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INSTITUTE OF JUDICIAL TRAINING & RESEARCH, U.P.
VINEET KHAND, GOMTINAGAR,
LUCKNOW – 226 010

Quarterly Digest

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

July – September, 2006

Volume: XII **Issue No.: 3**

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Arbitration and Conciliation Act

◆ S. 20 of Arbitration Act, 1940 – Appointment of Arbitrator – Court below should not enter into the merit of the dispute, as the suit was only for appointment of an Arbitrator U/s. 20 of the Arbitration Act and not for deciding the claim on merit.

Once the respondents in its written statement had themselves admitted and there was a dispute between the parties with regard to the rate at which the payment for additional work was to be made, it was not proper for the Courts below to have entered into the merits of the dispute, as the suit was only for appointment of an arbitrator under Section 20 of the Arbitration Act and not for deciding the claim on merits. Clause 53 of the agreement is independent of other clauses of the agreement. Clause 52 provides for settlement of disputes but does not bar an aggrieved party from invoking the arbitration clause without going through the procedure of clause 52 for settlement of his dispute. This court also observed that the clause 52 will not come in the way of the petitioner for invoking the provisions of clause 53 and demanding reference to an arbitrator for deciding the dispute raised by them. **(Bansal Febwell Industries v. Betwa River Board; 2006(3) AWC 2346)**

◆ **S. 34 – Civil P.C., S. 47 – Arbitration award – Provisions of S. 47 of CPC are not attracted in execution of arbitration award.**

Section 47 of the Code of Civil Procedure cannot be attracted, despite provisions contained in Section 36 in respect of an award when the same is sought to be executed thereunder. If section 47 of the CPC is to be attracted then the restrictions provided in Section 34 of the Act would be redundant, that is why the Legislature in its wisdom thought it fit to incorporate the scope similar to Section 47 of the Code of Civil Procedure, in Section 34 of the Arbitration Act in order to bring finality before the decree becomes executable. The object of the Arbitration Act is directed towards speedy hazard free finality with a view to avoid long drawn procedure based on technicalities. Thus Court find that no illegality has been committed by the court below in passing the impugned order. **(State of U.P. & Anr. V. Sadhu Ram Mittal; 2006 (5) ALJ 215)**

Arms Act

◆ **S. 13(1) – Arms Rules, R.51; Sch. 3 Part (A) – Cancellation of arms licence on ground of non-disclosure of criminal case pending against applicant – Validity of.**

What is necessary for the applicant to disclose is as to whether he has been convicted in any criminal case, and if so, then he has to mention the offence, the sentence and the date of the sentence. Nowhere in the form is an applicant required to furnish the details of pendency of any criminal case against him. By not disclosing about the pendency of the criminal case the petitioner cannot be said to have furnished any false or wrong information nor can he be said to have suppressed any factual information in his application, as the same was not required to be furnished. If the same was a necessary information, the Form 'A' should have contained a clause requiring the applicant to furnish such information also. In the absence of the same it cannot be said that the petitioner has suppressed any information.

Even otherwise, in the said criminal case, admittedly the petitioner has already been acquitted by the Session Court on 19.4.2004, which is prior to the passing of the impugned order cancelling his arms license. Such fact of his acquittal has also been noticed by the authorities concerned in the impugned orders. In the aforesaid circumstance, as in the facts of this case it is clear that the petitioner had not concealed any material information, the cancellation of his arms license, on the basis of his not disclosing about the pendency of the criminal case at the time of making the application for grant of arms license, cannot be justified. **(Pratap Narayan v.State of U.P. & Ors.; 2006 (4) ALJ 169)**

◆ **S. 18 – Arms Rules, R. 56 –There is no provision in Act or Rules for permitting appellate authority to dismiss appeal in default –Appeal has to be decided on merit.**

The provisions of the Act and the Rules provide that the appeal filed ought to be decided on merits after calling for the records of the case from the authority who has passed the order appealed against. The said provisions of the Act and the Rules do not give any indication that the appellate authority has the power to dismiss the appeal in default of the appellants. Since in the present case, the appellate authority has not

considered the case on merits, hence, such order deserves to be set aside. **(Alam Singh v. State of U.P.; 2006 (4) ALJ 70)**

Banks

- **Bank Guarantee – Must be construed on its own terms – Its construction in the light of contemporaneous documents is not permissible.**

The contention that the bank guarantee must be construed in the light of other purported contemporaneous documents cannot be accepted. A contract indisputably may be contained in more than one document. Such a document, however, must be a subject matter of contract by and between the parties. The correspondences in question were between the Cooperative Society and Pentagon while the contract in question (whether of indemnity of guarantee) was between Pentagon and the appellant (though in favour of the Cooperative Society). The said correspondences were not exchanged between the parties hereto, the appellant and the respondent Cooperative Society, as a part of the same transaction. The appellant understood that it would stand as a surety and not as a guarantor.

It is beyond any cavil that a bank guarantee must be construed on its own terms. It is considered to be a separate transaction. If a construction as suggested by the respondent Cooperative Society that the bank guarantee must be construed in light of other purported contemporaneous documents is to be accepted, it would also be open to a banker to put forward a case that an absolute and unequivocal bank guarantee should be read as a conditional one having regard to circumstances attending thereto. It is impermissible in law.

In this case, the document in question whether a contract of indemnity or guarantee does not specifically refer to any particular clause of the contract between the Cooperative Society and Pentagon. In fact the contract between the Cooperative Society and Pentagon does not contain any clause requiring Pentagon to furnish any bank guarantee. **(State Bank of India & Another v. Mula Sahakari Sakhar Karkhana Ltd.; (2006) 6 SCC 293)**

Civil Procedure Code

◆ **S. 9 – Jurisdiction of Civil Court – Not to cover disputes involving rights or obligations created by Industrial Disputes Act.**

Where, however, the disputes involve recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act. The Civil Court has no jurisdiction to entertain such suit and any decree passed by the Civil Court without jurisdiction, is a nullity. The High Court has failed to notice the position of law enunciated by this Court. **(State of Haryana & Ors. v. Bikar Singh; AIR 2006 SC 2473)**

◆ **S. 10 – Stay of suit – Tenant filing suit for injunction against landlord and landlord subsequently filed suit against tenant for eviction and recovery of arrears of rent – Whether suit for eviction filed by landlord liable to be stayed? – "No".**

In the circumstances, in any matter, the landlord if he is to evict the tenant, he will have to institute a suit for eviction, which has been done in the subsequent case. In the circumstances, the order impugned in the revision rejecting the application under Section 10, CPC does not suffer from any illegality or irregularity. The Court has specifically taken into consideration and arrived at a conclusion that the questions to be determined in the two suits are substantially different and, therefore, the application has been rejected. Besides, the aforesaid consideration, the Court has also recorded finding that the jurisdiction of a suit for eviction on the ground of arrears of rent is maintainable before the Judge Small Causes Court, whereas the injunction suit is proceeding in the regular civil court. Therefore, no illegality has been committed by the Judge Small Causes Court while rejecting the application under Section 10, CPC. **(Rakesh Kumar Gupta v. Ashok Kumar Gupta; 2006 (3) AWC 2488)**

◆ **S. 47 – Execution of decree –Objections regarding new construction on disputed land for the first time during execution proceeding cannot be raised.**

The rejection of objection under Section 47 CPC is absolutely correct and well founded. It does not call for any interference. It is also noteworthy that the question of trees or two rooms standing on the plot was never pleaded and neither any issue was framed nor any finding has been

recorded in the suit, therefore, these objections cannot be raised for the first time during execution proceedings. **(Ram Chandra v. Kalyan Singh; AIR 2006 (All) 184)**

◆ **S. 100 – Administrative Tribunals Act, Ss. 28, 29 29-A – Maintainability of Second Appeal – Second Appeal in High Court would not be maintainable after establishments of Central Administrative Tribunal & in views of provisions of Ss. 28, 29 and 29-A of Administrative Tribunals Act.**

It was not open to the Union of India (defendant-appellant) to file the present Second Appeal before the High Court on 20.12.1985, that is, much after the establishment of Tribunal on 1.11.1985. The present Second Appeal filed before this Court on 20.12.1985 was evidently not maintainable. In the circumstances, the present Second Appeal is liable to be dismissed as not maintainable in view of the provisions of the Administrative Tribunals Act, 1985, particularly, Sections 28, 29 and 29-A thereof. **(Union of India v. Dr. Vishwabir Singh; 2006 (4) ALJ 615)**

◆ **S. 115 (as amended by Central Act w.e.f. 1.7.2002) – Revision – Order issuing notice on injunction application is not amenable to revision.**

An order directing issue of notice on a temporary injunction application under Order XXXIX, Rule 1 CPC is definitely not an order, which though may come within the ambit of 'case decided' but it would not amount to dispose of the injunction application or terminate the proceedings of the temporary injunction. Obviously, as the law is settled on this point, the revision as was preferred before the District Judge by the plaintiff on the order passed by the trial court issuing notice on temporary injunction application, was definitely not maintainable and any order directing admission of such revision and granting interim relief to the revisionist is, thus, unsustainable and requires to be quashed. **(Mohd. Rais Khan v. Naseeb Ullah Khan; 2006 (3) AWC 2147)**

◆ **O. 1 R. 10 – Grant of application for impleadment does not affect merits of the claim.**

So far as the first submission of the learned counsel for the appellants is concerned, it is on record that the application for impleadment was allowed by the High Court which was affirmed by this Court by rejecting a special leave petition, which relates to impleadment of Respondents 2 and 3 in the revision case. In an application for impleadment under Order 1 Rule 10 of the Code of Civil Procedure, the only question that needs to be decided is whether the presence of the applicant before the Court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. Therefore, according to the learned counsel for the appellants, even if Respondents 2 and 3 were added as parties, but by such addition it cannot be said that they were also entitled to succeed to the properties in question of late Suryanarayana and therefore entitled to evict the appellants.

It is true, as noted hereinabove, that in an application for impleadment under Order 1 Rule 10 CPC, the court would only decide whether the presence of the applicant before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the proceedings. But in the facts and circumstances of the present case, we are of the view that the question of strict proof whether Respondents 2 and 3 were also entitled to evict the appellants from the properties in question may not be germane for decision of this case. **(Bhogadi Kannababu v. Vuggina Pydamma; (2006) 5 SCC 532)**

◆ **O. 6 R. 17 – Amendment of written statement – The approach should be more liberal than amendment in the plaint.**

Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In view of the provisions made under Order 6 Rule 17 CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the court shall allow amendment of pleadings if it finds

that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.

An amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case. Therefore inconsistent pleas can be raised by the defendants in the written statement although the same may not be permissible in the case of Plaint. **(Baldev Singh v. Manohar Singh; (2006) 6 SCC 498)**

◈ **O. 6 R. 17 – Application for amendment of pleadings – If application was filed only to delay the decision of case – Rejection of application was proper.**

After the amendment proviso to Rule 17 makes it clear that the amendment can be made after the commencement of the trial only when the court comes to the conclusion that in spite of due diligence, a party could not have raised the matter before the commencement of the trial. In the present case the petitioner has not given any reason for not raising the matter at the stage of filing his written statement initially or before the commencement of the trial. As such the order of the court below rejecting the amendment application of the petitioner is wholly justified. **(Malkhan Singh v. Smt. Vimala Devi & Anr.; 2006 (4) ALJ 620)**

◈ **O. 6, R. 17 – Amendment of Written Statement – Filing of amendment application after 10 years from date of filing of written statement – Effect of.**

It is true that the amendment should be moved within the reasonable time and not with the intent to delay the proceedings. In the present case

amendment has been filed after ten years from filing of the written statement but at the same time it is seen that the amendment has been filed when the process of evidence has been started. Thus, filing of the amendment application after ten years would not make any difference and even if the amendment would have been incorporated, it would not amount to causing any delay in the proceedings. **(Abdul Mateem v. Mehandi Hasan & Anr.; 2006 (5) ALJ 243)**

◆ **O. 17, R. 1(as amended by CPC Amendment Act of 1999) – Adjournment – Restriction of three adjournments by proviso of O. 17, R. 1 is not mandatory but directory.**

A perusal of the statutory provisions no doubt makes it clear that the statute provides guidelines not to grant adjournment sought by one party in the hearing of a suit on more than three occasions. But at the same time it also does not put complete fetters on the court's discretion for such grant of adjournment in case, the party suffering on account of such grant of adjournment can be compensated by award of costs and there are exceptional reasons or circumstances beyond the control of that party seeking adjournment to proceed with the hearing. Therefore, to say that this proviso added to Rule 1 by CPC. Amendment Act, 1999, takes away the discretion of the court to grant adjournment on fourth occasion would be a wrong interpretation of the Rule. Thus, the number, as provided in the aforesaid proviso, has only limited adjournment and can be quite safely interpreted to be just directory and not mandatory. It is true that grant of any adjournment let alone the first, second or third adjournment, is not a right of a party. The court granting adjournment must be satisfied by the party making such prayer that special and extraordinary circumstances are available for grant of adjournment and the court is not supposed to make a routine order in this regard. The proviso to Order 17 Rule 1 CPC has to be necessarily read down so as not to take away the discretion of the court. In the extreme hard cases, for instance, a party may be suddenly hospitalized on account of some serious ailment or there may be serious accident or some act of God leading to some devastation. In such circumstances it cannot be said that though the circumstances may be beyond control of a party, further adjournment cannot be granted because of restrictions of three adjournments, as provided in the proviso to Order 17 Rule 1 CPC. The court can grant adjournment even in cases, which may not directly come

within the category of circumstances beyond the control of a party, by resorting to the provision of higher costs which can also include punitive costs, in the discretion of the court for granting adjournment beyond three occasions, while considering such prayer of a party. **(Shiv Nath Sahdeo and Anr. V. Bangai Sahdeo; 2006(5) ALJ 232)**

◆ **Order 22 Rule 3 – Failure of plaintiff to move formal substitution application before trial Court for purpose of incorporating amendment in array of parties – Would not amount to abatement of suit.**

It is true that a formal substitution application is required to be given in the trial court also for the purpose of incorporating amendment in the array of the parties in the plaint. But in case the plaintiff has failed to move this formal application it will not amount abating the suit. In the present view of the matter the application moved by the petitioner had absolutely no merit and it has rightly been rejected by the courts below. **(Committee of Management, Rama Devi Balika Inter College, Allahabad v. Mohd. Iqbal Khan & Ors.; AIR 2006 (All) 163)**

◆ **O. 22 Rule 3, 4, 11 & 12 – Abatement of Appeal – Order rejecting application for restoration of suit attaining finality against one of several Appealants, Plaintiffs for non-joinder of his LRs. – The whole appeal abates as the court can't pass inconsistent decrees in the same suit.**

Before proceeding to consider the contentions raised, one aspect requires to be noticed. It is seen that on 20.7.2002, when the application for restoration was pending, petitioner-Plaintiff 1, S.M. Naqi, one of the legal representatives of the deceased original plaintiff, died. The surviving petitioners in the application, the other legal representatives of the original plaintiff, did not take steps to bring on record the legal representatives of the said petitioner S.M. Naqi.

