before' is, therefore, important. The question is how 'soon before'? This would obviously depend on facts and circumstances of each case. The cruelty or harassment differs from case to case. It relates to the mindset of people which varies from person to person. Cruelty can be mental or it can be physical. Mental cruelty is also of different shades. It can be verbal or emotional like insulting or ridiculing or humiliating a woman. It can be giving threats of injury to her or her near and dear ones. It can be depriving her of economic resources or essential amenities of life. It can be putting restraints on her movements. It can be not allowing her to talk to the outside world. The list is illustrative and not exhaustive. Physical cruelty could be actual beating or causing pain and harm to the person of a woman. Every such instance of cruelty and related harassment has a different impact on the mind of a woman. Some instances may be so grave as to have a lasting impact on a woman. Some instances which degrade her dignity may remain etched in her memory for a long time. Therefore, 'soon before' is a relative term. In matters of emotions we cannot have fixed formulae. The time-lag may differ from case to case. This must be kept in mind while examining

each case of dowry death. **(Surinder Singh vs. State of Haryana; 2014 (84) ACC 371 (SC)**

S. 304B—Dowry death

Deceased dying within 7 years of marriage, was harassed and beaten for dowry 15-20 days before death. Death claimed to be accidental because of electrocution. Accused neither examining doctor who certified death nor examining his brother who gave out theory of accidental death by electrocution, accused even in his statement u/s. 311 CrPC not stating about death by electrocution. Accused cannot be said to have rebut presumption u/s. 113B Evidence Act. Liable to be convicted. **(Suresh Kumar vs. State of Haryana; 2014 Cr.L.J. 551 (SC)**

S. 304B—Dowry death—S. 304-B does not categorize death—Covers every type of death that occurs otherwise than under normal circumstances

S. 304-B of the IPC does not categorize death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring "otherwise than under normal circumstances" can, in a given case, be homicidal or suicidal or accidental.

Therefore, if all the other ingredients of s. 304-B of the IPC are fulfilled, any death (whether homicidal or suicidal or accidental) and whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a "dowry death" and the woman's husband or his relative "shall be deemed to have caused her death". The Section clearly specifies what constitutes the offence of a dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death. **(Suresh Kumar vs. State of Haryana; 2014 Cr.L.J. 551 (SC)**

S. 304B—S. 113B Evidence Act—Dowry death—Burden of proof—When shifts on accused

Initial burden of proving the death of a woman within seven years of her marriage in circumstances that are not normal is on the prosecution; such death should be in connection with or for a demand of dowry which is accompanied by such cruelty or harassment that eventually leads to the woman's death in circumstances that are not normal. After the initial burden of a deemed dowry death is discharged by the prosecution, a reverse onus is put on the accused to prove his innocence by showing, inter alia, that the death was accidental.

(Suresh Kumar vs. State of Haryana; 2014 Cr.L.J. 551 (SC)

S.304B—Dowry death—"Soon before"—Is relative term depends on facts of case

Terms requires that proximity between cruelty based on dowry demand and death should be established. **(Surinder Singh vs. State of Haryana; 2014 Cr.L.J. 561 (SC)**

S. 304B—Dowry death—Non-examination of independent witnesses—Cannot be ground to doubt charge

Offence of harassment and cruelty to woman is committed within four walls of matrimonial home. Getting independent witnesses to depose is difficult. **(Surinder Singh vs. State of Haryana; 2014 Cr.L.J. 561 (SC)**

S. 304-B - Expression "soon before her death" under – How to be construed - Held, said term has been consistently held by Supreme Court not to mean immediately before death

There are specific allegations in respect of the demand by the appellant, apart from the various statements of the witnesses, that the appellant harassed the deceased even when she went to cohabit for the first time. The appellant entrusted her the work of a maidservant and he used to beat her for dowry. Moreover, the appellant informed the family of the deceased, his intention to marry another lady for higher dowry. In view of the beating and humiliation meted out by the appellant, it is clear that the deceased was harassed and treated with cruelty in connection with demand for dowry. The defence contended that the so-called harassment for dowry was not shown to have been made immediately before the death of the deceased as required by law for conviction, is rejected, since the term "soon before her death" (as appearing in Section 304-B IPC and Section Il3-B, Evidence Act) has been consistently held by the Supreme Court not to mean immediately before the death. The post- -mortem report and the post-mortem observations of PW 10 (doctor), confirmed that the deceased had died due to consuming poisonous Endosulfan. Herein, there is sufficient and reliable evidence to hold that the deceased was subjected to cruelty and harassment by her husband (appellant) in connection with the demand for dowry soon before her death. No exculpatory evidence was led in defence so as to rebut the presumption enacted by Section 113-B, Evidence Act. Hence, the conviction of the appellant under Section 304-B is confirmed. **(Tummala Venkateswar Rao v. State of Andhra Pradesh; (2014) 2 SCC 240)**

Ss. 326/64 – Sentence - Commutation/ Modification/Reduction of sentence - Adequate and special reasons for - Warrantedness of - Sympathy, undue and misplaced - Not justified

In operating the sentencing system, the law should adopt the corrective machinery or deterrence based on factual matrix. The punishment should meet the gravity of the offence committed by the accused. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. Courts should not show undue sympathy with the accused persons. Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. **(State of M.P. v. Najab Khan and others; (2014) 1SCC (Cri.) 153)**

Ss. 376, 90—Rape—Consent—Accused committed sexual intercourse with prosecutrix by giving false assurance that he would marry her—After she got pregnant, he refused to do so—Consent of prosecutrix obtained under a misconception of fact—Accused guilty of offence of rape

If consent is given by the prosecutrix under a misconception of fact, it is vitiated. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 of the IPC. Thus, the alleged consent said to have obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. He made a false promise to her He is thus guilty of rape as defined under Section 375 of the IPC and is liable to be punished for the offence under Section 376 of the IPC. **(State of U.P. vs. Naushad; 2014 Cr.L.J. 540 (SC)**

S. 376(1) proviso – Rape - Sentence – Reduction of, to below statutorily prescribed minimum period of 7 yrs - Court must assign adequate and special reasons indicating extenuating circumstances - "Adequate and special reasons" – What are

Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India. Rape cases have to be dealt with keeping these observations in mind.

Section 376(1) IPC provides for punishment for rape. Offence of rape is punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years. The convict shall also be liable to fine. Proviso to Section 376(1) states that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Thus, a minimum of seven years sentence is provided under Section 376(1) of the IPC. Sentence for a term of less than seven years can be imposed by a court only after assigning adequate and special reasons for such reduction. Thus, ordinarily sentence for an offence of rape shall not be less than seven years. When the legislature provides for a minimum sentence and makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the judgment, the courts must strictly abide by this legislative command. Section 376(1) read with the proviso thereto reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence below the minimum i.e. less than seven years cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence. The High Court appears to have not noticed this requirement. **(State of Haryana v. Janak Sing and others; (2014) 1 SCC (Cri.) 212)**

S. 377 - Constitutional validity of – Held, S. 377 does not suffer the vice of unconstitutionality

Every legislation enacted by Parliament or State Legislature carries with it a presumption of constitutionality. This is founded on the premise that the legislature, being a representative body of the people and accountable to them is aware of their needs and acts in their best interest within the confines of the Constitution. There is nothing to suggest that this principle would not apply to

pre-Constitutional laws which have been adopted by the Parliament and used with or without amendment. If no amendment is made to a particular law it may represent a decision that the Legislature has taken to leave the law as it is and this decision is no different from a decision to amend and change the law or enact a new law. In light of this, both pre and post Constitutional laws are manifestations of the will of the people of India through the Parliament and are presumed to be constitutional.

From the imported judgments, the following principles can be culled out:

(i) The High Court and Supreme Court of India are empowered to declare as void any law, whether enacted prior to the enactment of the Constitution or after. Such power can be exercised to the extent of inconsistency with the Constitution/contravention of Part III.

(ii) There is a presumption of constitutionality in favour of all laws, including pre-Constitutional laws as the Parliament, in its capacity as the representative of the people, is deemed to act for the benefit of the people in light of their needs and the constraints of the Constitution.

(iii) The doctrine of severability seeks to ensure that only that portion of the law which is unconstitutional is so declared and the remainder is saved. This doctrine should be applied keeping in mind the scheme and purpose of the law and the intention of the Legislature and should be avoided where the two portions are inextricably mixed with one another.

(iv) The court can resort to reading down a law in order to save it from being rendered unconstitutional. But while doing so, it cannot change the essence of the law and create a new law which in its opinion is more desirable.

It is, therefore, apposite to say that unless a clear constitutional violation is proved, this Court is not empowered to strike down a law merely by virtue of its falling into disuse or the perception of the society having changed as regards the legitimacy of its purpose and its need.

The IPC along with Section 377 as it exists today was passed by the Legislative Council and the Governor General assented to it on 6.10.1860. The understating of acts which fall within the ambit of Section 377 has changed from non-procreative (Khanu v. Emperor) to imitative of sexual intercourse (Lohana Vasantlal v. State AIR 1968 Guj 352) to sexual perversity (Fazal Rab v. State of Bihar AIR 1963, Mihir v. Orissa 1991 Cri LJ 488).

While reading down Section 377 IPC, the Division Bench of the High Court overlooked that a miniscule fraction of the country's population

constitute lesbians, gays, bisexuals or transgender and in last more than 150 years less than 200 persons have been prosecuted (as per the reported orders) for committing offence under Section 377 IPC and this cannot be made sound basis for declaring that section ultra vires the provisions of Articles 14, 15 and 21 of the Constitution.

Respondent No.1 attacked Section 377 IPC on the ground that the same has been used to perpetrate harassment, blackmail and torture on certain persons, especially those belonging to the LGBT community. In our opinion, this treatment is neither mandated by the section nor condoned by it and the mere fact that the section is misused by police authorities and others is not a reflection of the vires of the section. It might be a relevant factor for the Legislature to consider while judging the desirability of amending Section 377 IPC. The law in this regard has been discussed and clarified succinctly in Sushil Kumar Sharma v. Union of India and Ors. (2005) 6 SCC 281 as follows:

> "11. It is well settled that mere possibility of abuse of a provision of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administration and application of a particular law would be done "not with an evil eye and unequal hand"

In its anxiety to protect the so-called rights of LGBT persons and to declare that Section 377 IPC violates the right to privacy, autonomy and dignity, the High Court has extensively relied upon the judgments of other jurisdictions. Though these judgments shed considerable light on various aspects of this right and are informative in relation to the plight of sexual minorities, we feel that they cannot be applied blindfolded for deciding the constitutionality of the law enacted by the Indian legislature.

In view of the above discussion, court hold that Section 377 IPC does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High court is legally unsustainable. **(Suresh Kumar Koushal and another v. Naz Foundation and others; 2014 (84) ACC 774)**

S. 498A - Intimacy of husband with other woman is not cruelty - Hindu Marriage Act S. 13

Mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A, IPC. **(Pinakin Mahipatray Rawal v. State of Gujarat; AIR 2014 SC 331)**

Indian Stamp Act

Article 23 of Schedule 1-A - Inadmissibility of document not duly stamped

During the course of the trial the agreement to sell was sought to be proved and admitted in evidence by the plaintiffs. But its admissibility was questioned by the defendants on the ground that the agreement to sell contains a recital that procession has been handed over to the purchaser and, therefore, it is a deemed conveyance in terms of the Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as submitted by Section 6 of Act 22 of Schedule 1-A of the Stamp Act as submitted by Section 6 of Act 22 of 1990, in the Stamp Act, 1899, as substituted by M.P. Act 22 of 1990, is required to be affixed. It is pointed out that the agreement to sell in question is executed on a stamp paper of Rs. 50 only. The submission made by the defendants found favour with the trial court and it held the agreement to sell to be inadmissible in evidence as it has not been sufficiently stamped. It further observed that if the plaintiffs want to produce the said document in evidence than they can make proper application as envisaged under Section 35 of the Stamp Act.

Thus the question which fell for consideration by the Supreme Court in this appeal was: where the admissibility of a document produced by the party would depend upon the recitals in the document or on the pleading raised by the parties in the suit or the factual situation, and whether the document in question was a deemed conveyance in terms of the Explanation appended to Article 23 of Schedule 1-A of the Stamp Act as substituted by Section 6 of Act 22 of 1990 in the State of M.P. and is duly stamped.

Hon'ble Court held that-

At the time of considering the question of admissibility of a document, it is the recital(s) therein which shall govern the issue. It does not mean that the recital(s) in the document shall be conclusive but for the purpose of admissibility of a document it is the terms and conditions incorporated therein which shall hold the field. In this case, the agreement to sell clearly acknowledges payment of a part of consideration money and further, the giving of actual physical possession to the purchaser by the seller.

If in a document certain recitals are made then the court would decide the admissibility of the document on the strength of such recitals and not otherwise. The jurisdiction of the court flows from Ss. 33, 35 and 38 of the Stamp Act and the court has to decide the question of admissibility. Whether the possession in fact was given or not in terms of the agreement to sell is a question of fact which requires adjudication, but shall not govern the question of admissibility of the agreement to sell in question: it is the recitals

contained in the document that are decisive of admissibility. (**Omprakahs vs. Laxminarayan and others; (2014) 1 SCC 618)**

Article 35 of Schedule 1-B – Execution of lease deed – Stamp duty – Deficiency – Determination of

Petitioner participated in the auction conducted by the Nagar Nigam, Aligarh for leasing out shops. In respect of shop No. 27 petitioner was declared to be a successful highest bidder on a premium of Rs.11,10,000/-. Accordingly, the said shop was leased out to the petitioner for a period of 30 years on a monthly rent of Rs.727/- per month. A lease deed was executed on 5.7.2007. Petitioner on the said lease deed paid stamp duty according to the lease rent only.

The Additional Collector (Administration) vide order dated 10.10.2012 determined the deficiency by taking into consideration the premium of Rs.11, 10,000/- also. The order has been upheld by the Additional Commissioner (Judicial), vide order dated 27.9.2013 passed in appeal arising there-from.

Both the above orders dated 27.9.2013 and 10.10.2012 have been impugned by the petitioner in this writ petition.

Article 35 of Schedule 1-B of the Act provides for three categories of the leases. In category (a) are leases where rent is fixed but there is no premium. In category (b) are the leases which are granted on premium but without reserving any rent whereas in category (c) are the leases which are granted for a premium in addition to rent reserved.

A plain reading of the lease deed in question reveals that it falls under category (c) of Article 35 to Schedule 1-B of the Act. The said lease deed has been execute on a premium of Rs.11, 10,000/-/ with the reserved rent of RS.727/- per month.

Accordingly, the lease deed is chargeable to stamp duty under Article 35 (c) (i) of Schedule 1-B of the Act for a consideration equal to the amount of the premium in addition to he duty which would have been payable on such lease if no premium had been paid.

In view of the aforesaid facts and circumstances, the authorities below have not committed any error of law in determining the deficiency in stamp duty by taking into account the premium which has been paid by the 'petitioner for obtaining the lease of the shop in question. **(Sanjay Pratap**

Singh v. State of U.P.; 2014 (1) ARC 671)

Interpretation of Statutes

Legal fiction created by the legislature—Court to ascertain the purpose for creating the fiction and assume existence of such facts

From a plain reading of the aforesaid provision it is evident that by the aforesaid section the legislature has created a fiction that every Member shall be deemed to be a public servant within the meaning of s. 21 of the Indian Penal Code. It is well settled that the legislature is competent to create a legal fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist. When the legislature creates a legal fiction, the court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction. In our opinion, the legislature, while enacting s. 87 has, thus, created a legal fiction for the purpose of assuming that the Members, otherwise, may not be public servants within the meaning of Section 21 of the Indian Penal Code but shall be assumed to be so in view of the legal fiction so created. **(Manish Trivedi vs. State of Rajasthan; 2014 (84) ACC 341 (SC)**

Meaning and scope of – Apex Court in Afcons case (2010 (8) SCC 24) held departure from literal rule of plain and straight reading should only be made in exceptional case

The Supreme Court in Afcons Infrastructure Limited and another vs. Cherian Varkey Construction Company Private Limited and others, 2010(8) SCC 24, however, held that even where the words in the statutes are clear and unambiguous, the departure from the literal rule can be made under certain circumstances, especially where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words would lead to confusion, absurdity, repugnancy with other provisions. In such circumstances, the Court, instead of adopting the plain and grammatical construction may use the interpretative tools to set right the situation by adding or omitting or substituting the words in the statutes or explaining the existing words in the statutes in a harmonious manner so that a meaningful approach and procedure could be adopted from the said statute. While doing so, the Court would prefer to presume that a clerical error or a typographical error was conducted by the draftsman rather than concluding that the legislature had introduced an absurd or irrational provision. The Supreme Court in Afcons case (supra) held that such departure from the literal rule of

plain and straight reading should only be made in exceptional cases.

The Supreme Court, while making the aforesaid observation considered Maxwel interpretation of Statutes and for facility, the same is extracted hereunder:

> "21.1. Maxwell on Interpretation of Statutes (12th Edn., page 228), under the caption "modification of the language to meet the intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:
>
> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the round that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced o a nullity by the draftman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

The Court in Tirath Singh v. Bachittar Singh [AIR 1955 SC 830] approved and adopted the said approach.

21.2. In Shamrao V. Parulekar v. District Magistrate, Thana, [AIR 1952 SC 324), this Court reiterated the principle from Maxwell (AIR p.327, para 12):

> "12 ..... if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of
> the words if by doing so absurdity and inconsistency can be avoided."

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the Statute, in his treatise Principles

of Statutory Interpretation (12th Edn. 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in Stock v. Frank Jones (Tipton) Ltd., [1978 (1) All ER 948(HL) : (WLR p. 237 F-G)

"a court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly." (**Afzal v. Cantonment Board, Meerut; 2014 (1) ARC 591)**

Juvenile Justice (Care & Protection of Children) Act

S. 7A— Outraging modesty of woman—Plea of juvenility

Incident occurred more than 18 years ago and appellant had been awarded only six months imprisonment for offence punishable u/s. 354. Consideration of plea of juvenility would not serve any purpose of such a belated stage. **(Ajahar Ali vs. State of W.B.; 2014 Cr.L.J. 18 (SC)**

Karnataka Lokayukta Act

S. 3 (2) (b) - Chief Minister advising Governor a name for appointment to post of Upa Lokayukta without meaningful consultation with Chief Justice of High Court - Effect of - Such appointment violative of section 3(2) (b)

'Consultation' for the purposes of Section 3(2)(b) of the Act does not and cannot postulate concurrence or consent. This is quite obvious given the large number of constitutional authorities involved in the consultation process. There is always a possibility of an absence of agreement on any one single person being recommended for appointment as an Up-lokayukta, as has actually happened in the present case. In such a situation, it is ultimately the decision of the Chief Minister what advice to tender to the Governor, since he alone has to take the final call.

Section 3(2)(b) – 'Consultation' does not and cannot postulate concurrence or consent- Chief Minister can recommend a completely different person, other than any of those recommended by any of the constitutional authorities as long as he does not keep them in the dark about the name of the candidate and there is full and complete disclosure of all relevant facts. **(Mr. Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishan & Ors. Etc.; 2014(1) CPR 739 (SC)**

Limitation Act

S. – 5-A - Plaint would not be covered by the term "application" used thereunder

Section 5 applies to the stage subsequent to institution of a valid suit

and those proceedings which are construed as continuation of suit and not for seeking condonation of delay in filing a time barred suit. The applicability of section 5 has been excluded specifically to applications which fall under Order XXI, C.P.C. It shows that even when the suit proceedings have come to an end, in execution proceedings also Section 5 shall not be applicable. A suit if otherwise is barred by time and is not saved by other provisions of sections 4 and 6 to 24 of Act, 1963 then it shall not be entertainable by the Court and has to be dismissed in view of the obligation created vide section 3 of Act, 1963. Section 5 specifically says that it is applicable to an appeal or in application but not to a suit. The suit instituted by filing a plaint and a plaint, in my view, would not be covered by the term "application".

The Court is Smt. Jagwanta v. Smt. Nirmala and others, 1982(8) ALR 673 (LB), has specifically said that section 5 does not apply to suits or to applications under Order XXI, Rule 2, C.P.C. A similar view has also been taken in Badri Narayan Sharma v. Panchayat Samiti, Dhariawad, AIR 1973 Raj. 29. The Karnataka High Court in Mahboob Pasha v. Syed Zaheeruddin and others, AIR 1988 Kant. 83, has said that section 5 does not apply to original cause of action so as to extend the period of limitation by concession made by parties. (**Smt. Arti Devi v. District Judge, Siddharthnagar & others; 2014(122) RD 777)**

Motor Vehicles Act

S. 147(1) – Comprehensive policy – Goods Vehicle – Passenger risk – Liability of insurance company

Death of two labourers travelling on tractor, for loading sugarcane on the instructions of their employer. Comprehensive insurance covers all risk except loss caused by fraudulent act of the insured. Insurance company neither pleaded nor proved that it is not liable to compensate the claimants notwithstanding the fact that it is a case of comprehensive insurance. Hence, Insurance Company is liable. (**New India Assurance Co. Ltd. v. Usha Devi (Kumari) and others; 2014 ACJ 434 (All HC)**

S. 149 – Accident – Breach of condition of policy – Rash and negligent driving of bus driver owned by Uttarakhand State Road Transport Corporation – Driver of bus was not having valid driving licence and route permit at time of accident – Insurer not liable to pay compensation

In this case after perusal the judgment and order and the evidence as well as considering the submissions made by the rival parties and having regard to the facts and circumstances of the case, especially the fact that on the date of occurrence the driver of the said bus was not having valid driving licence and

route permit and specially finding that the amount of compensation, calculated by the learned Tribunal, is in no way excessive, the Court finds that the judgment and order dated 05.07.2011 has been passed by the Tribunal with all the prudence and is completely in accordance with law, therefore, it requires no interference by the Court and thus the judgment and order, dated 05.07.2011 passed by the Tribunal, is upheld. **(Uttarakhand State Road Transport Corporation, Dehradoon Depot v. Abdul Qayum and Ors.; 2014 (2) ALJ 153)**

S. 163 - Principles of Assessment u/s 163 A M.V. Act read with Second Schedule

The Central Government was bestowed with duties to amend the Second Schedule in view of Section 163A (3), but it failed to do so for 19 years in spite of repeated observation of this court.

Accordingly, we direct the Central Government to do so immediately. Till such amendment is made by the Central Government in exercise of power vested under Sub-section(3) of Section 163A of the Act, 1988 or amendment is made by Parliament, we hold and direct that the children up to the age of 5 years shall be entitled for fixed compensation of Rs.1,00,000 (Rupees one lakh) and persons more than 5 years of age shall be entitled for a fixed compensation of Rs. 1,50,000 (Rupees one lakh and fifty thousand) or the amount may be determined in terms of Second Schedule whichever is higher. Such amount is to be paid if any application is filed under section 163A of the M.V. Act, 1988. (**Puttamma and others v. Narayana Reddy; 2014 ACJ 526 (SC)**

S. 163-A - Maintainability of claim petition u/s 163A – Negligence on the part of Victim – Whether claim application under Section 163A is maintainable - Held – No

Death of motorcyclist when the motor cycle he was driving slipped and fell into a ditch resulting in fatal injuries. As per Section 163A liability of the insurance company is also a fault liability in which the deceased has to establish the fault of the offending vehicle. Motor cycle driven by the deceased did not meet with an accident with any other vehicle and deceased cannot be said to be a third party in accident for making a claim under section 163A or 166 of the Motor Vehicle Act. **(Raj Kumari Chaurasia and others v. New India Assurance Co. Ltd.; 2014 ACJ 252 (All HC)**

S. 168 – Compensation – Determination of – Deceased aged 40 years, employed as driver – Car met with accident causing grievous injuries to deceased and later on succumbed to injuries – Deceased earning Rs. 7500/- apart from food allowance of Rs. 2000/- p.m. – Offending vehicle covered by

insurance at time of accident and deceased had valid and effective driving licence when he was performing his duties as driver on fateful day – Compensation awarded, proper

So far as salary is concerned, the Compensation Commissioner held that according to Govt. Gazette notification dated 31.5.2010, salary of deceased Liyakat Ahmad would come to Rs. 7500/- as was claimed apart from the food allowance of Rs. 2000/- per month.

After discussing the difference in age of the deceased as given by the claimant in her statement, inquest report and postmortem report as well as in his driving licence where his date of birth was recorded as 3.5.1971, the Commissioner ascertained age of the deceased to be about 40 years, six months i.e. about 41 years. He also found that the vehicle in question was covered by the insurance at the time of the accident and the deceased had a valid and effective driving licence when he was performing his duties as driver on the fateful day i.e. 25.11.2011.

The Compensation Commissioner in the circumstances, computed compensation to the tune of Rs. 6, 80,137.50P according to the formula Rs. 7500 x 181.7 as provided in the Workmen Compensation Act, 1923, with 12 % simple interest till the date of its payment. **(National Insurance Co. Ltd. v. Saba Parveen & others; 2014 (1) ALJ 201)**

Circular Dated 12-12-2005 issued by Transport Commissioner, Contrary to the provisions of the Act is not binding and cannot override the provision of the Act

Insurance company contended that offending vehicle did not possess a fitness certificate and offending vehicle with seating capacity of 8 passengers is a private service vehicle and as per circular dated 12-12-2005 issued by Transport Commissioner, vehicle having seating capacity of more than 6 person must possess a fitness certificate. Motor vehicle which carries persons for or in connection with trade or business of the owner shall be considered as private service vehicle and insurance company adduced no evidence to show that offending vehicle was being used for carrying of passengers for the purpose of his trade or business by the owner of vehicle. As per provisions of the Motor Vehicles Act only motor vehicle having capacity of more than 6 persons is required to have fitness certificate which is being used for carrying passengers for or in connection with trade or business of the owner of vehicle. (**Oriental Insurance Co. Ltd. v. Sushil Kumar Pandey and others; 2014 ACJ 94 (All HC)**

Composite Negligence

"Composite negligence" refers to the negligence on the part of two or more persons: where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages recoverable by him in respect of the injuries stand reduced in proportion in his contributory negligence. (**Pawan Kumar vs. Harkishan Dass Mohan Lal; (2014) 3 SCC 590)**

Contributory Negligence – The contribution of the claimants in the accident is proved by the opposite parties Owner/Insurance Company

Tractor-trailer came on the right side of its road and hit 3 persons who were proceeding on the left side of their road pushing a punctured motor cycle and all 3 persons sustained injuries. Tribunal concluded that though charge-sheet has been filed by police against tractor driver, injured persons contributed to the accident to the extent of 25 percent. Tribunal's finding upheld by High Court. Whether in the Contributory negligence the Tribunal was justified in concluding that claimants are liable for contributory negligence without the same being proved by the owner/insurance parties. Held, No. (**Syed Sadiq v. United India Insurance Co. Ltd.; 2014 ACJ 627 SC)**

Goods Vehicle person accompanying the goods in transit for purpose of delivery - Whether risk of deceased is covered and insurance company is liable?

Tribunal allowed compensation to the legal representatives of the deceased against insurance company. High Court exempted insurance company from liability on the ground that deceased was working in clerical cadre, accompanying the goods in transit for purpose of delivery and is not covered by the clause under which premium was paid for covering risk of persons employed for loading/unloading of goods. Clause 'persons employed in connection with the operation in IMT 17 is clearly over and above the coverage

provided by the policy to 'person employed in connection with loading/unloading of motor vehicle.'