In this context, learned counsel for the respondents raised a preliminary objection to the hearing of the appeal on merits. He contended that the dismissal of the suit for default has become final as against S.M. Naqi, one of the legal representatives of the deceased original plaintiff, since he died pending the application for restoration of the suit and his legal

representatives were not brought on record and in view of this, this Court cannot proceed to allow the appeal and restore the suit, even if it were possible, since it would give rise to inconsistent decrees in the suit, one of dismissal of the suit against Naqi, which has become final and the other, a restoration of the suit in favour of the other legal representatives of the original plaintiff and the reopening of the suit. Learned counsel contended that such reopening of the suit qua the surviving plaintiffs would only be an exercise in futility since the Court cannot pass a decree inconsistent with the decree of dismissal that has become final as against Naqi. Learned counsel relied on the leading case in *State of Punjab v. Nathu Ram* in support. Learned counsel for the plaintiffs could not give any effective answer to this submission on behalf of the defendants. The contention that the other legal representatives substantially represented the estate of the original plaintiff cannot take the appellants far. The question is not whether the estate of the original plaintiff is substantially represented or not, the question is, what is the consequence of the death of one of the legal representatives of the original plaintiff pending the application for restoration of the suit that stood dismissed. The decree of dismissal as against that legal representative has become final. Therefore, the court cannot pass an inconsistent decree in the same suit by granting a decree to the other legal representatives. This is the position adopted by this Court in the decision relied on by the learned counsel for the respondents and followed subsequently by this Court in *Ram Sarup v. Munshi*. Thus, the preliminary objection has to be upheld and it has to be held that the relief of reopening the suit cannot be granted to the appellants since its dismissal has become final as against S.M. Naqi, one of the legal representatives of the original plaintiff. **(Firdous Omer v. Bankim Chandra Daw; (2006) 6 SCC 569)**

- **O. 23, R. 3 – Appeal against consent decree is not maintainable.**

The position that emerges from the amended provisions of O. 23, can be summed up thus: (1) No appeal is maintainable against a consent decree having regard to the specific bar contained in S. 96(3), CPC; (ii) No appeal is maintainable against the order of the Court recording the compromise (or refusing to record a compromise) in view of the deletion of Cl. (m), R.1, O. 43; (iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in

view of the bar contained in R. 3-A; (iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the Court which passed the consent decree, by an order on an application under the proviso to R. 3 of O. 23. Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the Court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the Court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the Court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. **(Pushpa Devi Bhagat (D) by LR v. Rajinder Singh & Ors.; AIR 2006 SC 2628)**

◆ **Order 22, Rule 3 read with S. 151 – Amendment in substitution allowed by court below – Not wholly illegal, since amendment not new case altogether as plaint itself containing avertment on possession.**

The proposed amendment, which was sought to be made in the plaint, in the application under Order 22, Rule 3, CPC can maximum be said to be supplementing the factual position and it will not be in any case deemed to be a case altogether newly adopted by the plaintiffs by virtue of the amendment, which they sought in the substitution application. However, it is also submitted by the petitioner that the application under Order 22,Rule 3 CPC is not supposed to contain a prayer for such amendment. May be that application, which is required to be given under Order 22, Rule 3 CPC relates to the prayer for substitution of the deceased party alone yet if some additional amendment has been sought by the plaintiffs and allowed by the Courts below, the order so passed in this context cannot be said to be wholly illegal. In the aforesaid view of the matter, the orders impugned do not appear to have any legal or procedural flaw and no interference in this petition under Article 226 of the Constitution of India, is required. **(Daya Shankar Lal Gupta v. Ambika Prasad; 2006 (3) AWC 2473).**

◆ **O. 26, R. 9 & 10 – Property can be identified either by boundaries or by other specific description – Minor discrepancy to be ignored.**

We find that a commission was issued for demarcating the suit Plot No. 1301/1-Ba and the Commissioner showed the disputed area in the map prepared by him. The lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the defendants as DW 1 and the report and plan submitted by the Commissioner. That court also noticed that the plaintiff had given specific boundaries of the suit land and it was clear from the sketch prepared by the Commissioner that the disputed constructions lay in the suit land and that it belonged to the plaintiff. This was the basis of the affirmance of the decree in favour of the plaintiff by the lower appellate court. In the second appeal, the learned Judge of the High Court, after referring to the description of the boundaries in the plaint, simply discarded the sketch prepared by the Commissioner.

That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally the boundaries should prevail. **(Subhaga & Others v. Shobha & Others; (2006) 5 SCC 466)**

◆ **O. 32, R. 3, O. 8, R. 1, 10 – Petition filed for appointment of guardian of minor – It is mandatory for Court to first appoint guardian & thereafter proceed with suit.**

From the statutory provision it is more than obvious that it is a mandatory requirement of the procedure for the Court to be overcautious to protect the interest of a minor who has been made a party to the suit. Therefore, the Court cannot dispense with the mandatory procedural requirement and when the petition for such appointment of guardian of minor defendant No. 3 was moved before it by the plaintiff as well as the minor's father, a party defendant in the suit, those petitions should have been taken first and disposed of, where after only the Court could further proceed in the suit. The stage in the suit for filing written statement by one or the other defendants would arise only after appointment of guardian by

the court has been done and not before that. **(Khursheed Ahmad & Ors.; 2006 (5) ALJ 161)**

◆ **O. 39, R. 3 – Setting aside of ex parte ad interim injunction – Ex parte ad interim injunction granted by trial court for selling of liquor in cantonment area without complying with statutory provisions was not proper**

The trial court has made certain observations on the aspect of the parity alleged by the petitioner of India Hotel and Clark Hotel etc. The petitioners did not show that those persons were impleaded as party before the court or any officer to show that the case of the petitioner was similar and identical to those in respect of those persons. The trial court also mentioned in its ex parte interim order that the business of selling foreign liquor in the premises in question is only source of livelihood of the plaintiff. This court finds no such allegation in the plaint. In that view of the matter this court finds that the learned Trial Judge has made perverse observations. It refers to Article 21 of the Constitution of India. The impugned order of the trial court is also misconceived and misplaced as the rights under Article 21 of the Constitution are subject to control and limitations prescribed through the statutory provisions. No person can sell the liquor in the cantonment premises even under the licence accorded by the District Excise Officer, but applying the provisions of Rule 325 of Excise Act Rules and Section 210 of the Cantonment Act. The trial court has no business to issue ad interim injunction when there was no compliance of Section 210 of Cantonment Act. In view of the above, while exercising our writ jurisdiction under Article 226 of the Constitution of India and considering the sensitivity of the issue, particularly when the matter relates to the Cantonment Area and there if flagrant violation of the statutory provisions as a consequence where of the petitioners can not carry on the shop of foreign liquor, therefore this court has suspend the ad interim injunction order granted by the trial court. **(Bhanu Jaiswal v. State of U.P.; 2006 (4) ALJ 14 (DB)).**

Constitution of India

◆ **Article 14 – Natural Justice – Order of termination of service passed without giving opportunity of hearing to employee would not be illegal, if order procured by misrepresentation or fraud.**

In such case where an order is obtained by misrepresentation or fraud, the principles of natural justice are not attracted to rectify the mistake, which the Authority had committed because of the fraud played by the applicant. In such eventualities, termination is automatic. **(Ramesh Prasad Patel v. Union of India; 2006 (4) ALJ 339 (DB))**

◆ **Article 14 & 16 – Validity of termination of service – Appointment made on purely temporary basis is liable to be terminate without any notice.**

Where the appointment is totally irregular no opportunity is required while dispensing with his service. No doubt, it is mentioned in the impugned order that the working of the petitioner was not up to the mark, but that is not the foundation of the order. The foundation of the order is that the appointment was temporary which was terminable without notice and thus in accordance with the condition of appointment letter, the order has been passed and in this particular case the petitioner was not entitled to any opportunity as the order cannot be termed as stigmatic. It is also well-settled that a temporary employee does not have any right to the post and that too one whose appointment itself is hit by the principles enshrined in Articles 14 and 16 of the Constitution. **(Man Mohan Bhatnagar v. VIIIth A.D. & S.J. Meerut; 2006 (3) AWC 2158)**

◆ **Article 14 – Equality – Article 14 has a positive concept – Nobody can claim equality in illegality.**

The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot

strengthen their case. Moreover, Article 14 has a positive concept. Nobody can claim equality in illegality. **(U.P. state Sugar Corpn. Ltd. & Anr. V. Sant Raj Singh & Ors.; 2006 (4) ALJ 590)**

◆ **Article 16 – Preliminary enquiry – There is no law, which requires participation of delinquent employees in preliminary enquiry.**

There is no requirement under any statutory provision or otherwise under settled law, which requires opportunity of participation to delinquent employees in the preliminary enquiry. Such enquiry is a fact finding enquiry only for the satisfaction of the authority, as to whether the allegations noticed against employee concerned, deserve any merit and as to whether a departmental enquiry be initiated against employee or not. There is no reason for participation of the employee in the aforesaid proceedings. **(Gopalji Rai & Ors. v. State of U.P. & Anrs.; 2006 (4) ALJ 502)**

◆ **Articles 16 – Disciplinary proceedings – Holding of more than one preliminary enquiries – Would not vitiate regular disciplinary conducted against employee in accordance with Rules.**

Even otherwise holding of more than one preliminary enquiries would not vitiate the regular disciplinary enquiry conducted against an employee in accordance with rules. Moreover any irregularity in the preliminary enquiry would not affect order of punishment passed. In pursuance to a regular enquiry conducted in accordance with rules unless regular inquiry itself is found to vitiate in law. Therefore, the first submission of the petitioner that after two preliminary enquiries reports submitted by the Chief Fire Officer the disciplinary authority could not have directed to hold further enquiry is rejected. **(Veerpal Singh v. Senior Superintendent of Police, Agra & Ors.; 2006 (5) ALJ 307)**

◆ **Article 21, 142 – Right of marriage – Whether major boy or girl undergoing inter-cast or inter-religious marriage would be protected under Article 21 of Constitution of India – "Yes".**

Disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. Such acts of

violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. Direction issued to Administration/police authorities throughout the country to see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such persons and further stern, action is taken against such persons as provided by law. **(Lata Singh v. State of U.P. & Anr.; 2006 (5) ALJ 357)**

◆ **Article 141 – Precedent – Decision is an authority for what it decides and not for what can logically be deduced there from.**

It is now well settled that a decision is an authority for what it decides and not what can logically be deduced there from. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. **(Inderpreet Singh Kahlon & Ors. v. State of Punjab & Ors; AIR 2006 SC 2571)**

◆ **Articles 161, 226 – Grant of pardon, suspension and commutation of sentence – Is essential function of Govt. and not of Writ Court.**

Article 161 of the Constitution of India speaks that the Government has power to grant pardon etc. and suspend to commute sentences in certain cases. We are also of the view such power is to be exercised on the basis of individual cases and following process laid down in the Code of Criminal Procedure. It is also significant to note that the appropriate Government may or may not accept the pardon. Therefore, at this juncture, the High Court cannot calculate the period of imprisonment and hold by itself that on the individual cases of the petitioners, they will be sent for further

imprisonment or they will be pardoned. It is for the essential function of the Government nor for the writ court. Striking down by the general order passed by the government does not mean considering the individual cases has been usurped. Therefore, remedy is open for the petitioners to approach before the appropriate government for consideration of their individual case. **(Ram Deo & Ors. v. State of U.P. &Ors.; 2006 (4) ALJ 657 (DB))**

- **Article 226 – Compassionate Appointment – Similarly, situated person can't be given appointment U/Article 14 of Constitution of India in order to perpetuate mistake on the ground of this discrimination or hardship.**

In an identical matter, appointment had been given to 'x' even though his mother was employed in another institution, while petitioner is being discriminated. In this case court observed that Article 14 is not available to perpetuate illegality and the High Court cannot issue directions that a mistake be perpetuated on the ground of discrimination or hardship. **(Anshuman Singh Bhadoria v. Director of Education (Higher Education) U.P., Allahabad; 2006 (3) AWC 2457)**

- **Article 226 – Writ against private body like (IFFCO) – Maintainability of.**

It must be remembered that any business or commercial activity, may be manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are such which do have an impact on the economy of the country in general but such activity cannot be classified as one falling in the category of discharging duties or functions of public nature. Therefore, no difficulty in concluding that manufacturing and selling of urea will also not involve any public function. In view of this, the inevitable conclusion that follows is that IFFCO is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. **(Jyoti Kumar Malviya v. Indian Farmers Fertilizers Co-operative Limited & Ors.; 2006 (4) ALJ 71 (DB)).**

◆ **Articles 311, 309 – Exparte enquiry – Validity of.**

Inquiry Officer can hold the enquiry exparte in two situations. Firstly in spite of service of charge sheet the delinquent employee does not reply the charge sheet within time stipulated in the charge sheet and secondly where the charged Govt. servant does not appear on the date fixed in the enquiry or at any stage of proceeding in spite of service of notice on him or having knowledge of the date. The 'exparte inquiry' should not be confused and equated with 'no formal inquiry' accordingly would not permit the Inquiry Officer to submit inquiry report finding the charged employee guilty of the charges leveled against him without holding any such formal disciplinary inquiry. Where after submission of reply to the charge sheet, the inquiry officer did not inform the petitioner in connection of date and place of holding of disciplinary inquiry against him, the respondent-authority/inquiry officer would not be justified under rules of inquiry to hold even exparte inquiry against the petitioner as unless inquiry officer communicates the date and place of holding such disciplinary inquiry against him. **(Shiv Shanker Saxena v. State of U.P.; 2006 (4) ALJ 90 (DB))**

◆ **Article 309, 25 – U.P. Government Servants (Conduct) Rules, R.29 – Rule prohibiting bigamy is not arbitrary and does not offend dictates of religion.**

There is no law, custom or practice showing that solemnizing more than one marriage is necessary religious or otherwise activity. In Muslim Personal Law marriage with four women is permissible. However, to the knowledge of the Court no personal law maintains or dictates it as a duty to perform more than one marriage. No religious or other authority provides that marrying more than one woman is a necessary religious sanction and any law providing otherwise or prohibiting bigamy or polygamy would be irreligious or offend the dictates of the religion. Polygamy cannot be said to be an integral part of any religious activity, may be Hindu, Muslim or any other religion. A distinction has to be drawn between religious faith, belief and religious practices. Even Article 25 of the Constitution guarantees only the religious faith and belief and No the religious practices which if run counter to public order or health or policy of social welfare which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. Therefore, R. 29 of Govt. Servants

(Conduct) Rules prohibiting bigamy cannot be said to arbitrary, illegal or ultra virus. **(Veerpal Singh v. Senior Superintendent of Police, Agra & Ors.; 2006 (5) ALJ 307)**

Consumer Protection Act, 1986

- **S. 2(1)(g) – Deficiency in service – Want of municipal Corporations approval and delay in handing over possession of fiat amounts to deficiency on part of Builder Company.**

Want of CMC approval and delay in not handing over the possession of flat amounted to deficiency in service on part of the petitioners. Court did not find any illegality or jurisdiction error calling for interference in revisional jurisdiction U/s. 21(b) of the Act in the order of State Commission affirming the order of District Forum for refund of the amount of Rs. 3,30,000/- with nominal interest @ 4% p.a. **(Howrah Enclave Pvt. Ltd. & Anr. V. Durga Venue; 2006 (4) ALJ 735)**

Contempt of Courts Act

- **S. 2(b) – Contempt petition – Factual controversy cannot be examined before framing of charges in contempt matters.**

Factual controversy cannot be examined before framing of charge(s) in contempt matters. Framing of charge(s) is prelude to the trial being held in contempt matter. The defence against the alleged contempt would be examined by Hon'ble Single Judge and he has himself observed that the effect of the withdrawal of the suit before presentation of the contempt application is a question to be examined after the framing of charge(s) against the appellant/contemnor. Indeed, defence against the alleged contempt cannot be taken up entering into factual aspects, even before charges framed. **(Anand Prakash Agarwal v. Cantonment Executive Officer, Cantonment Board, Meerut & Ors.; 2006 (4) ALJ 547 (DB))**

◆ **Section 2(b) & Article 215 – Contempt jurisdiction of High Court for violation of order of temporary injunction – High Court cannot only exercise powers under Article 215 of Constitution but also under O. 39 R. 2A of Civil P.C. and under Contempt of Courts Act.**

When there is willful disobedience of any order such as violation of temporary injunction, the High Court can also exercise powers under Article 215 of the Constitution. As per Article 215 of the Constitution, every High Court is a court of record and has all the powers of such a court including the power to punish for contempt of itself. It would be recalled that in the instant case, the breach alleged is of an interim injunction order granted by this Court in First Appeal From Order. The contempt could be proceeded against under Order 39 Rule 2A CPC as well as under the Contempt of Courts Act, 1971.Section 2(b) of the said Act clearly embraces within its ambit a willful disobedience to any judgment, decree, direction, order, writ or other process of a court. It matters not whether contempt is dealt with by 'X' Bench or 'Y' Bench of this Court. The point of the matter is that the allegation is of violation of an interim injunction granted by this Court where for this Court has ample power to proceed against the contemnor under the Contempt of Courts Act. **(Anand Prakash Agarwal v. Cantonment Executive Officer, Cantonment Board, Meerut & Ors.; 2006 (4) ALJ 547 (DB))**

Court Fees Act

◆ **Section 6A (2) – Serious challenge to the valuation of the suit and Court Fees – Interim injunction application should not be decided before deciding preliminary issue of Court Fees and Suits Valuation.**

Whenever a serious challenge is made to the jurisdiction of the Court as well as to the valuation of the suit and sufficiency of the court fee or to the maintainability of the suit, then if there appears *prima facie* some substance in those pleas, the proper procedure for the Court is to first decide these issues and then to decide the injunction application and other matters. It is also necessary in view of the spirit of provisions of Section 6A (2) of the Court Fees Act which provides that where it is found that the court fee paid is insufficient, the injunction order shall be discharged if the deficiency is not made good in accordance with the order of the Court, even if an appeal has been filed against that order. The learned Addlitional Civil

Judge has observed in the impugned order that the preliminary issues could not be decided before hearing of the injunction because other defendants had not put in appearance so far. His above approach is not proper. **(Arun Kumar Tiwari v. Smt. Deepa Sharma; 2006 (3) AWC 2142)**

Criminal Procedure Code, 1973

- **S. 50 – Direction for the arresting officers.**

In the case of Shanna alias Lulla, a Division Bench of this Hon'ble Court while dealing with the provisions of S., 50(1) Cr.P.C. held that every police officer arresting any person without warrant, shall forthwith communicate to him full particulars of the offence for which, he is arrested and the ground for such arrest. The duty is cost on the arresting officer to communicate the full particulars of the offence to the person arrested. It is not for the person arrested merely to draw his own inferences.

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S. 50 Cr.P.C. requires full particulars of the offence or other grounds for his arrest when a person is arrested. While committing a crime the provisions of S. 50 (1) of the Cr.P.C. will not be attracted. (Sheesh Ram v. State of U.P.; 2006 (55) ACC 750)

- **S. 154 – Effect of delay in filing FIR.**

Delay in filing FIR by itself cannot be ground to doubt the prosecution case and discard it. The delay in lodging the FIR would put the Court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting

the prosecution case and discarding the same solely on the ground of delay in

lodging the first information report. Delay has the effect of putting the court on its guard to search if any plausible explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot be itself be a ground for disbelieving and discarding the entire prosecution case. **(Sahebrao v. State of Maharashtra, 2006 Cri. L.J. 2881)**

◆ **S. 156(3) - When Magistrate is bound to direct for registration of case.**

If there is previous enmity between the parties that does not mean that any offence, committed thereafter, should go unnoticed. There is fracture in the hand of one injured and it makes out a cognizable offence. Whenever said application under section 156(3) Cr.P.C. discloses a cognizance offence, the Magistrate is bound to direct for registration of the case. (Ram Kumar Gautam v. State4 of U.P., 2006 (55) ACC 763)

◆ S. 156(3) – Purpose is only to call upon the police to investigate a cognizable case which it would have power to investigate, but which it has failed to investigate

The purpose of section 156(3) Cr.P.C. is only to call upon the police to investigate a cognizable case which it would have power to investigate, but which it has failed to investigate. Section 190 Cr.P.C. on the other hand calls for a greater application of the judicial mind as it requires the Magistrate concerned to decide whether or not cognizance should betaken on a complaint, police report or

information from other sources regarding the commission of an offence. The key words in section 190 Cr.P.C. are that on receiving a complaint of facts or on a police report or from information received from other sources that an offence has been committed a Magistrate may take cognizance of any offence. This right of the Magistrate whereby he may or may not take cognizance of an offence shows that he needs to apply his judicial mind for deciding whether or not to take cognizance of an offence. But it may be noted that even under section 190 Cr.P.C. the judicial satisfaction contemplated is a very limited satisfaction that prima face an offence appears to be disclosed. The Magistrate is not to adjudicate the issue on merits, as if he was conducting a full-dressed trial, nor is he required to form an opinion on the eventual probability of conviction at this stage. The consideration of an application under section 156(3) Cr.P.C. is even anterior to this stage, and the Court at the stage of 156(3) Cr.P.C. has not even to go into the question whether a prima facie case is made out. The Court has merely to see whether the allegations disclose the existence of a cognizable offence, and if the police has failed to investigate the matter, then the Magistrate is empowered to direct investigation into the offence. Questions about the probability of conviction, or even as to whether a prima facie case is made out are ordinarily outside the scope of proceedings under section 156(3) Cr.P.C. (Nitya Nand Dubey v. State of U.P.; 2006 (55) ACC 646)

- S. 161 –Statement under- Purpose of

If any statement is recorded by the Investigating Office, during the course of an investigation, then such a statement, if reduced in writing, can be used only for the purposes of contradicting the maker of the statement under section 162 of the Code, in accordance with section 162 of the Code in accordance with Section 145 of the Evidence Act. If any part of that statement is duly proved and if, the maker of the statement is contradicted in accordance with section 145 Cr.P.C. then he can be re-examined for the purposes of explaining any matter culled out during his cross-examination. The said bar of using such statement only for contradicting a witness does not apply to a dying declaration for the obvious reason that the maker of the said statement is dead. It also does not apply to a statement made under Section 27 of

the Evidence Act as it relates to the discovery of anything during the course of an investigation. The explanation attached with section 162 of the Code lays down as to what will amount to a contradiction, in a given by a witness. (CBI, Lucknow v. Arun Kumar Kaushik; 2006(55) ACC 629)

◆ S. 167 –The Magistrate must insist on the diary to be placed before him, and he must scan it for the purposes of granting remand- Granting of remand is a judicial exercise based on sound discretion, which must satisfy legal brain

The legislature has laid much emphasis on the entries of the diary to be forwarded to the magistrate, by the Police, at the time of seeking remand and for the magistrate to record it's reasons for granting remand of the accused in custody. This has duel purpose. Firstly, it gives the Magistrate to look into case diary to ascertain as to whether there exist reasonable grounds in the diary to grant remand for the offence mentioned in the remand prayer. This procedure, thus, checks the power of investigation to be misused by the police and at the same time expedite the investigation conducted by the police under judicial scrutiny by the Magistrate at regular intervals. This, in turn, checks the arbitrary misuse of power by the investigating officer. Secondly, it gives a chance to the higher Courts to verify the correctness of the remand order passed by the Magistrate, in case it is challenged before it. If the entries are not produced before the Magistrate at the time of granting remand then the Magistrate does not get a chance to verify the need for granting remand and thus allows criticism to be raised against his order. It is reminded that remand of an accused is not an empty formality and a mechanical process based on the whims of the police. If granted, it takes away the Fundamental Right of an individual enshrined under Chapter III of the Constitution and, therefore, is of very serious consequences. For a law abiding prestigious citizen it is worst than death. It not only snatches away the liberty of an individual but in most of the cases it affects the whole family adversely and tarnish their image in society. In a democratic country like our's the liberty is a precious attribute of an individual and he can be deprived of it only by "due process of law" as provided for it. Infractions of the due process of law will offence Articles 14, 19 and 21 immediately. Due process of law means doing an act as the law requires it to be done. It is a cardinal principle of law that if a thing is

required to be done in a particular way then either it is done in that way or not at all. Thus, unless the entries are produced before the Magistrate by the police, the Magistrate cannot grant remand mechanically merely by asking of it by the police., The Magistrate must insist on the diary to be placed before him, and he must scan it for the purposes of granting remand. Granting of remand is a judicial exercise taken by the Magistrate based on sound discretion, which must satisfy legal brain. **(Atah Ullah v. State of U.P.; 2006 (55) ACC 633)**

◆ **S. 167(2) Proviso (a) – Section 304B(2) IPC provides for minimum punishments of seven years and maximum punishment of imprisonment for life – Period of remand would be 90 days under clause (i) and not 60 days under clause (ii) of Section 167(2).**

A bare reading of Section 304-B IPC shows that whoever commits "dowry death" in terms of Section 304-B IPC shall be punished with imprisonment for a term which shall not be less than 7 years but which may extend to imprisonment for life. In other words, the minimum sentence is 7 years but in a given case sentence of imprisonment for life can be awarded. Put differently, sentence of imprisonment for life can be awarded in respect of an offence punishable under Section 304-B IPC. The proviso to sub-section (2) of Section 167 consists of three parts. The first part relates to power of the Magistrate to authorize detention of the accused person. This part consists of two sub-parts. In positive terms it prescribes that no Magistrate shall authorize detention of the accused in custody, under this paragraph [meaning sub-section (2)(a)] for a total period exceeding (i) 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and (ii) 60 days where the investigation relates to any other offences. The period of 90 days is applicable to cases where the investigation relates to the three categories of offences, which are punishable with (i) death, (ii) imprisonment for life, or (iii) imprisonment for a term of not less than ten years. The question is whether Section 304-B is an offence "punishable" with imprisonment for life. Strong reliance was placed by Mr. D.K. Garg, learned counsel appearing for the appellant on *Rajeev Chaudhary v. State (NCT) of Delhi* (AIR 2001 SC 2369). A reference is also made to the decisions of the Jharkhand, the Delhi and the Karnataka High Courts where the ratio in *Rajeev Chaudhary Case* AIR 2001 SC 2369) has been made applicable to cases involving offence punishable under Section 304-B IPC. The Jharkhand High Court's decision is *Sunil Kumar v.State of Jharkhand* [(2002 Cri LJ 2507 (Jhar)] has been made applicable to cases involving offence punishable under Section 304-B IPC. The Jharkhand High Court's decision is [(*Sunil Kumarv. State of Jharkhand* (2002 Cri LJ 2507 (Jhar)] Contrary views appear to have been taken by the Rajasthan and the Himachal Pradesh high Courts in *Keshav Dev v. State of Rajasthan* [(2005 Cri LJ 3306 (Raj)] and *State of H.P. v.Lal Singh* [(2003 Cri LJ 1668 (HP)]. The Pnjab and Haryana High Court appears to have taken a somewhat different view in two different cases. In *Kuldeep Singh v. State of Punjab*