The High Court has clearly fallen in error in holding that the insurer is not liable in respect of death of Hanumanth. The clause 'person employed in connection with the operation' is clearly over and above the coverage provided by the policy to 'person employed in connection with loading/unloading of motor vehicle'. As gumashta, deceased was accompanying the goods in transit for the purpose of delivery of goods. This has been accepted by the High Court. Obviously, as gumashta the deceased would be covered by the expression 'person employed in connection with operation of motor vehicle'. The operation of the aforesaid clause has wrongly been restricted and limited only to person employed in connection with loading/unloading of the motor vehicle. (**Hanumangouda v. United India Insurance Co. Ltd.; 2014 ACJ 681 (SC)**

'Legal representative' is wide enough to include even 'inter-meddlers' with the estate of deceased

Death of member of a registered charitable society in an accident while driving jeep due to negligence of driver of an insured Gypsy. Member after joining society renounces the world and is known as "Brother". "Brother" severs all his relations with his natural family and whatever benefit the "Brother" receives as salary, gifts, pension, insurance, etc. belongs to the community as by right and goes into common purse. Deceased was Headmaster of school and claim application against owner and insurance company of Gypsy was filed by the society. Maintainability of claim application for want of locus standi of the claimant was bit pressed by opposite parties and Tribunal awarded compensation. Insurance company preferred writ against order of the Tribunal which was allowed by the High Court on the ground that claimant was not competent to claim compensation under Motor Vehicles Act. Contention that as the term 'legal representative' has not been defined under Motor Vehicles Act, taking guidance from section 1A of Fatal Accidents Act, claim should be confined only for the benefit of wife, husband, parent and child of the deceased. Motor Vehicles Act creates new and enlarged right for filing application for compensation and this right cannot be hedged in by limitations under Fatal Accidents Act. Whether claim application is maintainable – Held: yes. (**Montford Brothers of St. Gabriel v. United India Insurance Co. Ltd.; 2014 ACJ 667 SC)**

Maintainability of claim petition u/s 163A – Negligence on the part of Victim – Whether claim application under Section 163A is maintainable. Held – No

Death of motorcyclist when the motor cycle he was driving slipped and fell into a ditch resulting in fatal injuries. As per Section 163A liability of the insurance company is also a fault liability in which the deceased has to establish the fault of the offending vehicle. Motor cycle driven by the deceased did not meet with an accident with any other vehicle and deceased cannot be said to be a third party in accident for making a claim under section 163A or 166 of the Motor Vehicle Act. **(Raj Kumari Chaurasia and others v. New India Assurance Co. Ltd.; 2014 ACJ 252 (All HC)**

Whether structured formula as prescribed under Second Schedule and the multiplier mentioned therein is binding for claims U/s. 166 - Held –No

It will be evident from the provisions of the Act that the structured formula as prescribed under Second Schedule and the multiplier mentioned therein is not binding for claims under section 166 of the M.V. Act, 1988. Split Multiplier should not applied in routine in the absence of any specific reason and evidence on record, Multiplier as per decision in Sarla Verma 2009 ACJ 1298 (SC) and affirmed in Reshma Kumar, 2013 ACJ 1253 (SC) should be applied. (**Puttamma and others v. Narayana Reddy; 2014 ACJ 526 (SC)**

Negotiable Instruments Act

S. 138—Dishonour of cheque

Compensation to holder of cheque has to be paid out of fine. Awarding certain amount as compensation and further sum in lieu of sentence, both sums added together going beyond twice the amount of cheque, offends limit for fine prescribed in S. 138. Amount imposed in lieu of sentence reduced. **(Somnath Sarkar vs. Utpal Basu Mallick; 2014 Cr.L.J. 179 (SC)**

Ss. 138, 142 – Complaint and cause action in dishonour of cheque – Prosecution based on second or successive dishonour of the cheque is permissible so long as it satisfies the requirements stipulated under the proviso to S. 138

The Court relied on the decision in Sadanandan Bhadran's v. Madhawan Sunil Kumar (AIR 1998 SC 3043) case and held that the prosecution based on second or successive dishonour of the cheque is also permissible so long as it satisfies the requirements stipulated under the proviso to Section 138 of the Act. **(MSR Leathers v. S. Palaniappan and anr.; AIR 2014 SC 642)**

Ss. 138, 142 – Filing of complaint in case of dishonour of cheque through power of attorney is perfectly legal and competent

The attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. Where the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee"; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor. Thus, Filing of complaint petition U/s. 138 of N. I. Act through power of attorney is perfectly legal and competent**. (A. C. Narayanan v. State of Maharashtra & Anr.; AIR 2014 SC 630)**

Ss. 138 and 142(b) – Dishonour of cheques - Prosecution of accused on fresh cause of action arising out of subsequent presentation of cheque - Permissibility of

The respondent issued four cheques to the appellant on 14th August, 1996. The appellant presented those four cheques on 21st November, 1996 and on presentation, those cheques were returned by the Bank with an endorsement “not arranged funds for”. At the request of the respondent, the appellant did not present the said cheques since the respondent agreed to settle the dispute. However, the respondent failed to settle the dispute subsequently. In these circumstances, on 8th January, 1997, the appellant sent a notice (to the respondent) under section 138(b) of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the Act’). The respondent duly received the said notice. Subsequent thereto, those cheques were again presented before the Bank on 21st January, 1997 by the appellant. On presentation, the said cheques were dishonoured for want of sufficient funds.

On 28th January, 1997 the appellant sent a notice under Section 138(b) of the Act and called upon the respondent to pay the said amount with interest within 15 days. The respondent duly received the said notice on 3rd February, 1997.

From the said facts, it appears that while the first notice dated 8th January, 1997 was beyond the limitation period, as required under Section 138(b) of the Act, the second notice sent by the appellant under the Act was within the limitation period from the date the Bank informed the appellant on the second occasion, i.e., on 28th January, 1997. Thereafter, the appellant filed a complaint before the Trial Court on 4th March, 1997. In the circumstances, the question arises whether the action of the appellant was time-barred under

Section 138(b) of the Act or not.

The Division Bench since expressed their Lordships' reservation about the correctness of the law laid down in Sadanandan Bhadran vs. Madhavan Sunil Kumar [1998 (6) SCC 514] and felt that it requires to be considered by a larger Bench and the matter was placed before the Hon'ble Chief Justice for consideration.

Accordingly, the matter was placed before a larger Bench. Their Lordships, while deciding the said question, noticed that proviso to Section 138 stipulates following three distinct conditions precedent, which must be satisfied before dishonour of the cheque can constitute an offence and becomes punishable.

> "…The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice…."

Fulfilment of those three conditions constitutes an offence under Section 138 and it can then be said that an offence under the said section has been committed by the person issuing the cheque.

Larger Bench in MSR Leathers, (2013) 1 SCC 177 answering reference holding that prosecution of accused on basis of fresh cause of action arising out of subsequent presentation of cheque even when original cause of action was time-barred is permissible, Hence, prosecution of respondent- accused on basis of cause of action arising out of subsequent presentation of cheque, is tenable as long as conditions mentioned under S. 138 are satisfied. **(MSR Leathers v. S. Palaniappan and Another; (2014) 1 SCC (Cri.) 406)**

Ss. 138/142—Presentation of cheque for encashment for the second time—Right of appellant—He can present the cheque within a period of six months from the date of its issue

In the present case, the complainant had not filed the complaint on the

dishonor of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under the aforesaid provision. This aspect is already authoritatively determined by this Court in MSR Leathers vs. S. Palaniappan & Anr.; (2013) 1 SCC 177. Specific question which was formulated for consideration by the Court and referred to three Judge Bench in that case, the following question for determination was as under:

> "Whether the payee or holder of a cheque can initiate prosecution for an offence under Section 138 of the Negotiable Instruments Act, 1881 for its dishonor for the second time, if he had not initiated any action on the earlier cause of action?"

This question was answered by the three Judge Bench in the aforesaid matter in the following manner:

> "What is important is that neither Section 138 nor Section 142 or any other provision contained in the Act forbids the holder or payee of the cheque from presenting the cheque for encashment on any number of occasions within a period of six months of its issue or within the period of its validity, whichever is earlier. That such presentation will be perfectly legal and justified was not disputed before us even at the Bar by the learned counsel appearing for the parties and rightly so in the light of the judicial pronouncements on that question which are all unanimous. Even Sadanandan case, the correctness whereof we are examining, recognized that the holder or the payee of the cheque has the right to present the same any number of times for encashment during the period of six months or during the period of its validity, whichever is earlier."

To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant. However, we find that when the cheque was presented second time on 10.11.2008 and was returned unpaid, legal notice for demand was issued only on 17.12.2008 which was not within 30 days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid. Non-issuance of notice within the limitation prescribed has rendered the complaint as not maintainable. **(Kamlesh Kumar vs. State of Bihar; 2014 (84) ACC 311 (SC)**

Ss. 138 and 142—Notice to drawer of dishonoured cheque—For purpose of limitation the legal notice has to be served within 30 days of receipt of information by the payee

It is thus clear that period of limitation is not to be counted from the

date when the cheque in question was presented in the first instance on 25.10.2008 or the legal notice was issued on 27.10.2008, inasmuch as the cheque was presented again on 10.11.2008. For the purposes of limitation, in so far as legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawyee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If noticee fails to make the payment, the offence can be said to have been committed and in that event cause of action for filing the complaint would accrue to the complainant and he is given one month time from the date of cause of action to file the complaint. **(Kamlesh Kumar vs. State of Bihar; 2014 (84) ACC 311 (SC)**

Practice and Procedure

Administration of Justice – Judicial review – Merely because of wrong has been committed several times in the past does not mean that it should be allowed to persist

Merely because a wrong has been committed several times in the past does not mean that it should be allowed to persist, otherwise it will never be corrected. **(Mr. Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishan & Ors. Etc.; 2014(1) CPR 739 (SC)**

Discretionary Power - Exercised for unauthorised purpose - Becomes vulnerable and liable to be set aside

It is trite law that if discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith and the order becomes vulnerable and liable to be set aside. **(Selvi J. Jayalalithaa v. State of Karnataka & others; 2014 (84) ACC 766)**

Prevention of Corruption Act

S. 19, & CrPC, S. 197 - Can in view of S. 19(3) sanction to prosecute be challenged only at time of trial - Not at stage of inquiry or at pre-trial

Undoubtedly, the stage of examining the validity of sanction is during the trial and court do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage. **(CBI v. Ashok Kumar Aggarwal; AIR 2014 SC 827)**

Probation of Offenders Act

S. 4— Outraging modesty of woman—Benefit of probation

Appellant had committed a heinous crime of outraging modesty of a young girl. Benefit of probation cannot be extended to him. **(Ajahar Ali vs. State of W.B.; 2014 Cr.L.J. 18 (SC)**

Protection of Women from Domestic Violence Act

S. 2(f)—Tests to determine when live-in-relationship would fall within the expression relationship in the nature of marriage to be covered u/s. 2(f)

In this case, the Hon'ble court has observed that some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give

some insight to such relationships.

(1) *Duration of period of relationship*

Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) *Shared household*

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) *Pooling of Resources and Financial Arrangements*

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) *Domestic Arrangements*

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) *Sexual Relationship*

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) *Children*

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

(Indra Sharma vs. V.K.V. Sharma; 2014 (84) ACC 290 (SC)

S. 2 (f) – Definition of Domestic relationship recognises only 5 types of relationship - Use of word "means" make definition restrictive and exhaustive

The definition clause mentions only five categories of relationships which exhausts itself since the expression "means", has been used. When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of marriage". **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

S. 2(t), 5 - Relationship in nature of marriage means relationship having some inherent or essential characteristics of marriage though not regular marriage - Marriage and live-in-relationship distinguished

Relationship in the nature of marriage means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognised. Relationship in the nature of marriage and marital relationship have many distinctions. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of." **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

Ss. 2(t), 2(a), 5 - Relationship should be in nature of marriage - Relationship between same sex is not recognised by Act and it is relationship in nature of marriage

Domestic relationship between same-sex partners (Gay and Lesbians) is not recognised by Act. Such a relationship cannot be termed as a relationship in, the nature of marriage. Section 2(f) of the, DV Act though uses the expression "any two persons" the expression "aggrieved person" under S.

2(a) takes in only a woman hence, the Act does not recognise the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act. **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

Ss. 2(t), 5 - Factors that exist in relationship in nature of marriage - And intention of are relevant

The expression "relationship in the nature of marriage," cannot be construed in the abstract. The various factors which exist in a particular relationship are to be considered to reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage." Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage while examining whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of S. 2(f) of the DV Act, a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. Individual factors cannot be isolated because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved. **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

Ss. 2(t), 5 - Relationship in nature of marriage & Live-in-relationship - Guidelines for determination of relationship

The following are some representative guidelines for testing under what circumstances, a live-in-relationship will fall within the expression "relationship in the nature of marriage" under S. 2(t) of the DV Act. The guidelines are not exhaustive, but will definitely give some insight to such relationships:-

(1) Duration of period of relationship

Section 2(t) of the DV Act has used the expression "at any point of time," which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact

situation.

(2) Shared household

The expression has been defined under 2(s) of the DV Act.

(3) Pooling of Resources and Financial Arrangements

Supporting each other, or anyone of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in public

Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold that the relationship is in the nature of marriage.

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship. **(Indra Sarma v. V.K.V. Sarma; AIR 2014 SC 309)**

S. 12—Relief under Magistrate can grant six different types of relief on an application u/s. 12 of the Act—Enumerated

Chapter IV is the heart and soul of the DV Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act. The Magistrate, while entertaining an application from an aggrieved person under Section 12 of the DV Act, can grant the following reliefs: 1) Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;

(2) The Magistrate, under Section 18 of the DV Act, can pass a "protection order" in favour of the aggrieved person and prohibit the respondent from:

a) committing any act of domestic violence;

b) aiding or abetting in the commission of acts of domestic violence;

c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

g) committing any other act as specified in the protection order.

(3) The Magistrate, while disposing of an application under Section 12(1) of the DV Act, can pass a "residence order" under Section 19 of the DV Act, in the following manner:

"19. Residence orders.- (1) While disposing of an application under

sub- section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

xxx xxx xxx

xxx xxx xxx"

(4) An aggrieved person, while filing an application under Section 12(1) of the DV Act, is also entitled, under Section 20 of the DV Act, to get "monetary reliefs" to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,-

"20. Monetary reliefs.- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

xxx xxx xxx

xxx xxx xxx"

The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(5) The Magistrate, under Section 21 of the DV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

(6) The Magistrate, in addition to other reliefs, under Section 22 of the DV Act, can pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

(Indra Sharma vs. V.K.V. Sharma; 2014 (84) ACC 290 (SC)

Provincial Small Cause Courts Act

S. 16,18 – Ejectment suit – Arrears of rent – Writ petition by tenant/petitioner for quashing of SCC proceeding on ground suit not maintainable – Validity – Petitioner has filed his w.s. and issues yet to be framed – Petitioner can pray to court below for framing of issue with regard to maintainability of SCC proceeding and such issue may be decided as preliminary issue

The petitioner happens to be tenant of respondent no. 2. It appears the respondent no. 1 has purchased the aforesaid property and thereafter filed suit before the Judge Small Causes Court terminating the tenancy of the petitioner on the ground of non-payment of rent. The petitioner filed written statement stating therein that the sale-deed is void as it could not be executed without there being any prior permission of the Charity Commissioner, Maharashtra State, Mumbai. He has brought on record the

certificate issued by the said office to this effect as annexure 3 to the writ petition. In his submissions, the respondent no. 1 is not the landlord, therefore the suit for terminating the tenancy and payment of arrears of rent cannot be maintained before the learned Judge Small Causes Court. It is also contended that the dispute with regard to the title is engaging attention of this Court in Public Interest Litigation No. 66213 of 2009.

After hearing learned counsel for the petitioner, Court not inclined to interfere in this matter under Article 226 of the Constitution of India. The petitioner has filed his written statement. On being confronted as to whether issues have been framed, learned counsel for the petitioner submitted that issues have yet not been framed. In such a situation, the petitioner can pray before the court below for framing a issue in this regard and in case, such issue is framed, that may be decided as a preliminary issue. (**Suri Color Lab Pvt. Ltd. v. Prashant Arora; 2014 (2) ARC 219)**

Ss. 18, 25 – Suit for eviction of tenant – Question of sub-letting – Held, for proving sub-letting exclusive possession being sufficient

The suit giving rise to the instant writ petition had been filed on the ground of default and subletting (rate of rent is RS.26/- per month). As far as subletting is concerned, both the courts below held that possession of one kothari had been delivered to Joginder Gulati, defendant No. 21 respondent No. 9 of the writ petition. However, both the courts below held that mere delivery of possession was not sufficient to prove subletting and neither any evidence had been adduced to show that original tenant Chhannoo entered into an agreement of subletting with Joginder Gulati nor evidence had been adduced of payment of rent by Joginder Gulati or his legal representatives. This view is utterly erroneous in law. For proving subletting, exclusive possession is sufficient vide Bharat Sales Ltd., M/s. v. Life Insurance Corporation of India, AIR 1998 SC 1240 and J.S. Sodhi Vs. A. Kaur, 2005 (1) SCC 31. ln the first authority, the Supreme Court has held that direct affirmative proof of subletting is not possible.