[(2005) 3 RCR 599 (P & H)] it was held that the period is 90 days, as has been held in the case at hand. But a different view (though in relation to some other offences) was taken in *Abdul Hamid* (Crl. Misc. No. 40599 M of 2005 disposed of on 21.9.2005). A bare reading of *Rajeev Chaudhary case* [(AIR 2001 SC 2369)] shows that the same related to an offence punishable under Section 386 IPC and the sentence in respect of the said offence is not less than 10 years. This Court held that the expression "not less than" means that the imprisonment should be 10 years or more to attract 90 days' period. In that context it was said that for the purpose of clause (i) of proviso (a) of Section 167(2) Cr.P.C. the imprisonment should be for a clear period of 10 years or more. The position is different in respect of the offence punishable under Section 304-B IPC. In the case of Section 304-B the range varies between 7 years and imprisonment for life. What should be the adequate punishment in a given case has to be decided by the court on the basis of the facts and circumstances involved in the particular case. The stage of imposing a sentence comes only after recording the order of conviction of the accused person. The significant word in the proviso is "punishable". The word "punishable" as used in statutes which declare that certain offences are punishable in a certain way means liable to be punished in the way designated. It is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished. **(Bhupinder Singh v. Jarjail Singh; (2006) 6 SCC 277)**

◈ **S. 200 (2) – Magistrate treated protest petition as compliant after following procedure provided under proviso to S. 202(2) Cr.P.C. and summoned the accused – Whether malafide.**

Under section 202(2) Cr.P.C. the complainant is obliged to examine all his witnesses if the offence is triable by Court of Sessions. The connotation " all his witnesses" means only those witnesses on whom the complainant places reliance. If he does not place reliance on any witness, then he is not obliged to examine that witness under the aforesaid proviso. Any witness on whom the complainant does not place reliance is not " his witness". It is not the mandate of law that the complainant should examine even those witnesses on whom he does not rely and to whom he does not want to produce before the Court in support of his allegations made in the complaint. **(Pradeep Kumar v. State of U. P.; 2006 (55) ACC 729)**

◆ S. 200 & 482 – If the allegations in complaint constitute and offence, merely existence of civil remedy does not bar complaint case.

A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protects the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which

do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. **(Indian Oil Corpn. v. Nepc India Ltd. & Others; (2006) 6 SCC 736)**

S. 204 - Legality of summoning under - Magistrate is required to see as to whether any offence from the complaint and statement recorded is made out or not.

Considering to the second contention of the learned Counsel for the applicants that the Magistrate, at the stage of summoning, should also take into consideration the fact that the independent witness had not supported the complaint's version and therefore he should not summon the accused is concerned, the same also does not have any substance in it. At the stage of summoning under section 204 Cr.P.C. the Magistrate is required only to see as to whether any triable offence is made out from the compliant and the statement recorded under section 200 and 2002 Cr.P.C. or not? At that stage his power does not travel beyond that scope. This view is no longer res integra and has been cemented by volumes of decisions of both by this Court as well as Apex Court. The contention of the learned Counsel for the applicants thus is de horsed the law and is hereby rejected.

At the stage of summoning U/S 204 Cr.P.C. the Magistrate is required only to see as to whether any triable offence is made out from the complaint and the statement recorded under Section 200 and 202 Cr.P.C. or not. At that stage his power does not travel beyond that scope. **(Pradeep Kumar v. State of U.P.; 2006 (55) ACC 729)**

S. 209 – Committal of the case - The Magistrate is not supposed to act like a post office

The Magistrate is not supposed to act like a post office at that stage. The Magistrate will examine the contention of the applicant as to whether any cognizable offence triable by the Court of Session is made out then the Magistrate need not commit the case to the Court of Session. The Magistrate will decide the application within a period of one month from the date of its filing. (Rai Sahab Yadav v. State of U.P.; 2006 (55) ACC 756)

- **S. 242/309/313 – The proviso to sub section (3) of S. 242 Cr.P.C..**

If the accused does not plead guilty, or claim to be tried or the Magistrate convict the accused under s. 241, the Magistrate shall fix a date for the examination of witnesses. The Magistrate is authorized under sub-section (2) to issue summons to any of the witnesses directing him to attend or two produce any document or other thing and under sub-section (3) on the date fixed, the Magistrate is enjoined upon to take all such evidence as may be produced in its support by the prosecution. The proviso permits the cross-

examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination. It does not deal with either the clubbing of cases registered against the accused or simultaneous trial of different cases registered against an accused.

Merely because certain other charge-sheets have been ground to postpone the examination of the accused under S., 313 Cr.P.C. The apprehension of the accused-respondent that if his statement is recorded under Section 313 Cr.P.C. he would be required to divulge his defence and in that event he would be prejudiced in the trial of other cases filed against him is without any basis and foundation. (State of Karnataka v. Annegowda, (2006) 3 SCC (Cri) 59)

◆ S. 256 & 302 – Death of the complainant – Legal heirs can file application for permission to prosecute the case.

Learned counsel for the appellants with reference to Section 256 of the Code submitted that the complaint was to be dismissed on the ground of the death of the complainant. As noted above learned counsel for Respondent 1's legal heirs submitted that the legal heirs of the complainant shall file an application for permission to prosecute and, therefore, the complaint still survives consideration.

At this juncture it is relevant to take note of what has been stated by this Court earlier on the principles applicable. In *Ashwin Nanubhai Vyas v. State of Maharashtra* with reference to Section 495 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") it was held that the Magistrate had the power to permit a relative to act as the complainant to continue the prosecution. In *Jimmy Jahangir Madan v. Bolly Cariyappa Hindley* after referring to *Ashwin Case* it was held that heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution. Section 302 of the Code reads as under:-

> "302 *Permission to conduct prosecution* – (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below

the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

To bring in application of Section 302 of the Code, permission to conduct the prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Magistrate is empowered to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector, but no person other than the Advocate General or the Government Advocate or a Public Prosecutor or Assistant Public prosecutor shall be entitled to do so without such permission.

Above being the position, if any permission is sought for by the legal heirs of the deceased complainant to continue prosecution, the same shall be considered in its perspective by the court dealing with the matter. It is brought to the notice that by order dated 13.10.2003 further proceedings before the Magistrate are stayed. In that background Mr. Adsure submitted that the application shall be filed before this Court. If and when any application is filed the same shall be dealt with appropriately. Ordered accordingly. **(Balasaheb K. Thackeray v. Venkat; (2006) 5 SCC 530)**

S. 431 – Applicability of

Section 431 has no application and the question whether the appeal abated on the death of the appellant is not governed strictly by the terms of that section. But in the interests of uniformity, there is not valid reason for applying to appeals under Article 136 a set of rules different from those which govern appeals under the Code in the matter of abatement.

Chapter XXXI of Code of 1898, called 'OF APPWALS' contains provisions governing appeals. The Chapter opens with Section 404 which provides that no appeal shall lie from any judgment or order of a criminal

court except as provided for by the Code or by any other law for the time being in force and ends with S. 431 which deals with abatement of appeals. S. 411-A(2) provides for appeals to the High Court from orders of acquittal passed by the High Court in the exercise of its of original criminal jurisdiction. Section 417 deals with appeals to the High Court from original or appellate orders of acquittal passed by courts other than a High Court. By S. 431, appeals against acquittal filed under S. 411-A(2) or S. 417 finally abate on the death of the accused. Dead persons are beyond the processes of human tribunal and recognizing this, the first limb of S. 431 provides that appeals against acquittals finally abate on the death of the accused.

Where a respondent who has been acquitted by the lower court dies, there is no one to answer the charge of criminality, no one to defend the appeal and no one to receive the sentence. It is of the essence of criminal trials that excepting cases like the release of offenders on probation, the sentence must follow upon a conviction. Section 258(2), S. 306(2) and Section 309(2) of the Code provide, to the extent material, that where the magistrate or the Sessions Judge finds the accused guilty and convicts him he shall, unless he proceeds in accordance with the provisions of S. 562, pass sentence on the accused according to law.

Every other appeal under Chapter XXXI, except an appeal from a sentence of fine, finally abates on the death of the appellant. By 'every other appeal' is meant an appeal other than one against an order acquittal, that is to say, an appeal against an order of conviction. Every appeal against conviction therefore abates on the death of the accused except an appeal from a sentence of fine. An appeal from a sentence of fine is excepted from the all-pervasive rule of abatement of criminal appeals for the reason that the fine constitutes a liability on the estate of the deceased and the legal representatives on whom the estate devolves are entitled to ward off that liability. By section 70 of the Penal Code the fine can be levied at any time within six years after the passing of the sentence and if the offender has been sentenced for a loner period that six years, then at any time previous to the expiration of that period; 'and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts'. The fact that the offender has served the sentence in

default of payment of fine is not a complete answer to the right of the Government to realize the fine because under the proviso to Section 386(1)(b) of the Code the court can, for special reasons to be recorded in writing, issue a warrant for realizing the fine even if the offender has undergone the whole of the imprisonment in default of payment of fine. The sentence of fine remains outstanding though the right to recover the fine is circumscribed by a sort of a period of limitation prescribed by Section 70, Penal Code. (State of A.P. v. S. Narasimha Kumar, (2006) 3 SCC (Cri) 54)

Criminal Trial

- Related witness – testimony of.

Testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased in an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeming the accused person being convicted somehow or the other either because of animosity or some other reasons. On the contrary, invariably the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously. (State of A.P. v. S. Rayappa, (2006) 2 SCC (Cri) 353)

- Sole witness

Where there is only sole eyewitness of a crime, a conviction may be recorded against the accused concerned provided the court, which hears such witness, regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill will is suggested.

Chance witnesses as well as a solitary witness are the competent witnesses but their testimony should be critically tested and the prudence requires some corroboration. **(Asadulla v. State of U.P., 2006 (55) ACC 738)**

Environment Protection and Pollution Control

- **Sustainable development – Before acquisition of lands for development, the consequence and adverse impact of development on environment must be properly comprehended.**

The respondent agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Karnataka Industrial Areas Development Board (in short "KIADB") be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle. According to the respondents, if the entire land was acquired and an industrial area was developed, the villagers would lose the gomal lands, causing grave hardship to them as well as their cattle. It was submitted that there would be an adverse impact on the environment of the villages as the industrial area increases.

The 1972 Stockholm Conference on "Human Environment" secured its place in the history of our times with the adoption of the first global action plan for the environment. Yet, as increasingly grim statistics indicate, over the past decades our global environment and the living conditions for most of the inhabitants of the planet continue to deteriorate. This process has meant significant setback for both rich and poor.

The Declaration of the 1972 Stockholm Conference referred obliquely to man's environment, adding that "both aspects of man's environment, the natural and the man-made, are essential for his well-being and enjoyment of basic human rights".

In *Essar Oil Ltd. v. Halar Utkarsh Samiti [(1996) 5 SCC 281]* this Court aptly observed Stockholm Declaration as "magna carta of our environment". First time at the international level importance of environment has been articulated.

In the Stockholm Declaration, Principle 2 provides that the natural resources of the earth including air, water, land, flora and fauna should be protected. The fourth principle of the Stockholm Declaration reminds us about our responsibility to safeguard and wisely manage the heritage of wildlife and its habitat.

The Court in the said judgment also observed that:

> "This, therefore, is the aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in the population together with consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, the filling up of lakes and pollution of water resources and the very air which we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all

laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other."

In the said judgment, the passage has been quoted from *Indian Council for Enviro-Legal Action v. Union of India [(1996) 5 SCC 281.]* We deem it appropriate to reproduce the same. Para 31 at SCC p. 296 in the said judgment reads as under:

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destructon and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment."

A nation's progress largely depends on development, therefore, the development cannot be stopped, but we need to control it rationally. No Government can cope with the problem of environmental repair by itself alone; people's voluntary participation in environmental management is a must for sustainable development. There is a need to create environmental

awareness, which may be propagated through formal and informal education. We must scientifically assess the ecological impact of various developmental schemes. To meet the challenge of current environmental issues, the entire globe should be considered the proper arena for environmental adjustment. Unity of mankind is not just a dream of the enlightenment but a biophysical fact.

In *Subhash Kumar v. State of Bihar [(1991) 1 SCC 598: AIR 1991 SC 420]* this Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Article 21 to provide clean drinking water to its citizens.

This Court had an occasion to deal with this main principle of sustainable development in *Indian Council for Enviro-Legal Action v. Union of India [(1996) 3 SCC 212]*. Carolyn Shelbourn in his article "Historic Pollution – Does the Polluter Pay?" (Published in the *Journal of Planning and Environmental Law*, August 1974 issue), mentioned that the question of liability of the respondents to defray the costs of remedial measures can be looked into from another angle, which has come to be accepted universally as a sound principle viz. the "polluter-pays" principle.

The Court in the said judgment observed as under: *(Indian Council for Enviro-Legal Action case [(1996) 3 SCC 212]*

> "The polluter-pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to

> shift the financial burden of the pollution incident to the taxpayer. The 'polluter-pays' principle was promoted by the Organization for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the polluter-pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed."

This principle has also been held to be a sound principle in *Vellore Citizens' Welfare Forum [(1996) 3 SCC 212].* The Court observed that the precautionary principle and the polluter-pays principle have been accepted as part of the law of the land. The Court in the said judgment, on the basis of the provisions of Articles 47, 48-A and 51-A (g) of the Constitution, observed that we have no hesitation in holding that the precautionary principle and the polluter-pays principle are part of the environmental laws of the country.

The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The publics trust doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public.

This Court in A.P. Pollution Control Board mentioned that there is a need to take into account the right to a healthy environment along with the right to sustainable development and balance them.