Accordingly, it is held that both the points, i.e. validity of notice and subletting have wrongly been decided by both the courts below against the landlord petitioner. (Notice was not even required) These findings are patently erroneous in law. (**Janak Dulari (Smt.) v. Xth ADJ, Lucknow; 2014 (1) ARC 339)**

S. 25 – Revision – Scope and exercise of powers under

Settled law that the powers of a Revisional Court are limited under Section 25 of the Provincial Small Cause Courts Act, 1887. As held by this court in the series of decisions that it is not open to the Revisional Court to go into the re-appraisal of the evidence was made before the Trial Court or to reverse the finding of fact arrived at by the Trial Court. So, the argument advanced by learned counsel for the revisionists on the basis of the sale deed executed between

Smt. Azra Begum and others with ICICI Brokeage Services Limited (IBSL) challenging the impugned order has go no force, rejected, thus, I do not find any illegality or infirmity in the impugned order dated 24.08.2001 passed by Special Judge (Ayodhya Matter)/Additional District Judge/Judge Small Causes, Lucknow in S.C.C. Suit NO.9 of 2003). **(Satish Chandra Sachdev v. Synidate Bank; 2014 (1) ARC 586)**

Public Premises (Eviction of Unauthorised Occupants) Act

S. 2(e) – Public premises – Means any premises belonging to or taken on lease by or on behalf of any cantonment Board constituted under cantonment Act, 1924 – Aim and object of

Public Premise" has been defined under Section 2(e) of Act 40 of 1971. Part of the provision relevant for the purpose of the case is quoted below:

"[(e) “public premises" means--

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1981), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of--

(i) any company as defined in section 3 of the Companies Act. 1956 (1 of 1956), in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or any company which is a

subsidiary (within the meaning of that Act) of the first-mentioned company,

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or a local authority) established by or under a Central Act and owned or controlled by the Central Government,

(iii) any University established or incorporated by any Central Act,

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961),

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963 (38 of 1963),

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when renamed as the Bhakra-Beas Management Board under sub- section (6) of section 80 of that Act;

(vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and]

As is evident from the definition, 'public premises' means any premise belonging to or taken on lease by, or on behalf of any Cantonment Board constituted under the Cantonments Act, 1924. Therefore, even if, the land is located within the cantonment area in respect of which, the Cantonment Board exercises power is a 'public premise' as defined under Act 40 of 1971. **(Anil Mahajan v. Estate Officer, 116, Taj Road, Agra; 2014 (1) ARC 262)**

Ss. 12(2) r/w 25 – Sub-letting – Partnership with non family members amounts to sub-letting

Partnership with non family member amounts to sub letting by virtue of Section 12(2) of the U.P. Act NO.13 of 1972 read with Section 25. The Supreme Court in Harish Tandon vs. A.D.M. Allahabad AIR 1995 SC 676 : 1995 (1) ARC 220 has held that partnership with son-in-law amounts to subletting

and tenant is liable to eviction on that around. Accordingly on the own showing of the petitioners petitioner no.1 admitted petitioner no.2 as partner in business hence it amounted to sub letting.

If Chunni Lal had been joint tenant, since start of the tenancy, it would have been mentioned in the written agreement of 1991. Accordingly inference of subletting was wrongly refused to be drawn by the trial court. The lower revisional court was perfectly within its jurisdiction in reversing the said findings and recording the findings of subletting.

The revisional court did not reassess the evidence, it based its findings on
proved and admitted facts particularly the most important admitted pieces of evidence i.e. the agreement of 1991 and subsequent partnership between both the brothers. In AIR 1996 SC 268: 1996 SCFBRC 79, Smt. Laxmi vs. C.S.Nagarkar Supreme Court set aside the findings of subletting recorded by all the courts below including the High Court.]

Supreme Court in Reshma Singh vs. Raghubir Singh 1999 SCFBRC 372: AIR 1999 SC 087 (which was a case from Punjab) has held that subletting is a question of law and can be interfered with by the High Court in revision. In the said case also brother was sitting on the shop however the Supreme Court held that it did not amount to subletting for the reason that against the tenant a criminal case had been launched and due to that reason he was absconding since long and it was his business which was being looked after by his brother hence it was not subletting. **(Ashok Kumar v. Additional District Judge, Court No. 10, Gonda; 2014 (1) ARC 317)**

S. 20(2)(d) – Change of user – Estoppel – Applicability

The submission of the learned counsel for the revisionist that as the landlord had not raised any objection for long with regards to the change of user of the tenanted accommodation, therefore, he was estopped, cannot be accepted, inasmuch as to seek protection under the U.P. Act No. 13 of 1972, the tenant must not, on his own, violate its provisions. Therefore, there is no question of applicability of the principle of estoppel against the landlord in this regard. No doubt, the Rent Control Legislation is a beneficial piece of legislation, but in order to avail its benefit the tenant must abide by its provisions. **(Darshan Kumar v. Jai Kumar Mishra, Advocate; 2014 (1) ARC 347)**

S. 20 (4) – Provisions under – Date of first hearing as used – Question and

interpretation of

In Krishna Kumar Gupta Vs. XIV A.D.J., 2004 (2) ARC 659 after considering five authorities of the Supreme Court on the question of interpretation of first date of hearing as used in Section 20(4) of U.P. Act NO.13 of the Act, Court has held that if written statement is filed with the permission of the court and taken on record by the court, then no date prior to the date of filing of the written statement can be taken to be date of first hearing. In the instant case, written statement was filed on 24.08.1998 and deposit of Rs. 70,000/- and odd had already been made on 15.05.1998, hence the deposit was well before the date of first hearing. **(Shailesh Kumar v. Mahendra Pratap Agarwal; 2014 (1) ARC 325)**

S. 21 – Release of accommodation – Bonafide requirement and alternative accommodation – Question of – Consideration

Petitioner landlady filed release application against original respondent Dr. uryakant Tripathi since deceased and survived by legal representatives, under Section 21 of U.P. Act of 13 of 1972 on the ground of bona fide need in the form of PA Case no. 14 of 1996, **Ram Pyaree vs. Dr. Surya Kumar Trivedi. Prescribed Authority/ Civil Judge Senior Division Unnao** allowed the release application on 24.7.1998. Against the said order original tenant respondent filed civil appeal no.61 of 1998. Second Additional District Judge Unnao through judgment and order dated 07.12.2000 allowed the appeal set aside the order of the prescribed authority and rejected the release application of the petitioner land-lady, hence, this writ petition.

The Lower Appellate Court allowed the appeal and rejected the release application mainly on the following points; -

i. husband of the landlady was carrying on business from a tenanted shop.

ii. one of the sons of the land-lady had got a job in another city.

iii. the sons of the land-lady were assisting their father in the business and the age of the elder son was 30 years, hence, age of the father must be more that 50 years and a person of 50 years or more can not sit on the shop from morning till evening.

iv. It was no-where stated that husband would vacate the tenanted shop.

v. the house in which another shop was available was sold by the

land-lady. In court's opinion all the findings are patently erroneous in law. As far as first point is concerned, availability of a tenanted accommodation is absolutely no ground to reject the release application. In Yadvendra Arya vs. M.K. Gupta AIR 2008 Supreme Court (773): 2008 SCFBRC 413: 2008 (1) ARC 322 and Sushila vs. A.D.J. AIR 2003 Supreme Court 780: 2003 (1) ARC 356 it has been held that every land-lord and every adult member of the family of land-lord is entitled to do separate business and sons can not be compelled to work with the father. It has been held by the Supreme Court in Raj Kumar Khaitan vs. Bibi Zubaida Khatoon A.I.R. 1995 Supreme Court 576 that it is not necessary to state precise nature of business to be started in release application on the ground of bona-fine need. In AIR 2002 Supreme Court 200: 2001 (2) ARC 603 G.C. Kapoor vs. A.D.**J.** it has been held that it is not necessary that one must have experience in order to start some business. In A.G. Nambiar vs. K. Raghavan AIR 1998, Supreme Court 3146 it has been held that an alternative accommodation available to landlord but not suitable for business to be established by him is not be to considered while deciding his bonafide need.

In Chandrika Prasad vs. Umesh Kumar Varma AIR 2002 Supreme Court 108 it has been held that if an accommodation which is away from the main road is available to the landlord or the person for whose need release application is filed, it is no ground to reject release application for more appropriate accommodation situate on the main road.

As far as the question of selling house no. 472 is concerned, firstly landlady asserted that under financial constraints it was sold; secondly a shop situate in the said house was earlier offered by the land-lady to the tenant who did not accept the said offer meaning thereby that the tenanted accommodation in dispute was much more beneficial than the said shop. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceeding under section 23 of the Act. **(Ram Pyari (Smt.) v. Dr. Surya Kumar Trivedi; 2014 (1) ARC 282)**

Rent Laws

Release application – For need of Advocate's chamber – Allowed – Appeal

against allowed – Legality of – No evidence led on behalf of landlord to prove that his son LL.B. pass – No error in impugned order – Petition dismissed

The landlord's writ petition arising out of eviction/release proceedings
initiated by him against tenant opposite party no. 2, Ramesh Jaiswal on the ground of bonafide need under section 21 of U.P. Act No. 13 of 1972 In the form of P.A. Case No. 13 of 1990 Sita Ram v. Ramesh Jaiswal. Prescribed authority/Second Additional C.J.M. Barabanki allowed the release application through order dated 15.5.1993. Against the said order tenant opposite party no. 2 filed R.C. Appeal no. 6 of 1993 Ramesh Kumar Jaiswal vs. Sita Ram which was allowed by 4th A.D.J. Barabanki through judgment and order dated 06.11.1999 order passed by the prescribed authority dated 15.5.1993 was set-aside and release application was dismissed, hence, this writ petition.

Court did not found least error in the judgment given by the lower appellate court holding that the need for Shiv Kumar was not bonafide. Specific plea had been taken that Shiv Kumar was an advocate and shop was required to establish his chamber. It has not been proved that Shiv Kumar is enrolled as an advocate rather it has been admitted that he is not advocate. Accordingly, need was not bonafide in the least.

Accordingly, Court does not find any error in the impugned judgment. Writ petition is dismissed. (**Sita Ram v. Addl. District Judge IV, Barabank; 2014 (1) ARC 527)**

Right to Information Act

Ss. 18, 19 and 20 - Appointment – Information commissioners - Supreme Court cannot direct for appointment of retired Judges of the High Court as Information commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner

It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority, under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person, and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking

information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act. Section 2(j) defines "Right to Information" conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, "which is held by or under the control of any public authority". While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.

While performing these administrative functions, however, the Information Commissions are required to act in a fair and just manner following the procedure laid down in Sections 18, 19 and 20 of the Act. But this does not mean that the Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen.

Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation. To quote from the judgment of the seven-Judge Bench in P. Ramachandra Rao v. State of Karnataka (supra):

> "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature."

Moreover, Sections 12(5) and 15(5) of the Act while providing that Chief Information Commissioner and Information Commissioners shall be persons with eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, also does not prescribe any basic qualification which such persons must have in the respective fields in which

they work. In the judgment under review, however, this Court has "read into" Sections 12(5) and 15(5) of the Act missing words and held that such persons must have a basic degree in the respective field as otherwise Sections 12(5) and 15(5) of the Act are bound to offend the doctrine of equality. This "reading into" the provisions of Sections 12(5) and 15(5) of the Act, words which Parliament has not intended is contrary to the principles of statutory interpretation recognised by this Court. In Union of India and Another v. Deoki Nandan Aggarwal (supra) this Court has held that the court could not correct or make up for any deficiencies or omissions in the language of the statute.

In the judgment under review, this Court has also held that if Sections 12(5) and 15(5) of the Act are not read in the manner suggested in the judgment, these Sections would offend the doctrine of equality. But on reading Sections 12(5) and 15(5) of the Act, we find that it does not discriminate against any person in the matter of appointment as Chief Information Commissioner and Information Commissioners and so long as one is a person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, he is eligible to be considered for appointment as Chief Information Commissioner or Information Commissioner. However, to ensure that the equality clause in Article 14 is not offended, the persons to be considered for appointment as Chief Information Commissioner or Information Commissioner should be from different fields, namely, law, science and technology, social service, management, journalism, mass media or administration and governance and not just from one field. **(Union of India v. Namit Sharma; 2014(2) SLR 383 (SC)**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act

Ss. 13, 17, 34 – C.P.C. (5 of 1908), S. 9-E - Any person aggrieved by enforcement of security interest has to file appeal to DRT and Civil Courts jurisdiction in such matter is completely barred

Statutory interest is created in favour of the secured creditor on the secured assets and when the secured creditor proposes to proceed against the secured assets, sub-section (4) of Section 13 envisages various measures to secure the borrower's debt. One of the measures proved by the statute is to take possession of secured assets of the borrowers, including the right to transfer -by way of lease, assignment or realizing" the secured assets. Any person aggrieved by any of the "measures" referred to in sub-section (4) of Section 13 has got a statutory right of appeal to the DRT under Section 17.

The opening portion of Section 34 clearly states that no civil Court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter which a DRT or an Appellate Tribunal is empowered by or under the Securitisation Act to determine. The expression 'in respect of any matter' referred to in Section 34 would take in the "measures" provided under sub-section (4) of Section 13 of the Securitisation Act. Civil Court jurisdiction as such stand completely barred, so far as the "measure" taken by a secured creditor under sub-section (4) of Section 13 of the Securitisation Act, against which an aggrieved person has a right of appeal before the DRT or the Appellate Tribunal to determine as to whether there has been any illegality in the "measures" taken. Thus where the bank auction sold the property mortgaged to secure money advanced, the respondent who claimed that property mortgaged was HUF property of which they were co-owners had to file appeal to DRT as they were covered by expression "any person" in S. 17 -Suit filed by them for declaration that property in question was HUF property and for partition and injunction was not tenable. **(Jagdish Singh v. Heeralal and others; AIR 2014 SC 371)**

Service Laws

Appointment – Daily wagers – Not appointees in the strict sense of the term 'appointment'

In this case, the principle as has been laid down in case of Umadevi has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term 'appointment'. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot, therefore, confer a similar entitlement on the daily wagers of abolished organisation to such alternative employment. [See Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Association (2006 (4) SCC 132)].