In M.C. Mehta v. Kamal Nath [(1997) 1 SCC 388] this Court dealt with the public trust doctrine in great detail. The Court observed as under:

> "We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources." **(Karnataka Industrial Areas Development Board v. C. Kenchappa and Others; (2006) 6 SCC 371)**

Evidence Act

113-A – Requirement of

Under S. 113-A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subject her to cruelty. Even if these facts are established the Court is not bound to presume that her husband had abetted the suicide. Section 113-A

gives discretion to the Court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected having regard to the meaning of the word "cruelty" in section 498-A, IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give to the presumption that the suicide had been abetted by her husband. The Court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the Court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life.

(Sahebrao v. State of Maharashtra; 2006(55) ACC 572 (SC))

◆ S. 145 – Applies only after examination-in-chief

Section 145 Evidence Act applies only after examination-in-chief as is provided under Section 138 of the Evidence Act is over and that he can be cross-examined by the adverse party. Thus, for cross-examining a witness any party has to substitute it as an adverse party. Prosecution can be allowed to cross-examine only when it transform itself as an adverse party. Without such a legal character, of adverse party, the prosecution cannot be allowed to cross-

examine its own witness. **(CBI, Lucknow v. Arun Kumar Kaushik; 2006(55) ACC 629)**

Guardians and Wards Act

◆ **S. 6 – Custody of Child should remain with mother instead of his father and grand father.**

It appears from the facts as they emerge from statements that the mother is a working lady in Dubai and the child has to be kept some time in a Care Home, that does not indicate that the mother will not be able to take care of the minor. It is not unusual for a working mother to utilize the services of the Care Home that alone, therefore, is not a sufficient circumstance to indicate that the mother will not be able to take care of the minor. There is nothing on record from which it maybe concluded that the mother is likely to ignore the up bringing of the minor. The Child has been with the mother now for about 10 years and if his custody is transferred to the father and the father's father, he will find himself in new surroundings, which may not be very congenial for him. Even if the father and father's father are extremely affluent that will not entitle them to the custody of the minor on this ground because money is no substitute for affection. A poor man, who has greater care and concern for his off springs, is in a better position to look after his minor son than a wealthy father, who remains busy in earning money and ignores the minor. In view of the aforesaid reasons, the custody of the minor shall remain with the mother. **(Amit Beri & Anr. V. Smt. Sheetal Beri; 2006 (4) ALJ 504)**

◆ **S. 9(1) – Application for custody of child – Territorial jurisdiction – Jurisdiction has to be determined by place where child whose custody was claimed ordinarily resides.**

Jurisdiction has to be determined by place where child whose custody was claimed ordinarily resides. Before the court decides, where the children ordinarily resided, it was necessary that there should have been some evidence in the shape of affidavits or documents to be able to come to some conclusion. In this case, there was no evidence whatsoever and still the learned trial court decided the question of jurisdiction. The case must,

therefore, go back to the trial court so that an opportunity may be given to the parties to file evidence in the form of documents and affidavit so that the matter be properly decided. **(Smt. Laxmi Devi v. Kunwar Pal; 2006 (5) ALJ 231)**

◆ **S. 17(3), (5) – Appointment of Guardian – Preference given by minor**

Considering the provisions of law as is contemplated in Section 17(3), (5) of Guardians and Wards Act 1890, his age borders majority. He appeared before the Court and Court found him to be intelligent enough to decide his welfare and he preferred to live with opposite party no. 1 Section 17(5) of the Act, 1890 contemplates in mandatory terms that Court shall not appoint or declare any person to be guardian against his will. In this case the minor boy is not aged about 5 and 6 years but he is aged about Seventeen and Half years. Therefore, his preference to live with opposite party no. 1 is a material consideration. **(Rajendra Kumar Shukla & Anr. v. Vishnu Kumar Shukla & Anr.; AIR 2006 All 173)**

Hindu Marriage Act

◆ **S. 5 – Inter-caste marriage – Not barred under Act or any other Law.**

There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, court observed that no offence was committed by the petitioner, her husband or her husband's relative. **(Lata Singh v. State of U.P. & Anr.; 2006 (5) ALJ 357)**

◆ **Ss. 28, 24 – Whether order of interim maintenance passed by Family Court under S. 24 of Hindu Marriage Act is appealable – Order is not appealable either under S. 28 of Hindu Marriage Act or under S. 19 of Family Courts Act.**

Since Section 19 of Family Courts Act excludes applicability of any other provisions under any law for the time being in force for the purposes of its applicability in regard to filing of appeal, an appeal against the

judgment and order of the Family Court Judge shall be maintainable only within the provision of Section 19 aforesaid and therefore the applicability of Section 28 of Hindu Marriage Act for the purpose of filing an appeal against an order under Section 24 of the Hindu Marriage Act is apparently excluded. An order passed under Section 24 of Hindu Marriage Act is an interlocutory order but it is found by implication that it has actually treated such interim order under Section 24 of Hindu Marriage Act to be an interlocutory order and therefore, has propounded that no appeal against such order would lie and instead a writ petition would be maintainable on behalf of the aggrieved party. **(Madhu Mishra v. The Additional Judge, Family Court & Anr.; AIR 2006 All 182)**

Indian Penal Code

◆ **S. 34 – Difference between common object and common intention.**

The concept of common object is different from common intention. So far as common object is concerned no prior concert is required. Common object can be formed at the spur of the moment. Course of conduct adopted by the members of the Assembly however, is a relevant factor. At what point of time the common object of the unlawful assembly was formed would depend upon the facts and circumstances of each case.

It is thus essential to prove that the person sought to be changed with an offence of S. 149 was a member of the unlawful assembly at the time the offence was committed. **(Sunny Kapoor v. State (U.T. of Chandigarh), 2006 Cr.L.J. 2920)**

◆ **S. 34/149 – Conviction of the accused with the aid of S. 34 IPC in place of S. 149 IPC is not barred.**

Non-applicability of section 149 of IPC is no bar to convicting appellant with aid of section 34 of IPC. If there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by the application of S. 34 IPC in place of S. 149 IPC. **(Dhaneshwar Mahakud v. State of Orissa; 2006 (55) ACC 577)**

S. 154 – FIR – Importance of

FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence of the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage off spontaneity, danged also creeps in the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been record, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest, prepared under S. 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the Fir came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. **(Budh Singh v. State of U.P.; 2006 Cr.L.J. 2886 (SC),)**

S. 299/300 – Destinction between

Under C. thirdly of section 300, IPC, culpable homicide is murder, I both the following conditions are satisfied i.e. (A) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury, and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must

be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course o nature, was sufficient to cause death, viz. that the injury found to be present was the injury that was intended to be inflicted. Even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder.

Clause (c) if Section 299 ad clause (4) of S. 300 both requires knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of S. 300 would be applicable where the knowledge of the offender as to the probability of death of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons – being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid. (Rajinder v. State of Haryana, 2006 Cr.L.J. 2926)

◆ S. 300 – Ex. 4 – Essential ingredients and plea of single blow when can be taken.

From bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

The fourth exception to Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the First Exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, which in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reasons and urges them to deeds, which they

would not otherwise do. There is provocation in Exception 4, as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocations given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame, which attaches to each fighter. The held of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is snot defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two or more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression "undue advantage" as used in

the provision means "unfair advantage". (Sandhya Jadhav v. State of Maharashtra, 20062 SCC (Cri.) 394)

- S. 302 – Necessary ingredient

To convict the accused person of an independent charge under S. 302 IPC, it is necessary that the court should reach to the conclusion that the injuries inflicted by each individual taken in isolation, were sufficient in the ordinary course of nature to cause death of deceased persons. If the court reaches to the conclusion on the basis of the material placed before it that the injuries were sufficient in the ordinary course of nature to cause death and the nature of injuries was homicidal the court can convict each and every accused under S. 302 IPC, but if the court cannot conclusively reach to the finding that each and every individual involved in commission of the offence has caused such injuries which are sufficient in ordinary course of nature to cause death, the accused cannot be conviction under S. 302 IPC. If the injuries caused are sufficient in the ordinary course of nature and they have been caused in furtherance of the common intention then each and every individual propagating the common intention on be convicted under S. 302 r/w 34 IPC. **(Dhaneshwar v. State of Orissa; 2006 (55) ACC 577 (SC))**

- **S. 366 – Essential ingredients for application of S. 366**

To constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. So far as a charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough; it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC,

the Court cannot hold the accused guilty and punish him under Section 366 IPC. (Gabbu v. State of M.P., (2006) 3 SCC (Cri.) 71)

◆ **Ss. 375, 376(2)(g) & Expln. I – Under the definition of rape under Ss. 375 and 376 a woman cannot be prosecuted for gang rape even if she facilitates the act of rape.**

A bare reading of Section 375 makes the position clear that rape can be committed only by a man. The section itself provides as to when a man can be said to have committed rape. Section 376(2) makes certain categories of serious cases of rape as enumerated therein attract more severe punishment. One of them relates to "gang rape". The language of Section 376(2)(g) provides that whoever commits "gang rape" shall be punished, etc. The Explanation only clarifies that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each such person shall be deemed to have committed gang rape within Section 376(2). That cannot make a woman guilty of committing rape. This is conceptually inconceivable. By operation of the deeming provision in the Explanation, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to the intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the appellant wife cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g).

The residual question is whether the appellant wife can be charged for abetment. This is an aspect which has not been dealt with by the trial court or the High Court. If in law, it is permissible and the facts warrant such a course to be adopted, it is for the court concerned to act in accordance with law. **(Priya Patel v. State of M.P.; (2006) 6 SCC 263)**

◆ **S. 376 – Applicability of section.**

The victim of sexual assault is not treated as accomplice and as such; her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve

the sole testimony of the prosecutrix. In normal cou5rse a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour.

A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the Court keeps this in mind and feels satisfied that it can act on the on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 similar to illustration (b) to s. 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. Btu if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is now to be inform and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. (Om Pakash v. State of Uttar Pradesh, 2006 Cr.L.J 2913)

◆ **S. 376(1) & (2) – Rape on a six year old child – adequate reason for giving minimum punishment**

In case sub-sections (1) & (2) of S. 376 the court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for "adequate and special reasons". If the court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum.

In order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. What is applicable to the trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is the young age of the acused and the fact that he belongs to a Scheduled Tribe. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative.

In the instant case the victim was a child about 6 years of age at the time of commission of offence. S. 376(2) IPC provides for a more stringent punishment when the victim is under 12 years of age. (State of M.P. v. Santosh Kumar, (2006)3 SCC (Cri) 1)

- **S. 376 (2) – Stringent punishment for rape on a pregnant woman.**

One of the categories which attracts more stringent punishment is the rape on a woman who is pregnant, In such cases where commission of rape is established for operation of S. 376(2)(e) the prosecution has to further establish that accused knew the victim to be pregnant. In the instant case there was no such evidence led. There is a gulf of difference between possibility and certainty. While considering the case covered by Section 376(2)(e) what is needed to be seen is whether evidence establishes knowledge the accused. Mere possibility of knowledge is not sufficient. When a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a

possibility is to be inferred. It requires prosecution to establish that the accused know her to be pregnant. This is clear from the use of the expression 'knowing her to be pregnant'. This is conceptually different that there is a possibility of his knowledge or that probably he knew it. Positive evidence has to be adduced by the persecution about the knowledge. In the absence of any material brought on record to show that the accused knew the victim to be pregnant. S. 376(2)(e), IPC cannot be pressed into service. (Om Pakash v. State of Uttar Pradesh, 2006 Cr.L.J 2913)

◆ **S. 405 & 409 – Prosecution is required to prove entrustment of the property to the accused – Actual manner of misappropriation need not be proved by it.**

The respondent, a Postmaster, was holding an office of public trust. The complainant who was a teacher entrusted a certain amount to the respondent for the purpose of purchasing national savings certificates. As soon as the amount was received by the respondent on behalf of the postal authorities, it became public money. It was required to be utilized for the purpose for which the same was handed over to the respondent.

The very fact that the respondent retained with him the entrusted amount is not disputed. If he did not utilize the amount for the purpose for which the same had been deposited, an offence must be held to have been committed. It was not necessary for the prosecution to bring on record material to show as to how the respondent had utilized the amount. In view of the admitted fact, it was for the respondent himself to prove the defence raised by him that the entire amount had not been paid to him by the complainant.

The actual manner of misappropriation, it is well settled, is not required to be proved by the prosecution. Once entrustment is proved, it was for the accused to prove as to how the property entrusted to him was dealt with in

view of Section 405 IPC. If the respondent had failed to produce any material for this purpose, the prosecution should not suffer therefore. **(State of H.P. v. Karanvir; (2006) 5 SCC 381)**

◆ S. 511 – Essential condition

In order to find an accused guilty of an attempt with intent to commit a rape, Court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions, upon her persons, but that he intended to do so at all events, and notwithstanding any resistance on her part. Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect.

Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word 'attempt' is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measure necessary for the commission of the offence. **(Guddu v. State of M.P.; 2006 (55) ACC 573 (SC))**

Indian Succession Act

◆ S. 236 – Letters of Administration – Cannot be granted to Registered Society.