Their relevance in the context of appointment arose by reason of the concept of regularisation as a source of appointment. After Umadevi case, their position continued to be that of daily wagers. Appointment on daily wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged

differently. **(Nand Kumar Vs. State of Bihar & Ors.; 2014 (2) Supreme 23)**

Compassionate appointment – Petitioner claiming that her husband was illegally retired from service - That her son be given compassionate appointment. No such appointment could be granted if employee did not die in harness

A perusal of the order of the learned Single Judge as well as Division Bench discloses that even when the order of compulsory retirement was served upon the deceased employee on the very next date, no objection was raised by him till his demise one year and three months later. Learned Single Judge has further observed that on 28.12.2007, the deceased employee has himself accepted his continued illness, leading to his compulsory retirement and it shows that such an order was passed in public interest. It is only after his death that his widow has taken up the issue and under the garb on challenging the order of compulsory retirement, she, in fact, wanted her elder son to be appointed on compassionate basis. In these circumstances, the learned Single Judge refused to grant any relief to the writ petitioner and dismissed the Writ Petition. For same reasons, the Division Bench has also found no merit in the appeal preferred by Manti Devi.

Before us, the learned counsel for the petitioner was candid in his submission that the petitioner, elder son of deceased employee, wanted relief by way of compassionate appointment which was the main purpose of present SLP. However, such a relief cannot be granted to a person whose father did not die in harness and as his death occurred after his compulsory retirement. Even otherwise, on our pertinent query, we were informed that the elder son is about 35 years of age. By no stretch of imagination such a direction can be given to appoint him on compassionate basis. (**Manti Devi (D) Through LRS v. State of Bihar; 2013(5) ESC 761 (SC)**

Departmental enquiry - Inquiry would not be vitiated merely on the ground that it had been initiated after a long time

There is no principle of law that an inquiry would stand vitiated merely for the reason that it has been initiated after a long time. On the contrary, whether delay in initiating inquiry would be fatal or not would depend on various facts and circumstances. Dealing this question and considering Bani Singh (Supra), the Apex Court in State of Punjab v. Chaman Lal Goel, 1995 (2) SCC 570, declined to set aside disciplinary proceeding initiated after a long time, and, said:

"9. Now remains the question of delay. There is undoubtedly a delay of

five and half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing."

Besides, in the instant case, the conduct of various officials in respondent's department reflects upon their active connivance with all the wrong doers including petitioner and now a time has come when their conduct also need be investigated by Vigilance Department of U.P. Government but not in the same slow pace as has been done in the present case. Whenever the investigation or inquiry is made, time is always the essence. Delay in investigation would definitely help wrong doers. If the investigating agency is causing delay, unless shown otherwise, one can safely draw' an inference that investigating agency is actually helping the wrong doers to absolve or to mitigate charges against him, so as to ultimately generating a ground to recommend a closure, observing wrong done to be a petty matter.

However, here is a fit case where respondents-authorities are directed to conclude disciplinary proceedings against petitioner in accordance with law giving due opportunity of hearing, expeditiously, and in any case within a period of four months from the date of production of a certified copy of this order before competent authority. (**Bhagwat Saran v. State of U.P.; 2013(5) ESC 2477 (All)**

Employment on compassionate grounds - Effect of

Death of driver, working under State Government, when his jeep was hit by a bus. State Government gave employment to widow of the deceased on

compassionate grounds under Dying-in-Harness Rules. Salary of widow slightly more than that of her husband. Tribunal found that there is no pecuniary loss to the claimants, they are not entitled to receive any compensation towards pecuniary loss and awarded Rs. 5,000 towards shock and suffering. Whether the Tribunal was justified in taking into consideration the benefits received by widow by way of compassionate appointment while determining compensation. Held, No. **(Lalita Rathore and another v. Darshan Lal and others; 2014 ACJ 229 (All HC)**

Pension – Pension cannot be withheld merely because criminal proceedings are pending. Pension is a right, Not dependent upon discretion of employer

The Court has considered the rival submissions. Admittedly, there is nothing on record to suggest that any departmental proceeding is pending against the petitioner. There is no such averment in the counter-affidavit. Merely because a criminal case is pending that too of a charge that he has not taken any preventive action, full pension cannot be withheld. There is no charge of any financial irregularities. The Court is of the view that on the facts and circumstances, full pension cannot be denied.

In the case of Deoki Nandan Shan v. State of U.P., AIR 1971 SC 1409, the Apex Court ruled that the pension is a right and payment of it does not depend upon the discretion of the Government but is governed by the Rules and the Government servant coming within those Rules is entitled to claim pension and grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount, having regard to service and other allied matters, that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was further affirmed by the Apex Court in the case of State of Punjab v. Iqbal Singh, AIR 1976 SC 667.

Apex Court in the case of State of Punjab and another v. Iqbal Singh (Supra) has further held that since the cut of the pension and the gratuity adversely affects the retired employee as such order cannot be passed without giving reasonable opportunity of making his defence.

The Court has also perused the Government Order dated 28.10.1980, Annexure- CA-l to the counter-affidavit, which has been made basis for withholding the part of the pension and allowing the interim pension. This

Government Order provides the payment of interim pension where the departmental proceeding are pending. None of the circular, Government Order or any provision has been referred before us, which provides that where no departmental proceeding is pending, still the pension can be withheld.

In view of the above, the writ petition is allowed and mandamus is being issued to the respondents to pay full pension to the petitioner within a period of two months from the date of presentation of the certified copy of this order. However, it will be open to the department to proceed afresh after the decision in the criminal case as observed by the appellate authority while certifying the integrity of the petitioner in accordance to law. (**Narendra Kumar Singh v. State of U.P.; 2013(5) ESC 2523 (All) (DB)**

Penalty/Punishment—Imposition of punishment by higher/appellate authority—When permissible—Higher authority may impose punishment if right of appeal is not taken away

The respondent (since deceased), when posted as Assistant Engineer in the Electricity Distribution Division, was alleged to have released electricity to one consumer beyond the approved estimate consequent to which wrongful loss was caused to U.P. SEB. Disciplinary proceeding were initiated against him, wherein he was found guilty and punishment of deduction of 10% amount of pension payable to him was imposed by U.P. SEB because he had superannuated by then.

Aggrieved, the respondent approached the Tribunal inter alia contending that the power to deal with the report of the Inquiry Committee vests in the Chairman of U.P. SEB in terms of Regulation 6(4) of the 1975 Regulations, but as the punishment had been imposed by U.P. SEB he was deprived of his right of appeal. The Tribunal directed release of the deducted amount of pension to the respondent with simple interest @ 8% per annum. A writ petition filed by the appellant Corporation there against was dismissed by the impugned judgment. Hence, the instant appeal.

A higher authority may pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal is not taken away. That apart, if the appellate authority passes an order as the primary authority and there is provision for further appeal or revision or review it cannot be said that the said order suffers from any illegality. In the case at hand, there is no denial of the fact that the UPSEB has passed the order for deduction of 10% pension from the delinquent employee. Under Regulation 6(5) of the 1975 Regulations

an appeal or representation, as the case may be, from the order of the Chairman shall lie to the UPSEB. The Regulation clearly provides that in case of an Assistant Engineer the Chairman is the competent authority to pass the order of punishment and, therefore, by virtue of the order passed by the UPSEB remedy of appeal was denied to the delinquent employee. Hence, the impugned judgment warrants no interference. (**U.P. Power Corpn. Ltd. vs. Virendra Lal; (2013) 10 SCC 39)**

Constitution of India, Art. 16 – Compassionate appointment – Scope of – Compassionate appointment is not privilege but measure of socio-economic justice

It is obvious that an appointment on a compassionate ground has a specific object. An appointment on compassionate ground is not a right bestowed upon the members of the deceased-employee's family. It is a privilege which is created under the scheme framed by the Government or institutions or under the law. Of course, it is true that compassionate appointment is a part of socio-economic justice as prescribed by the preamble of the Constitution of India. But even then, the socio-economic justice has to be done within the parameters of the scheme/rules governing the compassionate appointment. Such an appointment is not a state largess which should be doled out to the dependents to every deceased employee. The question of appointment on compassionate ground is required to be examined in each case on its individual facts and circumstances. The assessment has to be made on objective criteria. Both in the cases of Umesh Kumar Nagpal and Sajad Ahmed Mir, the Apex Court was of the opinion that if many years have gone by since the death of the employee, compassionate appointment cannot be claimed and cannot be offered. For, the normal rule of appointment cannot be ignored at the cost of the interest of an individual. If it were done, so, it would ignore the mandate of Article 14 of the Constitution of India.

In this case, most importantly, the learned Judge has ignored the fact that the respondent's father had died in the year 2002. For four long years, the family had managed to survive. According to the principles laid down by the Hon'ble Supreme Court, in the case of Umesh Kumar Nagpal and in the case of Sajad Ahmed Mir, if the family has survived financially without one of its dependent is being given appointment on the compassionate ground, the appointment should not be given subsequently. In the present case, the family had survived about four long years. Thus, the respondent would not be entitled to an appointment on compassionate ground.

Thus, the learned Judge was not justified in observing that the

compassionate appointment should be given on the ground that the family is not well to do. For the reasons stated above, this appeal is hereby, allowed and the impugned judgment dated 17.10.2006 is, hereby, quashed and set aside. **(State of Bank of India v. Kuldeep Kall; 2014 (1) SLR 187)**

Constitution of India, Articles 16, 226—Retrospective promotion—Availability of—Retrospective promotion cannot be claimed as a matter of right unless the Rules permits so or there exists some special facts and circumstances for issuing such direction

The petitioners impugn the order dated 18.10.2011 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'), whereby the petitioners have been directed to promote the first respondent to the post of Head of the Department (Pharmacy) at Government Polytechnic for Women, Sector-10, Chandigarh "with effect from the date the relevant vacancy became available" along with all the consequential benefits within two months.

The above-stated vacancy had arisen w.e.f. 1.8.2006 whereas the first respondent was promoted w.e.f. 8.5.2009. It may be mentioned CWP No. 3865 of 2012 -2- here that the Tribunal while accepting the claim of respondent No. 1 has relied upon its previous decisions in the cases of (i) Mrs. K. Ranga Rajyam and (ii) Mrs. Veena Sood and observed that since the above- stated orders were accepted by the petitioner-Administration and both the applicants were granted retrospective promotions from the date of occurrence of vacancies, the first respondent is also entitled to seek parity.

During the course of hearing, it is fairly conceded by Ms. Lisa Gill, learned counsel for the petitioners on instructions from the departmental official that pursuant to the order under challenge passed by the Tribunal, the first respondent would not get any monetary benefit as CWP No. 3865 of 2012 -3- she was already officiating as Head of the Department on current duty charge basis w.e.f. 12.12.2005 and was getting the salary of Head of the Department. It is pointed out by learned counsel for respondent No. 1 that she is otherwise senior-most in the Department. If that is so, it is obvious that neither respondent No. 1 would be entitled to any monetary benefit nor she affects anybody's seniority in the department as a result of retrospective promotion from the date of occurrence of the vacancy. In this view of the matter, we do not deem it necessary to interfere with the directions issued by the Tribunal except to the extent that in our considered view, retrospective promotion cannot be claimed as a matter of right unless the Rules permits so or there exists some special or peculiar facts and circumstances for issuing such direction. The writ petition is accordingly disposed of without interfering

with the order passed by the learned Tribunal, however, with a clarificatory direction that as and when an applicant seeks retrospective promotion on the basis of the instances referred to above or on the strength of the order under challenge, the learned Tribunal shall not be influenced by its previous orders and shall decide the same keeping in view the binding precedents in accordance with law. **(Union Territory, Chandigarh vs. Vin Dosajh; 2014(1) SLR 560 (P&H)**

Constitution of India, Art, 16, 226—Compassionate Appointment—-- When cannot be granted—Petitioner's claim can be rejected on ground that matter of petitioner was employed in Deptt. of Irrigation and, therefore, the petitioner was not a destitute

It is the contention of the counsel for the petitioner that the father of the petitioner was killed by the terrorists on 17.5.1992, FIR No. 41 dated 18.5.1992 u/s. 302 IPC and u/s. 25 of the Arms Act was registered at Police Station Tarn Taran. Petitioner is the dependent son of the deceased who was a Government employee. Petitioner applied for appointment on compassionate ground as per the Punjab Government Policy/Instructions dated 21.11.2002 which provided for appointment on compassionate ground to the dependents of the deceased. Petitioner falls within the definition of Dependent Family Member as specified in Note I. The claim of the petitioner was submitted by him along with necessary documents and the required recommendations but despite that the claim of the petitioner was not accepted and he was not offered appointment on compassionate ground whereas similarly placed employees have been duly given appointment. He, on this basis, contends that the petitioner, faced with this situation, served a legal notice dated 27.12.2011 (Annexure P-2) upon respondents No. 1 and 2, to which reply has been received by the Deputy Commissioner, Tarn Taran- respondent No. 2 dated 18.4.2012 (Annexure P-3), wherein the claim of the petitioner has been rejected on the ground that the mother of the petitioner, who was wife of the deceased, was working as a Clerk in the department of Irrigation and, therefore, the petitioner was not a destitute. Further, his mother was earning a good amount and, therefore, the case of the petitioner would not be covered by the instructions. Counsel further contends that the instructions itself provide that where one of the parents is working, the Government can take into consideration the income and give relief to the claimants. The rejection of the claim of the petitioner being not in consonance with the instructions cannot sustain.

On considering the submissions made by the counsel for the petitioner and on going through the records of the case and especially the reply, which has been filed by the Deputy Commissioner, Tarn Taran dated 18.4.2012 to the

legal notice, the claim of the petitioner has been rightly rejected by the respondent-State. Mother of the petitioner is admittedly working as a Clerk in the Irrigation Department. She was, as a matter of fact, earlier also working prior to the death of the father of the petitioner. That leaves no manner of doubt that the petitioner was not a destitute or dependent merely on his father. That apart, a plea has been raised that the mother of the petitioner had deserted him and left him with his grandparents at the time of death of his father. In support of this contention, reliance has been placed upon the copy of the identity card issued by the Election Commission of India dated 03.04.1997, which gives the place of residence of the petitioner. Ration card, copy whereof has been placed on record, has been pressed into service to suggest that the petitioner is residing with his grandparents. A perusal of the ration card would show that there is no date depicted in the said ration card. In the absence of any proof that the petitioner had been residing with his grandparents after the death of his father and that the mother of the petitioner had deserted him, the assertion of the petitioner cannot be accepted. **(Bhupinder Singh vs. State of Punjab; 2014 (1) SLR 568 (P &H)**

Constitution of India, Art. 226—Initiation of departmental proceeding—Superannuation—Departmental inquiry—Inquiry can be initiated even after superannuation of an employee

Departmental inquiry can be initiated even after superannuation of an employee. There is no bar in initiating and continuing disciplinary proceedings after superannuation of an employee. In this case, departmental proceedings which will take place against the petitioner will not be disciplinary proceedings but departmental proceedings. **(J.B. Chaudhry vs. Indian Overseas Bank; 2014 (1) SLR 469 (Delhi)**

Constitution of India, Art. 226, 311—ACR—Premature Retirement of Judicial Officer on ground of doubtful integrity—Legality of

A perusal of summary of ACRs for the period from 1990-91 to 2010-11 shows that except 'A - very good' and 'A + Outstanding' for the years 1999-2000 and 2000-01 respectively, the reports of the petitioner are 'B Plus (Good)'. However, in respect of some years i.e. 1990-91, 1991-92, 1995-96 & 1996-97, the remarks are 'B (Satisfactory)'. In the ACR for the year 2011-12, which is the basis of premature retirement, a separate note was attached pertaining to 'Integrity'.

The Full Court in its meeting held on 29.01.2013 resolved to record 'C (Integrity doubtful)' and also recommended for prematureretirement by giving salary of three months in lieu of notice period.

The issue of premature retirement of a Judicial Officer has been subject matter of examination of the Hon'ble Supreme Court from time to time. One of the comprehensive and latest judgment in this respect is Rajendra Singh Verma (dead) through LRs & others Vs. Lieutenant Governor (NCT of Delhi) & others (2011) 10 SCC 1, wherein the Hon'ble Supreme Court has held that Judicial service is not a service in the sense of an employment, but Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. The Court observed as under:

> "81. Judicial service is not a service in the sense of an employment as is commonly understood. Judges are discharging their functions while exercising the sovereign judicial power of the State. Their honesty and integrity is expected to be beyond doubt. It should be reflected in their overall reputation. There is no manner of doubt that the nature of judicial service is such that it cannot afford to suffer continuance in service of persons of doubtful integrity or who have lost their utility."

In view of the fact that the Hon'ble Supreme Court has considered the judgments on which the petitioner has put reliance and has taken the view as quoted above, therefore, we find no illegality or irregularity in the order of premature retirement of the petitioner more so when the petitioner has completed 58 years of service. The retention in service beyond 58 years is only for an Officer, who is an asset to the Institution. **(Chaman Lal Mohal vs. High Court of Punjab & Haryana at Chandigarh; 2014 (1) SLR 660 (652) (P&H)**

Constitution of India, Art. 311 – Adverse remarks for year 1992-93 – Representation rejected on 7.5.1996 – After four years fresh representation on 20.6.2000 accepted – Expunction of remarks, held, bad in law

The appellant in this appeal was recruited into the police service in the State of Haryana as a Constable in the year 1971. He got promotion to higher ranks from time to time and became Inspector of Police in the year 2002. During the course of his employment, an adverse entry was recorded in his Annual Confidential Report (hereinafter to be referred as 'ACR') for the period 11.10.1989 to 31.3.1990. Though the exact report was not placed on record either before the High Court or this Court, it is a common case of the parties that the ACR for this period related to adverse comments on his "integrity". It was acknowledged by the appellant's counsel before the High Court that the said adverse remarks pertained to his character and antecedents.

These remarks were recorded by the then Superintendent of Police,

Hisar Range, Hisar. As he wanted these remarks to be expunged, the appellant made a representation to the Deputy Inspector-General of Police, Hisar. His representation was rejected on 26.5.1993. Initially, there was a stoic silence on the part of the appellant who did not pursue the matter further for quite some time. However, he woke up from slumber and after almost 9 years, he made another representation to the Director General of Police, Haryana. This was accepted by the DGP vide orders dated 15.7.2002 and the aforesaid remarks were expunged.

From the facts of this case also it is apparent that the representation against the ACR for the period 1992-1993 was rejected on 7.5.1996 and thereafter when fresh representation dated 20.6.2000 was made after a lapse of more than 4 years. It was accepted vide orders dated 12.7.2000 and the adverse remarks were expunged. This case is thus, on the same footing as Vinod Kumar's case. The appeal is accordingly dismissed. **(Vinod Kumar v. State of Haryana; 2014 (1) SLR 74)**

Constitution of India, Art. 311 – Compulsory retirement – Basis of

The appellant was given show cause notice dated 24.10.2010 proposing compulsory retirement. The ground on which the action proposed was attached to the show cause notice. On perusal thereof reveals that the material sought to be put up against the appellant was as under:

1. Adverse remarks for the period 1.4.2001 to 2.10.200l.
2. Award of punishment of "warning" vide SPI AMB/OB/218/08 for showing negligence in investigation in case FIR No. 121 dated 9.7.2008 under Section 27; 91 and 304 A IPC, PS Narayan.

In reply, the appellant had submitted that his appeal No. 396/08 is pending against the judgment of the High Court in so far as ACR's for the period 10.4.2001 to 2.10.2001 is concerned and, therefore, notice in question be withdrawn. However, this plea of the appellant was not accepted and vide orders dated 17.3.2011, appellant was ordered to be compulsory retired from service with immediate effect. In this order also, same two grounds namely, ACR for the period 1.4.2001 to 2.10.200l and award of punishment of warning in every case, are mentioned.

In so far as award of "warning" is concerned, leaned Counsel for the State could not dispute that "warning" is not a punishment prescribed under the Rules. It was not given to him after holding any inquiry. Therefore, such a warning recorded administratively in a service record cannot be the sole basis

of compulsory retirement.

The appellant's writ petition has been dismissed by the High Court vide orders dated 26.12.2011. Court, thus allow this appeal and set aside the impugned judgment of the High Court. As a consequence, the appellant shall be reinstated in service in the same position on which he was working as on the date of compulsorily retirement with consequential benefits in case he has not already attained the age of superannuation. However, if he has already attained the age of superannuation, he shall be treated as deemed to be in service throughout as if no compulsory retirement orders were passed and will be given consequential benefits including pay for the intervening period and pensionary benefits on that basis. **(Vinod Kumar v. State of Haryana; 2014 (1) SLR 74)**

U.P. Fundamental Rules, 1956 – Rule 56(c) – U.P. Government Servant Conduct Rules, 1956 – Rule 3(2). "Concept of departmental inquiry and voluntary retirement explained"

In the present case, it is clear that provision regarding voluntary retirement of government servant provided under Rule 56(c), Chapter IX of U.P. Fundamental Rules, envisages that a Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty five years or after he has completed qualifying service for twenty years. In the present case, claim of voluntary retirement of the petitioner was under Rule 56(c), according to which the petitioner was eligible to apply for voluntary retirement with effect from 1.10.2003, hence there was no occasion for the State Government to have refused or to keep his application for voluntary retirement, pending. It is also apparent from record that petitioner was not informed about the order dated 5.6.2003 and there was overwhelming inter se correspondence between the departmental authorities stating therein that no enquiry was pending or contemplated against him; that his leave for 2.5.2003 was also regularized and payment of salary for that day made; that he was also not given any opportunity before appointment of the inquiry officer or submission of charge-sheet dated 30.7.2004 to show that he was innocent. No material has been mentioned in the office order dated 5.6.2003 on the basis of which enquiry is said to have been contemplated against the petitioner.

. . . . . .

Merely taking a decision as to whether enquiry is held or not against the petitioner and nominating Inquiry Officer, would not be sufficient until and unless contemplation comes to conclusion and is transformed into an enquiry by issuance of the charge-sheet. Indication that Inquiry Officer has been

nominated is different from appointment of the Inquiry Officer. Therefore, reading the two together the normal conclusion is that it is after appointment of the Inquiry Officer so nominated in a contemplated enquiry that enquiry can be said to be pending.

. . . . . .

In the instant case, admittedly the charge-sheet was issued on 30.7.2004 much after the notice for voluntary retirement had taken effect. The Inquiry Officer has also not been actually appointed before the voluntary retirement took effect and it is clearly established from inter se correspondence of the departmental authorities that no enquiry was pending against the petitioner and it was only in the stage of contemplation vide letter dated 5.6.2003 of which no information whatsoever was given to the petitioner coupled with the fact that the competent authority had not rejected voluntary retirement application of the petitioner by a positive act, it would be deemed to have been accepted as has been held in the decisions of the Apex Court referred to above.

. . . . . .

For all the reasons stated above, the writ petition succeeds and is allowed. The order impugned dated 16.7.2007 appended as Annexure 15 to the writ petition is quashed. The petitioner shall be deemed to have voluntarily retired on 30.9.2003 and shall be entitled to all retrial benefits in accordance with law. No order as to costs. (**Dr. Hari Prasad Singh v. State of U.P.; 2014(1) ESC 110 (All)(DB)**

Transfer of Property Act

S. 106 – Notice – Validity of – Required to be given before filing of suit

This is landlord's writ petition arising out of SCC suit No. 563 of 1970. P.L. Nigam vs. Srnt. Gujja and others. The matter was once remanded to the trial court by the revisional court. Thereafter, Additional J.S.S.C., Lucknow through judgment and decree dated 10.10.1988 dismissed the suit. The petitioner, who was substituted at the place of original plaintiff landlord filed S.C.C. Revision NO.213 of 1988. The revision was dismissed on 03.08.1996, hence this writ petition. The original landlord plaintiff had died during pendency of the suit and had been substituted by the petitioner Smt. Janak Dulari. Accordingly, the title of the suit when it was decided in 1988 was Janak Dulari Vs. Smt. Gujja and others.

Both the courts below dismissed the suit mainly on the ground that the notice was defective as it did not contain the details of total tenanted accommodation. Copy of the notice is Annexure-3 to the writ petition, in

which the accommodation in dispute has been described to consist of "two rooms, one kothari, one gallery inside' for kitchen, courtyard, latrine and bathroom". Copy of the plaint is Annexure-4 to the writ petition. In para-1 of the plaint, the tenanted accommodation has been described exactly in the same manner as it was described in the notice.

Placing reliance upon its earlier Constitution Bench, seven judge authority reported in V.D. Chettiar vs. Y. Ammal, 1980 ARC 1: AIR 2005 SC 1745 held that if U.P. Act NO.13 of 1972 applies to a building (as is the position in the instant case) then no notice terminating the tenancy under Section 106 of Transfer of Property Act is required to be given before filing the suit. In the said case also eviction decree passed by J.S.C.C. and lower revisional court had *been set aside by this High Court on the ground that notice issued by the landlady* was not in accordance with law. The Supreme Court set aside the order of the High Court and affirmed the eviction order passed by the trial court. **(Janak Dulari (Smt.) v. Xth ADJ, Lucknow; 2014 (1) ARC 339)**

Property Laws – Title – Burden to prove title lies on the party making the claim – Relief cannot be ground of weakens of defendant's case

It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.

The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the focus on it, irrespective of the question whether the defendants have proved their case or not. Court's view that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, plaintiff must be non-suited**. (Union of India v. Vasavi Co-op. Housing Society Ltd.; 2013 (1) Supreme 1)**

U.P. Dacoity Affected Areas Act

S.7—Scope—Special Court has to try the scheduled offences by following the procedure provided for the trial of sessions cases

The very provisions of section 193 Cr.P.C. itself indicate that the Court of Session may also take cognizance of an offence, if it is empowered to do so by any other law for the time being in consonance with the saving clause contained in section 5 of the Cr.P.C., which lays down that nothing contained in the Code shall in the absence of a specific provision to the contrary, affect any

special or local law for the time being in force or any special jurisdiction or power conferred or any special forum of procedure prescribed by any other law for the time being in force. As such, if the special laws are in force, then the general laws could not be resorted to as regards the procedure of a trial or other things regarding a criminal offence made punishable either under the IPC or any other Act for the time being in force.

In ordinary parlance, the Special Court is also a Court of Session as is envisaged by section 9 of the Cr.P.C., but what is further found by virtue of section 7(2) of the Special Act is that the Special Court has to try the scheduled offences by following the procedure provided by the Code of Criminal Procedure, 1973 for the trial of sessions cases. Thus, what is directed by this special provision is that irrespective of the offences not being triable under the I.P.C. by a Court of Session, a Special Judge, which we have noted, is a Court of Session has the power of trying such cases, but in all such trials, the Special Court has to follow the procedures set down by the Cr.P.C. under Chapter-XVIII, which relates to trial before the Court of Session. If the Court of Session departs from the procedures, which are contained in Chapter-XVIII of the Cr.P.C. to carry out the trial of any of the scheduled offences under the Special Act, then it is either a case of lack of jurisdiction or lack of corum in a Judge on account of not following the appropriate provisions set down for carrying out the trial of such scheduled offences. **(Munna Lal vs. State of U.P.; 2014 (84) ACC 459 (All)**

U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act

S. 20(2)(c) – Structural alteration – eviction suit under provision – No consideration by trial court that alterations in respect to tenanted property have diminished its value or utility or disfigured – No interference warranted

The tenant had raised a plea that whatever construction he has made is not on tenanted property but on the property which is not under the tenancy with respondent-landlord. The Trial Court decreed the suit vide judgment dated 17.9.1997 where it has noticed several constructions and alteration not only in the room under tenancy but even beyond that but there is no finding at all as to whether structural alteration respect to tenanted property has resulted in diminishing its, value or utility or disfigure it. The revisional Court has reversed judgment of Trial Court by means impugned judgment on the ground that since landlord failed to prove alternation made in respect to tenanted property and therefore, suit had failed.

In court's view, when there is no consideration by Trial Court that alternations respect to tenanted property have diminished its value or utility or disfigured it, the suit could not have been decreed. Even otherwise, construction made outside tenanted property do not provide a ground for eviction from tenanted property under Section 20(2)(c) of Act, 1972, Substantial justice has been done by revisional Court since judgment of Trial Court was not sustainable in view of discussion made above. The scope of judicial review under Article 227 is very limited and narrow as discussed in detail by this Court in Writ-A No, 11365 of 1998 (Jalil Ahmad Vs. 1.6th Addl. District Judge, Kanpur Nagar and others) decided on 30.7.2012. There is nothing which may justify judicial review of order impugned in this writ petition in the light to exposition of laws, as discussed in the above judgment. **(Syed Ali Ahmad v. Addl. District Judge, Kanpur Nagar; 2014 (1) ARC 537)**

S. 21 – Release application – Admittedly held gravity of need lies in realm of comparative hardship – Apex Court decision in B.C. Bhutada case (2005 (2) ARC 899) followed – Relied on

The Supreme Court in B.C. Bhutada Vs. G.R. Mundada; AIR 2003 Supreme Court 2713 : 2005 (2) ARC 899 has held that the gravity of need lies in the realm of comparative hardship. Accordingly even if it is assumed that the need of the landlord is not too grave, still release application deserves to be allowed as the courts below particularly the Prescribed Authority held that tenant had several other shops available to him to do the business. Moreover as per report of the advocate commissioner and admission of the tenant, the electricity had been got disconnected by the tenant which proved that the tenant was not doing business from the shop in dispute.

In the instant case court found that the findings of both the courts below that landlord not proved the bonafide need are patently erroneous in law and are based upon misconception of bonafide need as used in Section 21 of U.P. Act No. 13 of 1972. Findings of comparative hardship have already been recorded against the tenant by the courts below.