Varshney Sabha Prayag is an association of individuals registered under the Society Registration Act, 1860. It is as such not entitled to the grant of letters of administration with will attached to administer the properties of the deceased. This petition as such is not maintainable by the society for grant of letters of administration. The legal bar created under s. 236 of the Indian Succession Act, 1925 does not allow the Court to proceed to consider the validity of the will and to decide other issue. The preliminary issue is as such decided against the plaintiff and the suit is consequently liable to be dismissed with observations that the Court has not considered the validity of the due execution of the unregistered will. (Captain Jagdish Chandra Varshney v. Smt. Muni Varshney; 2006 (4) ALJ 726)

Industrial Disputes Act

◆ **S. 2(s) – Workman – Employee appointed in examination department of educational institution is neither a Govt. Servant nor an industrial worker.**

The employee was appointed in examination department of an educational institution. Certain employees may be industrial workers even in an educational institution and some part of the others may not. The Model Standing Orders or the Industrial Employment Standing Orders would not apply to every establishment which is not covered by it. The judgment was passed after looking into the award and pleadings of the parties and it was held that the workman was neither a Government servant nor an industrial worker, and was not covered under the Industrial Employment (Standing Orders) Act, 1946, as such the provisions of Model Standing Orders would not apply nor Article 311 (2) of the Constitution would be attracted. **(Hindi Sahitya Sammelan Prayag v. The Presiding Officer, Labour Court, Allahabad & Anr.; 2006 (5) ALJ 149)**

◆ **Ss. 4k, 6N – Denial of relief to workman by Labour Court on the ground of delay in raising industrial dispute would not be improper.**

A period of 21 years cannot be said to be a reasonable time for any workman to approach the Labour Court for relief. The petitioner in the present case did not raise any industrial dispute questioning his termination/dismissal within a reasonable time. In fact, he allowed 21 years to slip by. 21 years cannot be said to be a reasonable time to approach any Court for relief. The submissions made by learned counsel for the respondent Corporation that the petitioner moved his claim highly belatedly has substance and is accepted by this Court to be correct. The submissions made by learned counsel for the respondent Corporation that the award of the Labour Court while deciding the issue of delay is correct and warrant no interference from this Court under Article 226 of the Constitution of India on account of the fact that the decision of the Labour Court is well considered on the question of delay. The Labour Court could not have put the clock back for 21 years, as it is too long a period and, therefore the Labour Court rightly refused to grant any relief to the petitioner workman of reinstatement. Hence, the Labour Court has committed no mistake in refusing to grant relief of reinstatement to the petitioner workman. Indeed,

the petitioner workman slept for many years. It could not be said that a delay of 21 years is to be condoned because it would be reasonable for any person to approach any Court for relief after a period of 21 years. **(Shiv Nath v. Presiding Officer, labour Court, Kanpur; 2006 (4) ALJ 194)**

◆ **S. 6-N –Termination of services is not retrenchment.**

There is no dispute that the respondent no. 1 worked as Baildar on daily wage basis. No evidence has been adduced that he was appointed on any post. Thus, he cannot derive any legal right in relation thereto. Petitioner employment was for a specific period and it started every day in the morning and came to end on every day in the evening on the close of the day. Thus, there was no question of his retrenchment. Thus, the provisions of Section 6-N of the Act was not applicable.**(Pankaj Gupta v. Presiding Officer and Ors.; 2006 (5) ALJ 289)**

◆ **S. 10 – Delay in seeking reference – Relief should not be granted by Labour Court.**

The Labour Court should not have granted relief. Unfortunately, learned single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons. Hence the appeal is bound to succeed and we direct accordingly. **(Assistant Engineer, C.A.D. Kota v. Dhan Kunwar; AIR 2006 SC 2670)**

◆ **Ss. 33 – C (2), 25FFF – Claim for closure compensation – When computed.**

Unless and until it is decided that whether the strike was genuine or not and whether it was illegal, the closure compensation cannot be computed because in view of Section 25FFF of the Act the closure compensation is payable only to those employees or workmen who are in continuous service for not less than one year. It is now well settled that the proceedings under Section 33-C(2) is in the nature of execution. Unless dispute has already been adjudicated by the Labour Court either under Section 10 or under Section 4-K of the Act, the proceedings under Section 33-C(2) will not be maintainable. **(M/s. Metal Technology Corpn. v. Labour Court, U.P., Varanasi; 2006 (4) ALJ 107)**

Interpretation of Statutes

◆ **Language of S. 48 of U.P. Consolidation of Holdings Act – Is plain and simple and admits of no doubt.**

Language of Section 48 is plain and simple and admits of no doubt. It was not disputed, and could not be disputed by the petitioner, that on the plain interpretation of Section 48 of the Act, the section does not provide any bar to entertain a revision by the Deputy Director of Consolidation even if the order under revision is appealable and the appeal has not been filed.

When language is plain and unambiguous and admits of only one meaning no question of construction of Statute arises and the Act speaks for itself. Courts are not concerned with policy involved or that the results are injurious or otherwise, which may fall from giving effect to the language used. If the words used are capable of one construction only, then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity the Court must look at the Statute as a whole and consider the appropriateness of the meaning in a particular context, to avoid absurdity and inconsistencies, unreasonableness which may render Statute unconstitutional. **(Faujdar v. Deputy Director of Consolidation, Azamgarh; 2006 (3) AWC 2243)**

Juvenile Justice (Care & Protection of Children) Act

◆ **S. 21 – Juvenile Justice (Care & Protection of Children) Rules (2001), R. 22(5) – Determination of age of juvenile – Sessions Judge can base his opinion on the report of medical board, if birth certificate issued by Municipal Authority or matriculation certificate not produced by juvenile.**

It is not disputed that the birth certificate issued by any corporation or any municipal Authority (as envisaged in clause (i) of sub Rule (5) of Rule 22 of the Rules) was not filed in the court of the Sessions Judge. It is further not disputed that the matriculation or the equivalent certificate was also not filed in the Court of the Sessions Judge. Thus no document laid down in clause (i to iii) of sub rule (5) of Rule 22 of the Rules appears to

have been filed before the Sessions Judge. In the absence of the documents enumerated in Clause (i) (ii) and (iii) there was no bar the learned Sessions Judge to base his opinion on the report of the Medical Board. The learned Sessions Judge, therefore, committed no error in relying upon the age of the revisionist opined by the Medical Board. Thus the learned sessions judge committed no illegality in passing the impugned order. **(Ajay v. State of U.P.; 2006 (4) ALJ 621)**

Land Acquisition and Requisition

◆ **S. 11 – Recalling of ex parte award on the ground that claimants had not submitted calculation sheet would not be improper.**

Since earlier order was an ex parte order and passed on the basis of calculations submitted by the State of U.P. alone, claimants/respondents had not submitted calculation sheet and the order passed is an ex parte one. No doubt, the order has been recalled after lapse of four years on 16.1.2006 but as submitted by the counsel for the respondents that this was for the reason detailed in the application and after consideration of the objection filed by the revisionist. In the circumstances, the order passed in misc. case no. 6 of 2002 does not call for any interference. Allegation of the counsel for the revisionist in respect of the executing court that the order was recalled for consideration other than the judicial ones is without any substance. Besides, the Presiding Officer has not been arrayed as a party and no specific allegation has been leveled, which could be countered by the concerned Officer. In the circumstances, the order recalling earlier order does not call for any reference. **(Krishi Utpadan Mandi Samiti, Najibabad v. Brij Behari; 2006 (4) ALJ 608)**

Limitation Act

◆ **Dismissal of suit for default – Rejection of restoration application by revisional Court by taking hyper technical view that under Article 122 application cannot be treated within time if same has been filed within 30 days from date of knowledge – Improper.**

The revisional Court on a very hyper technical ground that as the provision of Article 122 has not been complied with which provides filing an application within 30 days, it cannot be filed or the application cannot be

treated within time if the same has been filed within 30 days from the date of knowledge. From the record, it is clear that no separate application has been filed. An averment in the prayer and in the body of the application has been stated regarding condonation of delay but the revisional court has not considered this aspect of the matter and taking a very hyper technical ground, the revision has been allowed and effect of the order will be that the plaintiff-petitioner is being deprived of his relief's which should have been granted to the petitioners if the suit filed by the petitioners is being decided on merits after affording an opportunities to the parties. The petitioners are being non-suited only on a very hyper technical ground. The purpose of justice demands that the Court should not take very hyper technical ground for non-suiting a party. Being a welfare state, the Court has to see the interest of both the parties and has to follow the principle of natural justice. **(Om Prakash & Ors. v. Kunwar Pal & Anr.; 2006 (4) ALJ 534)**

◈ **Arts. 60, 65 & 59 and Ss. 31 & 34 of Specific Relief Act – Void deed of sale conveyed interest of minor – Such minor would have two options in filing the suit to get such property – He could either file the suit within 12 years of the deed or within 3 years of attending majority.**

Respondent 1 filed a suit for declaration and partition of land in Khasra No. 516 alleging that his father, had a share therein died in the year 1950. His wife also died soon thereafter. At the time of the death of his father, the plaintiff Respondetn 1 was a minor. He started living with Appellant 4. Appellant 4, allegedly, executed a deed of sale on 1.12.1961 in respect of Khasra No. 516, Respondent 1's age in the sale deed was shown to be 26 years. Only on 17.8.1979, did Respondent 1 allegedly gather the informationthat the land under Khasra No. 516 was purported to have been sold by him. Respondent 1, thereafter, filed the suit in question on 24.9.1979. the appellant pleaded that the suit was barred by limitation. The said suit of Respondent 1 was dismissed by the trial court holding that the suit was barred by limitation. The trial court found that on 1.12.1961, when the deed of sale was executed, Respondent 1 was aged about 12 years. However, the trial court opined that the plaintiff – Respondent 1 failed to prove that he acquired knowledge of the said purported fraudulent execution of the deed of sale only on 22.8.1979. On the basis of the said finding the suit was held to be barred by limitation. An appeal was

preferred thereagaint by the plaintiff-Respondent 1. The first appellate court held that the said deed of sale had been executed by playing fraud on the plaintiff who was a minor at the relevant point of time and the said deed of sale, thus, being *void ab initio*, the limitation of three years from the date of attaining of majority, as is provided for in Article 59 (sic Article 60) of the Limitation Act, 1963, would not be applicable in the instant case. A second appeal preferred by the appellants was dismissed by the impugned judgment. The appellants were before the Supreme Court by special leave.

When a document is valid, no question arises of its cancellation. When a document is *void ab initio*, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity, Section 31 of the Specific Relief Act, 1963 refers to both *void* and *voidable* documents. It provides for a discretionary relief.

Limitation is a statute of repose. It ordinarily bars a remedy, but does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963. An extinction of a remedy, as contemplated by the provisions of the Limitation Act, *prima facie* would be attracted in all types of suits.

Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are *voidable* transactions. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is *prima facie* valid. It would not apply only to instruments, which are presumptively invalid.

If a deed was executed by the plaintiff when he was a minor and it was *void*, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation. **(Prem Singh & Others v. Birbal & Others; (2006) 5 SCC 353)**

Motor Vehicle Act & Motor Accidents

◆ S.147 – Liability of Insurance Company in case of death of gratuitous passenger on Goods Vehicle – Insurance Company is not liable.

Respondent Nos. 1 to 6 are the legal representatives of the deceased who died in an accident on 28th January, 1996 leading to the filing of a claim petition on 9th July, 1996 under the provisions of the Motor Vehicles Act, 1988. By order dated 20th August, 1998, the Motor Accident Claims Tribunal (for short, "the Tribunal") granted compensation both against the appellant – Insurance Company and the owner of the vehicle. Respondent No. 7 herein. The appeal filed in the High Court by the appellant – Insurance Company disputing its liability to pay to the legal representatives of the deceased was dismissed on 27th August, 2002, in view of the law then prevailing as a result of the decision of this Court in New Indian Assurance Company v. Satpal Singh (2000 (1) SCC 237). The said decision has now been overruled by this Court in New India Assurance Company Limited v. Asha Rani & Ors. (2003 (2) SCC 223) wherein it has been held that an Insurance Company will not be liable to pay compensation in respect of a gratuitous passenger being carried in a goods vehicle if the vehicle meets with an accident. In this view, we set aside the impugned judgment of the High Court affirming the order of the Tribunal. The claim petition against the appellant shall stand dismissed. We, however, clarify that the amount of compensation, if any, that may have been paid to Respondent Nos. 1 to 6 shall be recoverable by the Insurance Company from the owner of the vehicle, Respondent No. 7 herein, and not from the legal representatives of the deceased. **(State of Haryana v. Bikar Singh; AIR 2006 SC 2472)**

◆ S.168 – Rash and negligent driving – Proof of.

The motorcycle hit by tanker from backside. Tanker's driver admitted on oath that he had seen motorcycle from distance of 50 yards. It shows that tanker's driver was negligent in not controlling speed of his tanker, driver of tanker was drunk and was apprehended at spot. Apart from this eye witness of incident given positive statement that incident took place on account of rash and negligent driving of tanker's driver. This statement has not challenged in cross-examination. In view of this

evidence, it could be said that incident took place due to rash and negligent driving of the tanker's driver and not that of motorcycle driver. **(Smt. Leela Bhanott v. Petrolube India; 2006 (4) ALJ 9)**

◈ **S. 168 & Second Schedule – Determination of multiplier – Sch. II of Act is to serve as a guide, but cannot be said to be an invariable ready reckoner.**

In a fatal accident action, the accepted measure of damages awarded to the dependants is the pecuniary loss suffered by them as a result of the death.

The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants, whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed over the period for which the dependency is expected to last.

The multiplier is to be adopted taking note of the prevalent banking rate of interest. As the interest rate is on the decline, the multiplier has to consequentially be raised.

The Second Schedule to the Motor Vehicles Act, 1988 suffers from many defects. The same is to serve as a guide, but cannot be said to be an invariable ready reckoner. However, the appropriate highest multiplier has been held to be 18. The highest multiplier has to be for the age group of 21 years to 25 years when an ordinary Indian citizen starts independently earning and the lowest would be in respect of a person in the age group of 60 to 70, which is the normal retirement age.

Hence the multiplier as adopted by the Tribunal and maintained by the High Court is clearly indefensible. Considering the age of the deceased the aforesaid multiplier would be 13. Calculated on the basis by taking monthly loss of dependency at Rs. 2000 (after adjusting for personal expenses and likelihood of increase in salary) the compensation to be

awarded would be Rs. 3,12,000. to the aforesaid sum would be added Rs. 25,000 awarded by the Tribunal for deprivation of love and affection and funeral expenses and, therefore, entitlement of the claimants is Rs. 3,37,000. The accident took place on 29.11.1990. Therefore, the rate of interest would be 9% from the date of filing of the claim petition. The claimants would be entitled accordingly. **(U.P.S.R.T.C. v. Krishna Bala; (2006) 6 SCC 249)**

- **S. 168 – Contributory negligence – Plea can be raised only where both parties are negligent in some respect.**

The plea of contributory negligence can be raised only, where both the parties were in some respects negligent, when there are the findings in unambiguous and clear terms that the deceased was hit by the jeep from behind, then no question of contributory negligence on the part of the deceased arises and the things being obvious, apparent and self speaking, there was no question of any contributory negligence on the part of the deceased. **(Smt. Suman Lata & Ors. v. Madan Mohan Sonkar & Ors.; 2006 (4) ALJ 408 (DB))**

- **S. 207(1) – Order for seizure of vehicle on the ground that vehicle registered as Maxi Cab and later converted into private vehicle without payment of additional taxes would not be justified.**

Whether at the relevant time it was being plied as private vehicle or commercial vehicle, Maxi Cab). This fact shall be decided during the trial of the said case, which has been challenged. The said court if found guilty for such offence or if it was found that it was being used as Maxi Cab only then the tax and penalty become due. In view of the above discussion, the writ petition is allowed and the impugned order passed by Chief Judicial Magistrate and order passed by Additional Sessions Judge are set aside. The amount of Rs. 1,10,000/- as tax assessment shall not be realized by the petitioner at present but after the matter has been finally decided by the Magistrate a fresh order can be passed according to rules. **(Ranju Chaturvedi v. State of U.P. & Ors; 2006 (5) 159)**

Municipalities Act

S. 263 – U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, S. 21 – Powers of Prescribed Authority under U.P. Act 13 of 1972 to give finding on application moved under S. 21 of that Act for release of house on ground that building is in dilapidated condition are independent of powers of Nagar Palika to issue notice under S. 263 of U.P. Municipalities Act.

Powers of Prescribed Authority under U.P. Act 13 of 1972 to give finding on application, moved under S. 21 of that Act for release of house on ground that building is in dilapidated condition are independent of powers of Nagar Palika to issue notice under S. 263 of U.P. Municipalities Act. Each authority may have its independent satisfaction on the point. In the case of application by the landlord for release of house on the ground that it is in dilapidated condition, S. 24 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provides that after reconstruction of such house by landlord, the tenant can make request to District Magistrate to allot the same premises. But purpose and object of S. 263 of U.P. Municipalities Act, 1916, is different as the Municipal Board is more concerned to save the lives of people living in the building or passing through the roads nearby the dilapidated building. There is no finding by Prescribed Authority in respect of shop in dispute which can be said to be contrary to the satisfaction of Nagar Palika. Otherwise also, since the plaintiff tenant has not sought any relief to set aside notice issued by Municipal Board as such unless that is set aside, the plaintiff is not entitled to the relief of injunction against the authorities that they should not demolish the building in question which includes the disputed shop. **(Ishwari Datt Joshi v. Bhuwan Chandra Mungali (D) by LRs. & Anr.; 2006 (5) ALJ 164)**

National Security Act

S. 3(2) – Order for preventive detention – Use of confessional statement of accused – there is no bar in use of confessional statement of accused in preventive law – Bar applies only in punitive law.

The confessional statement can be used for passing a detention order, which is preventive in nature. There is no such bar for its use in

preventive law and the bar applies only in punitive law. **(Tej Pal v. State of U.P. & Ors.; 2006 (4) ALJ 625 (DB))**

Negotiable Instruments Act

◆ **S. 118(a), 138 & 139 – Initial burden to rebut the presumption of consideration is on the accused – Once this burden is discharged the onus thereafter shifts on the complainant to prove the case– Burden of accused is not very heavy and he need not disproved prosecution case in entirety – He can discharge his burden on the basis of preponderance of probabilities.**

The appellant raised a plea that Respondent 2 was in dire financial assistance and the aforesaid cheque for a sum of Rs. 2,95, 033 was given by way of loan so as to enable him to tide over his difficulties. He also adduced his evidence before the trial court. The trial court opined that the appellant failed to discharge the onus placed on him in terms of Section 139 of the Negotiable Instruments Act. Thus, the trial court convicted and sentenced the appellant under Section 138 of the Negotiable Instruments Act. The Supreme Court held that the presumptions both under Section 118(a) and 139 of the Negotiable Instruments Act are rebuttable in nature.

In terms of Section 4 of the Evidence Act whenever it is provided by the Act that the court shall presume a fact, it shall regard such fact as proved unless and until it is disproved. The words "proved" and "disproved" have been defined in Section 3 of the Evidence Act. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118(a) of the Negotiable Instruments Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon. It is not necessary for the defendant to disprove the existence of consideration by way of direct evidence. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which the accused

relies. The accused need not disprove the prosecution case in its entirety. Moreover, the onus on an accused is not as heavy as that of the prosecution. It may be compared with that on a defendant in a civil proceeding. Thus, it was for the acused only to discharge the initial onus of proof. He was not necessarily required to disprove the prosecution case. Whether in the given facts and circumstances of a case the initial burden has been discharged by an accused would be a question of fact. It is a matter relating to appreciation of evidence. **(M.S. Narayana Menon v. State of Kerala; (2006) 6 SCC 39)**

◆ **S. 138 – Notice – In absence of sufficient service upon registered notice, no offence U/s. 138 would be made out – Proceedings liable to be quashed.**

It is essential that service upon registered notice should be affected in absence of registered post. It shall not be presumed that there is sufficient service regarding notice sent by U.P.C. and it cannot be taken into account U/s. 27 of the Act that there was sufficient service upon the accused/applicants. Although, it has been denied by the applicant that no any notice was received by them in the affidavit and same has not been controverted by filing counter affidavit. Therefore, it is liable to be deemed that there was no sufficient service of legal notice upon the applicants/accused. On this basis, the impugned order passed by the court below is liable to be quashed. **(M/s. Jai Durga Enterprises & Anr. V. State of U.P. & Anr.; 2006 (4) ALJ 497**

◆ **S. 138 – Cr.P.C., S. 482 – Quashing of complaint on the ground that cheque was in possession of complainant for collateral security – Cannot be ground for quashing of complaint – It is a matter to be looked into at stage of trial.**

While exercising power under Section 482 Cr.P.C., only on basis of pleadings of parties, it cannot be held that blank cheque was given as security. Whether cheque was issued under guarantee or with understanding with parties that as soon as cheque would be presented in bank, same would be encashed. It has to be examined by trial Court after evidence of parties. It is matter to be looked into at stage of trial whether cheque was given in blank or in security. **(M/s. Jai Durga Enterprises & Anr. V. State of U.P. & Anr.; 2006 (4) ALJ 497)**

Panchayats and Zila Parishads

◆ **S. 12-C – Order for recounting of votes on the ground that ballot papers of election-petitioner were counted with votes of other candidates, and that some valid votes of election-petitioner were declared as invalid – Directions given by Prescribed Authority for recounting of votes on the ground would be improper.**

It is clear that averments made for recounting are totally vague and general in nature. No instance of any specific irregularity has been mentioned, except for the general averments that ballot papers of the election-petitioner were counted with the votes of other candidates and that some valid votes of the election-petitioner were declared as invalid. Such allegations do not make out a prima facie case for grant of the prayer made in the application, as they do not constitute material facts stating irregularities in counting of votes. The Prescribed Authority has reproduced certain paragraphs of his application on the basis of which the direction for recounting has been made. On perusal of the same, it is clear that the Respondent no. 2 has merely made vague and general averments with regard to the irregularities committed during the course of counting, which can be made in each and every election petition. Even if no reply may have been filed to the affidavit filed in support of the application for recounting then too the Prescribed Authority would be duty bound to examine as to whether, even if the averments are correct, it would make out a case for direction of recounting of votes. Court observed that the averments made by the election-petitioner were so vague and of general nature that no order for recounting could have been passed on such basis. **(Amrish v. U.P.-Ziladhikari, Meerut & Ors.; 2006 (4) ALJ 495)**

Precedents

◆ Per incuriam decision

Incuria literally means ‘carelessness’. In practice per incuriam is taken to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The “quotable in law” is avoided and ignored if it is rendered, “in ignoratium of a statute or other binding authority where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and shall have

to be treated as having been rendered per incuriam. **(Mayuram Subramanian Srinivasan v. CBI, 2006(3) SCC (Cri) 83)**

Prevention of Corruption Act

◆ **S. 5(1)(e) & 5(2) – Burden of proof as regards first part of S. 5(1)(e) is on prosecution and as regards second part is on accused.**

The provision contained in Section 5(1)(e) is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. From the words used in clause (e) of Section 5(1) of the PC Act it is implied that the burden is on the accused to account for the sources for the acquisition of disproportionate assets. As in all other criminal cases wherein the accused is charged with an offence, the prosecution is required to discharge the burden of establishing the charge beyond reasonable doubt. **(G.M. Tank v. State of Gujarat & Others; (2006) 5 SCC 446)**

◆ **S. 17(Second Proviso) – Investigation without authorization by Superintendent of Police is illegal – The requirement is mandatory and burden of proof is on the prosecution to probe that in fact authorization in writing was there.**

Provisions of the 1988 Act, no doubt, like the 1947 Act seek to protect public servant from a vexatious prosecution. Section 17 provides for investigation by a person authorized in this behalf. The said provision contains a *non obstante* clause. It makes investigation only by police officers of the ranks specified therein to be imperative in character. The second proviso appended to Section 17 of the Act provides that an offence referred to in clause (e) of sub-section (1) of Section 13, shall notbe investigated without the order of a police officer not below the rank of a Superintendent of Police. Authorisation by a Superintendent of Police in favour of an officer so as to enable him to carry out investigation in terms of Section 17 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of a Superintendent of Police. The proviso uses a negative expression. It also uses the expression “shall”. *Ex facie* it is mandatory in character. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down therefore in terms

of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same. It has not been disputed before us that the investigating officer, PW 41, did not produce any record to show that he had been so authorized. Shri K. Biswal, the Investigating officer, while examining himself as PW 41, admitted that he had not filed any authorization letter stating:

> "I have received the specific authorization from SP, CBI, to register a case but I have not filed the said authorization letter."

No explanation has been offered therefore. Even no attempt was made to bring the said document on record at a later stage.

The approach of the learned Special Judge, to say the least, was not correct. When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in administrative law. The statutory functionaries are enjoined with a duty to pass written orders.

It is now well settled that when a document being in possession of a public functionary, who is under a statutory obligaton to produce the same before the court of law, fails and/or neglects to produce the same, an adverse inference maybe drawn against him. The learned Special Judge in the aforementioned situation was enjoined with a duty to draw an adverse inference. He did not consider the question from the point of view of statutory requirements, but took into consideration factors, which were not germane. **(State Inspector of Police v. Surya Sankaram Karri; (2006) 7 SCC 172)**

- S. 49(7) – Entitlement of Bail

Sub-section (7) of Section 49 provides that where the Public Prosecutor opposes the application of the accused for release on bail, no person accused of an offence punishable under this Act or any rule made there under shall be released on bail until the court is satisfied that there are

grounds for believing that he is not guilty of committing the said offence. However, the proviso, as interpreted by this Court in People's union for Civil Liberties v. Union of India provides that after the expiry of a period of one year from the date of detention of the accused for an offence under this Act, the provisions of subsection (6) shall apply, which means that after the expiry of one year of detention, the accused can be released on bail under ordinary law without applying the rigour of Section 49(7) of the Act. **(Kirti Bhai Madav Lal Joshi v State of Gujrat, 2006(2) SCC (Cri.) 399)**

Prevention of Food Adulteration Act

◆ **Ss. 10(7), 6, 17 – Taking of sample – Conviction of accused would be improper if procedure for taking sample has not been followed.**

The idea under lying in this provision is that the Food Inspector may not act arbitrarily. The Prevention of Food Adulteration Act, 1954 made a provision to call one or more person to be present, when such sample is taken and take their signature. The Legislature felt its necessity and made amendment on 1.3.1965 for calling of witness and taking of signature. This provision has not been at all followed. The Magistrate bye-passed it by mentioning that there are no enmity between the Food Inspector and the revisionist. He has also stated that inspector had not cleaned the Pari and Katora, meaning thereby, the Pari through which oil was taken out or the Katora was not clean and the mustard oil put in the said Katora was taken as sample. The Public Analyst report shows a marginal difference in the standard mustard oil and the mustard oil taken in the sample, which is clear from the public analyst report itself. It was the duty of the Food Inspector to have cleaned the utensil when filling the sample. Thus, considering the above situation and assessment of evidence, the conviction of revisionist does not hold good. **(Anwar Husain S/o Deen Mohammad v. Nagar Swasthya Adhikari, Agra Nagar Palaika & Anr.; 2006 (4) ALJ 767 (DB))**

◆ **S. 16 – Prevention of Food Adulteration Rules, Rule 9 is not mandatory but directory.**

Rule 9(j) of the Act is not mandatory but directory, such finding has been given by the trial court as well as the appellate court on the basis of

the observation made in Nanha v. State; 1981 ACC 329. Although, there was sufficient compliance of the Rule 9(j) of the Act according to the evidence of Food Inspector but non-compliance of this rule the accused cannot be acquitted as it is not mandatory but directory. **(Rajendra Kumar Sharma v. State of U.P.; 2006 (5) ALJ 147)**

Probation of Offenders Act

- **S. 4 – Where provisions of the 1958 Act apply resort to S. 360 Cr.P.C. is not required.**

In comparison to S. 360 Cr.P.C., the scope of S. 4 of the Probation Act is much wider. It applies to any person found guilty of having committed an offence not punishable with death or imprisonment for life. Further, Section 360 does not provide for any role for probation officers in assisting the courts in relation to supervision and other matters while the Probation Act does make such a provision. That apart, while Section 12 of the Probation Act states that the person found guilty of an offence and dealt with under Section 3 or 4 of the said Act shall not suffer disqualification, if any, attached to conviction of an offence under any law, the Code does not contain parallel provision. Two statutes with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of Section 360 Cr.P.C. and the provisions of the Probation Act as applicable at the same time in a given area cannot be gathered from the provisions of Section 360 or any other provision of the Code of Criminal Procedure. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Probation Act have been brought into force, the provisions of Section 360 Cr.P.C. are wholly inapplicable. Enforcement of the Probation Act in some particular area excludes the applicability of the provisions of Sections 360 and 361 Cr.P.C. in that area. **(Chhanni v. State of U.P.; (2006) 5 SCC 396)**

- **Applicability of S. 360 & 361 Cr.P.C. in Act of 1958**

Where the provisions of the Probation Act are applications, the employment of S. 360 of the Code is not to be made, In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, that gave birth to the Probation Act

and the Code, wanted to obviate. Yet the legislature in its wisdom has obliged the Court under S. 361 of the Code to apply one of the other beneficial provisions be it S. 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. The comparative elevation of the provisions of the Probation Act is further noticed in sub-section (10) of S. 360 of the Code, which makes it clear that nothing in the said section shall affect the provisions of the Probation Act. Those provisions have a paramount of their own in the respective areas where they are applicable.