Accordingly, writ petition is allowed. Both the impugned orders are set aside. Release application of the landlord is allowed. **(Shiv Kumar v. 1st Addl. District Judge; (2014) 1 ARC 581)**

S. 23 – Enforcement of eviction order – In addition to right of landlord to file contempt petition for violation of undertaking and initiate proceeding under section 23 of Act liberty provided

In this case court observed that it is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and initiate execution proceedings under Section 23 of the Act. (**Ram Pyari (Smt.) v. Dr. Surya Kumar Trivedi; 2014(1) ARC 282)**

U.P. Zamindari Abolition and Land Reforms Act

S. 143

The petitioner instituted Original Suit No. 479 of 1993 seeking partition in the disputed plot which was recorded in revenue record as agricultural land. The defendant raised an objection that Civil Court has no jurisdiction in the matter. The Trial Court answered with respect to jurisdiction of Civil Court holding, if there existed a permanent construction over agricultural land, the Civil Court will have jurisdiction to adjudicate suit for partition. Decision of Trial Court confirmed by Revisional Court.

There is no declaration under Section 143 of Act, 1951- Since the land in dispute, despite and irrespective of nature of construction continued to be an "agricultural land", in absence of any declaration made under Section 143, evidently Civil Court had no jurisdiction to decide the matter being barred by Section 331 of Act, 1951. The dispute could have been settled in Revenue Court. The writ petition allowed accordingly. **(Satgur Dayal Vs. IV Additional District Judge & Others; 2013 (6) AWC 6327 (LB)**

Words and Phrases

"Bias" – Meaning

Bias can be defined as the total absence of any pre-conceived notions in the mind of the Authority/Judge, and in the absence of such a situation, it is impossible to expect a fair deal/trial and no one would therefore, see any point in holding/participating in one, as it would serve no purpose. The Judge/Authority must be able to think dispassionately, and sub-merge any private feelings with respect to each aspect of the case. The apprehension of bias must be reasonable, i.e., which a reasonable person would be likely to entertain. Bias is one of the limbs of natural justice. The doctrine of bias emerges from the legal maxim - *nemo debet esse judex in causa propria sua*. It applies only when the interest attributed to an individual is such, so as to tempt him to make a decision in favour of, or to further, his own cause. There may not be a case of actual bias, or an apprehension to the effect that the matter most certainly will not be decided, or dealt with impartially, but where the circumstances are such, so as to create a reasonable apprehension in the minds of others, that there is a likelihood of bias affecting the decision, the same is

sufficient to invoke the doctrine of bias.

In the event that actual proof of prejudice is available, the same will naturally make the case of a party much stronger, but the availability of such proof is not a necessary pre-condition, for what is relevant, is actually the reasonableness of the apprehension in this regard, in the mind of such party. In case such apprehension exists, the trial/judgment/order etc. would stand vitiated, for want of impartiality, and such judgment/order becomes a nullity. The trial becomes "*coram non judice*".

While deciding upon such an issue, the court must examine the facts and circumstances of the case, and examine the matter from the view point of the people at large. The question as regards, "whether or not a real likelihood of bias exists, must be determined on the basis of probabilities that are inferred from the circumstances of the case, by the court objectively, or, upon the basis of the impression that may reasonably be left upon the minds of those aggrieved, or the public at large". **(State of Gujarat & Anr. v. Hon'ble Mr. Justice R.A. Mehta; 2014 (1) CPR 779 (SC)**

Term "Buggery", "Sodomy", "Carnal" – Defined and clarified

Court may also notice dictionary meanings of some words and expressions, which have bearing on this case.

Buggery – a carnal copulation against nature; a man or a woman with a brute beast, a man with a man, or man unnaturally with a woman. This term is often used interchangeably with "sodomy". (Black's Law Dictionary 6th Edn. 1990)

Carnal – Pertaining to the body, its passions and its appetites animal; fleshy; sensual; impure; sexual. People v. Battilana, 52 Cal. App.2d 685, 126 P.2d 923, 928 (Black's Law Dictionary 6th edn. 1990)

The first records of sodomy as a crime at Common Law in England were chronicled in the Fleta, 1290, and later in the Britton, 1300. Both texts prescribed that sodomites should be burnt alive. Such offences were dealt with by the ecclesiastical Courts.

The offence of sodomy was introduced in India on 25.7.1828 through the Act for Improving the Administration of Criminal Justice in the East Indies (9.George.IV).

Chapter LXXIV Clause LXIII "Sodomy" – "And it be enacted, that every person convicted of the abominable crime of buggery committed with either mankind or with any animal, shall suffer death as a felon". In 1837, a Draft Penal Code was prepared which included: Clauses 361 – "Whoever

intending to gratify unnatural lust, touches for that purpose any person or any animal or is by his own consent touched by any person for the purpose of gratifying unnatural lust, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and must not be less than two years"; and Clause 362 - "Whoever intending to gratify unnatural lust, touches for that purpose any person without that person's free and intelligent consent, shall be punished with imprisonment of either description for a term which may extend to life and must not be less than seven years, and shall also be liable to fine." **(Suresh Kumar Koushal and another v. Naz Foundation and others; 2014 (84) ACC 774)**

Consequential benefits back wages, continuity of service and attendant benefits are part of consequential benefits

Whether an order of "all" consequential benefits" includes back wages. It is not as though the Labour Court ordered reinstatement with continuity of service with/without back wages and attendant benefits. The Labour Court ordered reinstatement with all consequential benefits. Back wages, continuity of service and attendant benefits are part of consequential benefits. **(APSRTC, Hyderabad and another v. T. Venkataiah and another; 2014(2) SLR 431 (AP))**

"Consultation"- Meaning and scope

The meaning of consultation varies from case to case, depending upon its fact-situation and the context of the statute, as well as the object it seeks to achieve. Thus, no straight-jacket formula can be laid down in this regard. Ordinarily, consultation means a free and fair discussion on a particular subject, revealing all material that the parties possess, in relation to each other, and then arriving at a decision. However, in a situation where one of the consultees has primacy of opinion under the statute, either specifically contained in a statutory provision, or by way of implication, consultation may mean concurrence. The court must examine the fact-situation in a given case to determine whether the process of consultation, as required under the particular situation did in fact, stand complete. **(State of Gujarat & Anr. v. Hon'ble Mr. Justice R.A. Mehta; 2014 (1) CPR 779 (SC)**

Expression "failure of justice"—Applicability and meaning of—Explained

The court must examine whether the issue raised regarding failure of justice is actually a failure of justice in the true sense or whether it is only a camouflage argument. The expression 'failure of justice' is an extremely pliable or facile an expression which can be made to fit into any case. The court must endeavour to find out the truth. There would be 'failure of justice' not

only by unjust conviction but also by acquittal of the guilty as a result of unjust or negligent failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be over emphasised to the extent of forgetting that the victims also have certain rights. It has to be shown that the accused has suffered some disability or detriment in the protections available to him under Indian Criminal Jurisprudence. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there has been serious prejudice caused to him with respect to either of these aspects, and that the same has defeated the rights available to him under legal jurisprudence, the accused can seek relief from the Court. **(C.B.I. vs. Ashok Kumar Aggarwal; 2014 (84) ACC 252 (SC)**

Workmen's Compensation Act

Employees' Compensation Act, 1923 – Compensation - Award of compensation – Contest by insurance company – On appeal, insurance company directed to pay interest from the date of adjudication and not from on month after the accident – Validities of- appellants held entitled to interest at the rate of 12% from the date of accident

The appellants are the wife and the relatives of deceased driver who died in a road accident. The deceased driver was driving a truck bearing No. GJ-17-T-8607, which was owned by Yunusbhai Gulambhai Shaikh, respondent No. 2 herein. The deceased was 36 years of age at the time of the accident. On 20th November, 1996, the appellants raised a claim of compensation for a sum of Rs.2,15,280/- and 12% interest therein from the date of accident by filing a claim application before the Workmen Compensation Commissioner/Labour Court. After passage of more than 16 years, the wife and children of the deceased driver had still not received any compensation.

The appellants filed a compensation application before the Workmen Compensation Commissioner/Labour Court on 20th November, 1996. The appellants made a claim of Rs.2,15,280/- and also penalty to the tune of 50% of the compensation i.e. a sum of Rs.1,07,640/-, thus, making the grand total of Rs.3,22,920/-. Respondent No.1- the Insurance Company, contested the compensation application. On 23th December, 2010, the learned Commissioner awarded compensation on account of death in the sum of Rs.2,13,570/- with 12% interest from the date of accident. The learned Commissioner also awarded Rs.1,06,785/- as penalty.

Aggrieved and dissatisfied with the aforesaid judgment and award

passed by the learned Commissioner, the Insurance Company filed First Appeal before the High Court.

By judgment and order, dated 24th January, 2012, the High Court has partly allowed the First Appeal. The High Court directed the respondent No.1 - Insurance Company to pay interest on the amount of compensation from the date of adjudication of claim application i.e. 23th December, 2010 and not from one month after from the date of accident i.e. 21st August, 1996.

Aggrieved by the aforesaid judgment of the High Court, the appellants have filed the present appeal.

Learned counsel for the appellants has submitted that the aforesaid judgment of the High Court is contrary to the law laid down by this Court in the case of Oriental Insurance Company Limited versus Siby George and others [(2012) 12 SCC 540].

Court have perused the aforesaid judgment. Court are of the considered opinion that the aforesaid judgment relied upon by the learned counsel for the appellants is fully applicable to the facts and circumstances of this case. This Court considered the earlier judgment relied upon by the High Court and observed that the judgments in the case of National Insurance Co. Ltd. v. Mubasir Ahmed [(2007) 2 SCC 349] and Oriental Insurance Co. Ltd. v. Mohd. Nasir [(2009) 6 SCC 280] were per incuriam having been rendered without considering the earlier decision in Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289]. In the aforesaid judgment, upon consideration of the entire matter, a four-judge Bench of this Court had held that the compensation has to be paid from the date of the accident. **(Saberabibi Yakubbhai Shaikh and Ors. v. National Insurance Co. Ltd. Ors.; 2014 (2) SLR 191 (SC)**

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Statutory Provisions

Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training), Not. No. G.S.R. 263, dated October 27, 2013, published In the Gazette of India, Part 11, Section 3(1), dated 23rd November, 2013, p. 1591, No. 47 [F. No. 6/2/2013-Estt.(Pay-l)]

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President hereby makes the following rules further to amend the Fundamental Rules, 1922, namely-

1. (1) These rules may be called the Fundamental (Amendment) Rules, 2013.

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

2. In the Fundamental Rules, 1922 in Rule 29, for clause (2), the following clauses shall be substituted, namely-

"(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post or to a lower scale, the authority ordering the reduction shall specify -

(a) The period for which the reduction shall be effective; and

(b) Whether, on restoration, the period of reduction shall operate to postpone
future increments and, if so, to what extent.

(3) The Government servant shall regain his original seniority in the higher service, grade or post on his restoration to the service, grade or post from which he was reduced".

Ministry of Women and Child Development, Noti. No. G.S.R. 769(E), dated December 9, 2013, published In the Gazette of India, Extra., Part 11, Section 3(1), dated 9tb December, 2013, pp. 4-6, No. 593 [F. No. 19-5/2013-WW]

In exercise of the powers conferred by Section 29 of the Sexual Harassment of Women at Workplace (prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely-

1. Short title and commencement.-(1) These rules may be called the

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

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

(a) "Act" means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of2013);

(b) "complaint" means the complaint made under Section 9;

(c) "Complaints Committee" means the Internal Committee or the Local Committee, as the case may be;

(d) "incident" means an incident of sexual harassment as defined in clause (n) of Section 2;

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

(f) "special educator" means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;

(g) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Fees or allowances for Member of Internal Committee.-(1) The Member appointed from amongst non-government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less. The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. Person familiar with issues relating to sexual harassment.-Person familiar with the issues relating to sexual harassment for the purpose of clause *(c)* of sub-section (I) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following-

(a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing

workplace sexual harassment;

(b) a person who is familiar with labour, service, civil or criminal law.

5. Fees or allowances for Chairperson and Members of Local Committee. (1) The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.

(2) The Members of the Local Committee other than the Members nominated under clauses (b) and (cl) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The District Officer shall be responsible for the payment of allowances referred to in sub-rules (I) and (2).

6. Complaint of sexual harassment.-For the purpose of sub-section (2) of Section 9,-

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by-

(a) her relative or friend; or
(b) her eo-worker; or
(c) an officer of the National Commission for Women or State Women's Commission; or
(d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;

(ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-

(a) her relative of friend; or
(b) a special educator; or
(c) a qualified psychiatrist or psychologist; or
(d) the guardian or authority under whose care she is receiving treatment or care; or
(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or

qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

(iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

(iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

7. Manner of inquiry into complaint.-(1) Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the

Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

8. Other relief to complainant during pendency of inquiry.-The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to-

(a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;

(b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. Manner of taking action for sexual harassment.-Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

10. Action for false or malicious complaint or false evidence.-Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.

11. Appeal.-Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

12. Penalty for contravention of provisions of Section 16.-Subject to the provisions of Section 17, if any person contravenes the provisions of

Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

13. Manner to organise workshops, etc.-Subject to the provisions of Section 19, every employer shall-

(a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;

(b) carry out orientation programmes and seminars for the Members of the Internal Committee;

(c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;

(d) conduct capacity building and skill building programmes for the Members of the Internal Committee;

(e) declare the names and contact details of all the Members of the Internal Committee;

(f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

14. Preparation of annual report.-The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details-

(a) number of complaints of sexual harassment received in the year;

(b) number of complaints disposed off during the year;

(c) number of cases pending for more than ninety days;

(d) number of workshops or awareness programme against sexual harassment carried out;

(e) nature of action taken by the employer of District Officer.

Ministry of Minority Affairs (Wakf Division), Noti. No. S.O. 3292(E), dated October 29, 2013, published In the Gazette of India, Extra., Part 11, Section 3(ii), dated 31st October, 2013, p, 1, No. 2523

In exercise of the powers conferred by sub-section (2) of Section 1 of the Wakf (Amendment) Act, 2013 (No. 27 of 2013) (2013-CCL-II-535), the Central Government hereby appoints the 1st day of November, 2013 as the date on which the provisions of the said Act shall come into force.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AMENDMENT) ACT, 2014 (NO. 16 OF 2014)

[7*th March*, 2014.]

An Act further to amend the Narcotic Drugs and Psychotropic Substances Act, 1985.

Be it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

Prefatory Note- Statement of Objects and Reasons.- The Narcotic Drugs and Psychotropic Substances Act, 1985 was enacted consolidating and amending the provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances under the Opium Act, 1857, Opium Act, 1878 and the Dangerous Drugs Act, 1930. This Act was amended once in 1989 and subsequently in 2001. During the implementation of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001. During the implementation of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 certain anomalies have been noticed, It is proposed to rectify those anomalies and make certain further changes to strengthen the provisions of the act.

2. The amending Act of 2001 rationalised the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. Such provisions have sometimes been misinterpreted to imply that in determining quantities, only the pure drug content in the quantum of drug seized should be reckoned. Sing the Act duly provides for punishment for preparations of drugs also, this amendment seeks to clarify the legislative intent to take the entire quantity of drug seized in a case of determining the quantum of punishment and not the

pure drug content.

3. Provisions for tracing and seizing of illegally acquired properties pursuant to drug trafficking activity were introduced in the principal Act by way of amendment in 1989 and were further strengthened in the amending Act of 2001. The need for further expanding the scope of such provisions and to broad base the definition of illegally acquired property so that it becomes more difficult for drug traffickers to enjoy the fruits of drug trafficking activity, has been experienced. It is proposed to do so by way of certain amendments.

4. The amendments also seek to put in place the enabling provisions for the introduction of an alternate method of obtaining alkaloids of opium through production of Concentrate of Poppy Straw instead of production and processing of opium, in the country. Besides, some other amendments seeking to address the anomalies arising out of the amendments made in 2001 are sought to be introduced along with measures to further strengthen the provisions of the Act.

1. Short title and commencement. (*1*) This Act may be called the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2.- In section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the principal Act),—

(*a*) after clause (*iv*), the following clause shall be inserted, namely:—

> '(*iva*) "Central Government factories" means factories owned by the Central Government or factories owned by any company in which the Central Government holds at least fifty-one per cent. of the paid-up share capital;';

(*b*) clause (*viii-a*) shall be relettered as clause (*viii-b*) and before, clause (*viii-b*) as so relettered, the following clause shall be inserted, namely:—

'(*viiia*) "essential narcotic drug" means a narcotic drug notified by the Central Government for medical and scientific use;'.

3. Amendment of Section 4.- In section 4 of the principal Act,—

(*a*) in sub-section (*1*), after the words "the illicit traffic therein'', the words "and for ensuring their medical and scientific use" shall be inserted;

(*b*) in sub-section (*2*), after clause (*d*), the following clause shall be inserted, namely:—

"(*d-a*) availability of narcotic drugs and psychotropic substances for medical and scientific use;".

4. Amendment of Section 9.- In section 9 of the principal Act,—

(*a*) in sub-section (*1*), in clause (*a*),—

(*i*) after sub-clause (*iii*), the following sub-clause shall be inserted, namely:—

"(*iii-a*) the possession, transport, import inter-State, export inter-State, warehousing, sale, purchase, consumption and use of poppy straw produced from plants from which no juice has been extracted through lancing;".

(*ii*) after sub-clause (*v*), the following shall be inserted, namely:—

(*v-a*) the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption and use of essential narcotic drugs:

Provided that where, in respect of an essential narcotic drug, the State Government has granted licence or permit under the provisions of section 10 prior to the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, such licence or permit shall continue to be valid till the date of its expiry or for a period of twelve months from such commencement, whichever is earlier.";

(*b*) in sub-section (*2*), after clause (*h*), the following clause shall be inserted, namely:—

"(*ha*) prescribe the forms and conditions of licences or permits for the manufacture, possession, transport, import inter-State, export inter-State, sale, purchase, consumption or use of essential narcotic drugs, the authorities by which such licence or permit may be granted and the fees that may be charged therefor;".

5. Amendment of Section 10- In section 10 of the principal Act, in sub-section (*1*), in clause (*a*),—

(*a*) in sub-clause (*i*), after the words ''poppy straw", the words "except poppy straw produced from plants from which no juice has been extracted through lancing" shall be inserted;

(*b*) in sub-clause (*v*), for the words "manufactured drugs other than prepared opium", the words and brackets "manufactured drugs (other than

prepared opium and essential narcotic drugs)'' shall be inserted.

6. Amendment of Section 15- In section 15 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

7. Amendment of Section 17- In section 17 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

8. Amendment of Section 18- In section 18 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

9. Amendment of Section 20- In section 20 of the principal Act, in clause (*b*), in sub-clause (*ii*), in item (*A*), for the words "six months", the words "one year" shall be substituted.

10. Amendment of Section 21- In section 21 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

11. Amendment of Section 22- In section 22 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

12. Amendment of Section 23- In section 23 of the principal Act, in clause (*a*), for the words "six months", the words "one year" shall be substituted.

13. Insertion of new Section 27-B- After section 27A of the principal Act, the following section shall be inserted, namely:—

> ''27B. Whoever contravenes the provision of section 8A shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine.''.

14. Amendment of Section 31- In section 31 of the principal Act,—

(*a*) in sub-section (*1*),—

(*i*) for the words ‘‘one-half of the maximum term’’, the words ‘‘one and onehalf times of the maximum term’’ shall be substituted;

(*ii*) for the words ‘‘one-half of the maximum amount’’, the words ‘‘one and one-half times of the maximum amount’’ shall be substituted;

(*b*) in sub-section (*2*),—

(*i*) for the words ‘‘one-half of the minimum term’’, the words ‘‘one and one half times of the minimum term’’ shall be substituted;

(*ii*) for the words ‘‘one-half of the minimum amount’’, the words ‘‘one and one-half times of the minimum amount’’ shall be substituted.

15. Amendment of Section 31-A- In section 31A of the principal Act, in sub-section (*1*), for the words “shall be punishable with death”, the words and figures “shall be punished with punishment which shall not be less than the punishment specified in section 31 or with death” shall be substituted.

16. Amendment of Section 42- In section 42 of the principal Act, in sub-section (*1*), in the proviso, for the words “Provided that”, the following shall be substituted, namely:—

“Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that”.

17. Amendment of Section 52-A- In section 52A of the principal Act,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

‘‘(*1*) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances,

by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.'';

(*b*) in sub-section (*2*),—

(*i*) for the words "narcotic drug or psychotropic substance" and "narcotic drugs or psychotropic substances", wherever they occur, the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted;

(*ii*) in clause (*b*), for the words "such drugs or substances", the words "such drugs, substances or conveyances" shall be substituted;

(*c*) in sub-section (*4*), for the words "narcotic drugs or psychotropic substances", the words "narcotic drugs, psychotropic substances, controlled substances or conveyances" shall be substituted.

18. Insertion of new Section 57-A -After section 57 of the principal Act, the following section shall be inserted, namely:—

"57A. Whenever any officer notified under section 53 makes an arrest or seizure bunder this Act, and the provisions of Chapter VA apply to any person involved in the case of such arrest or seizure, the officer shall make a report of the illegally acquired properties of such person to the jurisdictional competent authority within ninety days of the arrest or seizure.".

19. Substitution of New Heading for heading of Chapter V-A- In Chapter VA of the principal Act, for the heading "FORFEITURE OF PROPERTY DERIVED FROM, OR USED IN ILLICIT TRAFFIC", the heading "FORFEITURE OF ILLEGALLY ACQUIRED PROPERTY" shall be substituted.

20. Amendment of Section 68-B- In section 68B of the principal Act,—

(*a*) in clause (*g*),—

(*i*) in sub-clause (*i*), for the words "of this Act; or", the words "of this Act or the equivalent value of such property; or" shall be

substituted;

(*ii*) in sub-clause (*ii*), for the words "such property,", the words "such property or the equivalent value of such property; or" shall be substituted;

(*iii*) after sub-clause (*ii*), the following sub-clause shall be inserted, namely:—

"(*iii*) any property acquired by such person, whether before or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2014, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved, or the equivalent value of such property;";

(*b*) for clause (*h*), the following clause shall be substituted, namely:—

'(*h*) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, wherever located and includes deeds and instruments evidencing title to, or interest in, such property or assets;'.

21. Amendment of Section 68-D.- In section 68D of the principal Act, in sub-section (*1*), for the words "any Collector of Customs or Collector of Central Excise", the words "any Commissioner of Customs or Commissioner of Central Excise" shall be substituted.

22. Amendment of Section 68-H- In section 68H of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that in a case where the provisions of section 68J are applicable, no notice under this section shall be invalid merely on the ground that it fails to mention the evidence relied upon or it fails to establish a direct nexus between the property sought to be forfeited and any activity in contravention of the provisions of this Act.".

23. Amendment of Section 68-O- In section 68-O of the principal Act, in sub-section (*4*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that if the office of the Chairman is vacant by reason of his death, resignation or otherwise, or if the Chairman is unable to discharge his duties owing to absence, illness or any other cause, the

Central Government may, by order, nominate any member to act as the Chairman until a new Chairman is appointed and assumes charge or, as the case may be, resumes his duties.''.

24. Amendment of Section 71- In section 71 of the principal Act, in sub-section (*1*), for the words "The Government may, in its discretion, establish, as many centres as it thinks fit for identification, treatment", the words ''The Government may establish, recognise or approve as many centres as it thinks fit for identification, treatment, management" shall be substituted.

English translation of Karmic Anubhag-2, Noti. No. 6/XIII73/Ka-2-T.C.-IV, dated January 17, 2014, published in the *U.P.* Gazette, Extra., Part 4, Section (Ka), dated 17th January, 2014, pp. 4-6

[A.P. 733]

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974:

1. Short title and commencement.-(I) These rules may be called the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness (Tenth Amendment) Rules, 2014.

(2) They shall come into force at once.

2. Substitution of Rule 5.-In the Uttar Pradesh Recruitment of Dependants of government Servants Dying in Harness Rules, 1974, for existing Rule 5 the following rule shall be *substituted,* namely-

"5. (1) *Recruitment of a member of the family of the deceased-In* case a Government servant dies in harness after the commencement of these rules, and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government Service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal

recruitment rules if such person-

(i) fulfils the educational qualifications prescribed for the post:

Provided that in case appointment is to be made on a post for which typewriting has been prescribed as an essential qualification and the dependent of the deceased Government servant does not possess the required proficiency in typewriting, he shall be appointed subject to the condition that he would acquire the requisite speed of 25 words per minute in typewriting well within one year and if he fails to do so, his general annual increment shall be withheld and a further period of one year shall be granted to him to acquire the requisite speed in typewriting and if in the extended period also he again fails to acquire the requisite speed in typewriting, his services shall be dispensed with.

(ii) is otherwise qualified for Government service; and

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, if may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner:

Provided further that for the purpose of the aforesaid proviso, the person concerned shall explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry of the time limit fixed for making the application for employment along with the necessary documents/proof in support of such delay and the Government shall, after taking into consideration all the facts leading to such delay, take the appropriate decision.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Every appointment made under sub-rule (1) shall be subject to the condition that the person appointed under sub-rule (1) shall maintain

other members of the family of deceased Government servant, who were dependent on the deceased Government servant immediately before his death and are unable to maintain themselves.

(4) Where the person appointed under sub-rule (1) neglects or refused to maintain a person to whom he is liable to maintain under sub-rule (3), his services may be terminated in accordance with the Uttar Pradesh Government Servant (Discipline and Anneal) Rules. 1999 as amended from time to time"

LEGAL QUIZ

Q. 1 Whether a High Court Judge holds 'Judicial Office?

Ans. Article 236(b) provides that "the expression judicial service means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of district Judge"

In para 25 of Padma Prasad v. Union of India, AIR 1992 SC 1213 it was held, "we, therefore, hold that expression "judicial office" under Art. 217 (2)(a) of Constitution means a judicial officer who belongs to the judicial service as defined under Art. 236 (b) of the Constitution. In order to qualify for appointment as a judge of High Court under Art. 217 (2)(a) a person must hold a judicial office which must be part of judicial service. A High Court Judge on the other side is a constitutional functionary.

Q. 2 Whether a High Court Judge is liable for Contempt of Court?

Ans. Relevant case law on the point is Harish Chandra v. Justice S. Ali Ahmad, AIR 1986 Pat. 65 (FB)

Explaining the provisions of Contempt of Courts Act Patna High Court in above mentioned case held that in view of S.9 and language of S.16 itself it has to be held that S. 16 does not purport to enlarge the scope of the Act by including even the judges of the courts of Record. In my opinion, it only gives statutory recognition in respect of contempt of court committed by Judge and Magistrates presiding over Subordinate Courts. (para 11)

It was further held "when Sec. 16(1) says that a judge ..... shall also be liable for contempt of his Court" it obviously does not refer to the Supreme Court or High Court. In respect of Supreme Court or High Court there is no question of any judge being liable for contempt of his own court, in other words, the court room in which such Judge is presiding. Only a judge of subordinate court can be said to have committed contempt of his own court i.e. the court in which such judge is presiding. If the framers of the Act wanted to include even the Supreme Court and High court Judges under S. "16, then in normal course it was expected that it should have been specifically mentioned that a Judge of the Supreme Court or a High Court can be held liable for Contempt of the Supreme Court or the High Court, as the case may be.

Under Article 215 of Constitution also there is no precedent wherein a High Court Judge has been prosecuted and punished for Contempt of Court.

Q. 3 Whether the formal arrest in necessary for issuance of P.T. Warrant?

Ans. The formal arrest is not necessary for issuance of P.T. Warrant because such prisoner is already confined in prison and is produced before another court for answering charge etc. By issuance of production warrant accused is transferred form the custody of one court to the another court. See: Md. Daud alias Md. Saleem v. Superintendent, Jail Moradabad, 1993 Alj 430 Alld (DB)

Q. 4 Whether the accused is to be produced on P.T. Warrant within 24 hours of formal arrest?

Ans. Yes, if the formal arrest of accused is effected then he should be produced before the Magistrate within 24 hours.

The production warrant is not the custody warrant for the purpose of Section 167 Cr.PC. It is also pertinent to mention that if the date of appearance on production warrant has not been expired or the date has not been mentioned in the production warrant, in such circumstances order of production warrant shall be complied. See: Nabbu v. State of U.P. and others, 2006 Cr.LJ 2260 Allahabad.

Q. 5 Whether the Magistrate can award lesser punishment than the minimum punishment provided under special Act such as copy Right Act and Essential Commodities Act?

Ans. The Magistrate can award lesser punishment after complying the provisions and conditions laid down in the special Act if such special Act makes provision for awarding lesser punishment than that of minimum punishment. See: Section 25 (1B) and proviso of the Arms Act.

Q.6 Whether the Magistrate can impose fine only or imprisonment with fine only in Section 304-A?

Ans. Section 304-A IPC provides "whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two year, or with fine, or with both."

Recently Apex Court propounded that if the accused are found guilty of rash and negligent driving, courts have to be on guards to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the Courts should have deterrent effect on potential wrong doers and it should commensurate with the seriousness of the offence. Of course the courts are given discretion in the matter of sentence, but the direction shall be exercised with due regard to larger interest of the society and it is needless to add that passing of sentence on the offender is probably the most public face of the criminal justice system. See:

(i) State of Karnataka v. Sharanappa Basnagouda; 2002 (45) ACC 39 (SC).
(ii) Satnam Sing v. State of Rajasthan; (2000) 1 SCC 662.
(iii) Ratan Singh v. State of Punjab; 1979 ACRR 485 (SC)

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