S. 360 of the Code relates only to persons not under 21 years of age convicted for an offence punishable with fine only or with imprisonment for a term of seven years or less, to any person under 21 years of age or any woman convicted of an offence not punishable with sentence of death or imprisonment for life. The scope of S. 4 of the Probation Act does make such a provision,. While S. 12 of the Probation Act states that the person found guilt of an offence and dealt with under S, 3 or 4 of the Probation Act shall not suffer disqualification, if any, attached to conviction of an offence under many law, the Code does not contain parallel provision. Two statuses with such significant differences could not be intended to coexist at the same time in the same area. Such coexistence would lead to anomalous results. The intention to retain the provisions of S. 360 of the code and the provisions of the Probation Act as application at the same time in a given area cannot be gathered from the provisions of S. 360 or any other provision of the Code. Therefore, by virtue of Section 8(1) of the General Clauses Act, where the provisions of the Act have been brought into force, the provisions of S. 360 of the Code are wholly inapplicable.

Enforcement of the Probation Act in some particular area excludes the applicability of the provision of Ss. 360 & 361 of the Code in that area. **(Daljit Singh v. State of Punjab, 2006(3) SCC (Cri.) 20)**

Provincial Insolvency Act

Ss. 14, 16 – Grant of leave to withdraw insolvency petition on account of compromise – Prior notice to other creditors is necessary.

Giving of a notice before permission to withdraw an insolvency petition on account of compromise or understanding or adjustment in

between the petitioning creditor and the debtor, is requirement of law looking into the notice and object of the insolvency proceedings. It is duty of the Court to give notice to the other creditors by postponing the date of hearing and posting the notice of compromise on notice board. The requirement of giving notice should be read under S. 14 of the Act. The grant of leave should be express, in other words, some material on record to show that the discharge of debts of other creditors have also taken care of. The proceedings before the insolvency court is not in the nature of a lis in between the petitioning creditor and the insolvent only but it is for benefit of entire body of the creditors. Object of law of insolvency is to seize the property of an insolvent before he can squander it and to distribute it among his creditors. The debtor who has committed an act of insolvency within the meaning of S. 6 of the Act is required to discharge not only the debts of the petitioning creditors but also to the entire body of the creditors to save himself from declaration of insolvency. **(Life Insurance Corporation of India, Kanpur v. Lala Raja Ram; 2006 (4) ALJ 715)**

Provincial Small Causes Courts Act

◈ **S. 17(1), proviso – Code of Civil Procedure, 1908 – Order IX, Rule 13 – Ex parte decree for eviction – The application to be made by judgment debtor to court for permission to furnish security or deposit decreetal amount in terms of proviso to Section 17(1) before making application for setting aside ex parte decree.**

It is thus abundantly clear that an application to furnish security or for permission to deposit the decretal amount must have been made by the time when the application for setting aside ex parte decree was presented which in the present case is 29.3.2004, while the application for seeking permission to deposit the decretal amount was made on 14.3.2005. There was non-compliance of proviso to Section 17 of Provincial Small Cause Courts Act, such application was not maintainable and was rightly rejected by the Courts below.

Learned counsel for the petitioner tried to interpret the word at the time of presenting the application the time when the applicant is taken up for consideration by the Court, i.e. when the application is heard in this respect. He tried to take help from the observations made by Hon'ble Supreme Court in Union of India v. Savjiram and another, 2004 (9) SCC

312. According to which, the expression "present" means in existence at the time at which something is spoken or written, being in a specified place, thing. Grammatically, it means denoting a tense of verbs used when the action or event described is occurring at the time of utterance or when the speaker does not wish to make any explicit temporal reference. It also means for the time being now. Commonly, it denotes existence of a particular thing or a matter at the time of consideration. But the aforesaid observations has been made in a different context which cannot be applied in the present case where language of the Act makes it clear that an application to set aside ex parte decree shall "at the time of presenting application either deposit……."

The Hon'ble Supreme Court in Kedar Nath v. Mohan Lal Kesarwani and others, 2002 (1) AWC 502 (SC): AIR 2002 SC 582, had occasion to interpret the provisions of Section 17 of the Provincial Small Cause Court Act. In that case ex parte decree for eviction was put to execution and on 21.2.1998 the decree holder had even obtained the possession. On 26.2.1998 the tenant moved an application under Order IX, Rule 13, CPC but neither the amount due under the decree was deposited nor any application was filed seeking direction of the Court to give security for the performance of the decree. During the course of hearing of arguments on 14.10.1998, it was pointed out that the compliance of proviso to Section 17 of the Provincial Small Cause Courts Act has not been done. On the next date, i.e. 15.10.1998, the tenant moved an application for permission to furnish security. However, the application for setting aside ex parte decree was dismissed on 15.11.1998. This order was reversed by the revisional court, which was also maintained by the High Court. Hon'ble Supreme Court while deciding the appeal went deep in the history of this provision, which was in a different form earlier. Section 17 provides as under:

> "Application of the Code of Civil Procedure. – (1) The procedure prescribed in the Code of Civil Procedure, 1908, shall save insofar as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes, in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an application for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting the

application either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by Section 145 of the Code of Civil Procedure, 1908" **(Har Kumar Vidyarthi v. Smt. Sudha Devi; 2006 (3) AWC 2331 (LB))**

◆ **Ss. 15, 16 – Jurisdiction of Small Cause Court – Determination of.**

This is a suit involving the question of declaration of title over the property in suit where both the parties have subsequently disputed the title of each other. It is quite obvious that the law is settled on this point because the Court of Small Causes has no jurisdiction to settle the dispute of title over the property when the same has been raised in a suit even of Small Causes nature. When such dispute of title arises at a subsequent stage of filing a suit, it is transferred to the regular Civil Court and not kept pending in the Court of Small Causes. Here from the very inception of filing of the pleadings of the parties it was more than obvious that the suit involving the declaration of title has rightly been entertained by the regular Civil Court and has been decided, as such, as a regular civil suit. Therefore, the existence of a dispute between the parties about the relationship of landlord-tenant is not an important point for determination and adjudication in the suit itself, and as such the appellate Court has rightly rejected such request of the petitioner. The impugned order cannot be said to be erroneous in any respect. **(Shamsuddin and Anrs. v. Hemraj Pandey; 2006 (4) ALJ 741)**

◆ **S. 23 – Return of plaint in suits involving question of title – When not required.**

In the case in hand it may be noted that the plaintiff has instituted a suit on the ground of default in payment of rent and sub letting and that the provisions of U.P. Act No. 13 of 1972 are not applicable. The trial court still has to decide the aforesaid questions and it has to arrive at the conclusion as to whether the agreement or contract of tenancy as pleaded

by the plaintiff is proved or not. The Judge Small Causes Court is competent to decide the question of title incidentally as held in the aforesaid judgments by the Apex Court. However, the decision on the question of title shall be subject to final decision by the Civil Court in a suit to be tried on regular side. Since the revision has been pending in this Court for the last about 20 years it is not appropriate to stay proceedings any further of SCC suit or order the return of the plaint. In view of Section23 of the Act the JSCC court shall proceed to decide the suit in accordance with law and also the question of title incidentally, if raised by the parties concerned. However, the decision on the question of title shall be subject to final decision by Civil Court. **(Ram Deo v. Ram Naresh & Anr.; 2006 (5) ALJ 323)**

Rent Control & Eviction

◆ **Denial of title – Tenants were let into possession by respondent – Appellants did not restore possession to respondents by surrender – Section 116 of Evidence Act would apply even if the respondents entitlement to inherit the property was doubtful.**

In Bilas Kunwar v. Desraj Ranjit Singh (AIR 1915 PC 96), the Privy Council observed as follows:

> "[A] Tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord"

This view was also recognized by this Court in Atyam Veerraju v. Pechetti Venkanna (AIR 1966 SC 629). Similar view has also been expressed in a later decision of this Court in Tej Bhan Madan v. II ADJ [(1988) 3 SCC 137] in which it was held that a tenant was precluded from denying the title of the landlady on the general principles of estoppel between landlord and tenant. It was held that the principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. In our view, Section 116 of the Evidence Act is clearly applicable in the present case, as held by the High Court in the impugned order. The finding of fact of the High Court and the trial court that the appellants were let into

possession by Pydamma and that possession was not restored to her by surrender, was based on consideration of material evidence on record, which cannot be disturbed by us. Therefore, in our view, even if Respondent 1 Pydamma, was not entitled to inherit the properties in question of late Suryanarayana then also she could maintain the application for eviction and obtain a decree/order of eviction on the ground of default and sub-letting under the A.P. Tenancy Act. We keep it on record that the learned counsel appearing for the appellants did not raise any objection on the findings of the High Court regarding default and sub-letting, before us. **(Bhogadi Kannababu v. Vuggina Pydamma; (2006) 5 SCC 532)**

Uttar Pradesh Urban Buildings (Regulations of Letting Rent And Eviction) Act

◆ *S. 2 – Exemption from applicability of Act – If building used as Dharmashala is a building of public charitable trust and it will not come within the purview of Rent Act.*

Since the building in question is owned by a trust which run as dharamashala is a public charitable trust which is exempted from the operation of U.P. Act No. 13 of 1972. This court observed that the view taken by revisional court does not suffer from any error. **(Union of India v. District Judge, Varanasi; 2006 (3) AWC 21780)**

◆ **S. 20 – Eviction on ground of material alteration – Placing of shutter, extension of boundary wall & construction of pucca chabutra – Does not amount to damage to building or material alteration.**

The ground on which the suit has been decreed is of material alteration and damage to the building as provided U/s. 20(2) (b) and (c) of U.P. Act no. 13 of 1972. The alterations found to have been made by the tenants are as – (1) A shutter has been placed which according to the landlord has weakened the ceiling. (2) The boundary wall has been extended; (3) Pucca Chabutara 10 feet x 6 feet has been constructed. This court found that placing of shutter, extension of boundary wall & construction of pucca chabutra does not amount to damage to building or material alteration. **(Satish Chand Kakkar v. VIIth Addl. District Judge & Ors.; 2006 (4) ALJ 303).**

◆ **S. 20 (2) (a) – Suit for eviction on ground of default and recovery of arrear of rent is not maintainable if tenant is not defaulter as arrear of rent.**

The tenant-petitioner appeared as witness and stated that he had sent the money order to the landlady through money order received 61c. The landlady refused the money order then tenant will not be liable to eviction. Hence, the suit for eviction on the ground of default and recovery of arrears of rent can be dismissed. **(Smt. Zohra v. Ivth A.D.J., Jhansi; 2006 (3) AWC 2309)**

◆ **S. 21 – Consideration of comparative hardship of sub-tenant – Comparative hardship of sub-tenant is not to be considered.**

As far as the hardship is concerned, firstly, hardship of sub-tenant is not to be considered and secondly petitioner/sub-tenant did not show that he made any effort to search alternative accommodation after filing of the release application. This is sufficient to decide the question of hardship even against the main tenant. **(Gopalji v. VIth Additional District Judge, Varanasi; 2006 (4) ALJ 331)**

◆ **S. 21 – Application for eviction filed by joint owner without impleading other joint owners would be Maintainable.**

So far as the maintainability of the application under Section 21(1)(a) of 'the Act' is concerned, the prescribed authority as well as the appellate authority have relied upon a decision referred in 1995 (1) ARC 146: (1995 AIHC 3053), wherein the application filed by one of the joint owner, without impleading the other joint owners would be maintainable and therefore the argument advanced on behalf of the tenant that application under Section 21(1)(a) of 'the Act' filed by the landlord without impleading other joint owner as a party is rejected and it is held that the application of the landlord is maintainable. **(Rishi Kumar Jalan & Anr. V. Lakshmendra Pal Gupta; 2006 (4) ALJ 743)**

◆ **S. 21(1), Second Proviso – Determination of balance of hardship – As no efforts made to search alternative accommodation after filing of release application – itself sufficient to tilt balance of hardship against tenant.**

Concept of comparative hardship cannot be stretched to the extent of depriving the landlord of his property even if landlord is in real and imminent need. In any case tenant did not show that he made any efforts to search alternative accommodation after filing of the release application. It is sufficient to tilt balance of hardship against tenant. Hence, the view taken by authorities below on comparative hardship was utterly erroneous in law. Therefore, impugned order is liable to be set aside. **(Faiyaz Khan v. Iind A.D.J., Jhansi and others; 2006 (3) AWC 2136)**

◆ **S. 21(1)(a) – Release of premises on Bonafide need to shift business from village to town – Can be termed as bonafide.**

Exodus from village to town and town to city is age-old phenomenon and is considered to be sign of progress. During recent times this trend has received great impetus. There cannot be any doubt that business in cities is much more profitable than towns. One may like it or not but the fact is that residence and business in a city is considered to be at a higher level than residence and business in towns and villages in the social hierarchy. Backwardness is defined in terms of educational, social and economical. In cities better opportunities of education and earning are available than towns. In terms of the social standards society gives greater value to the residence in cities than to residence in villages and towns. Accordingly the need to shift from Nanauta to Saharanpur was quite bonafide and appellate court did not commit any error of law in holding the need of the landlord to be bonafide by reversing the judgment of the prescribed authority on the said point. **(M/s. Kewal Krishna Om Prakash Pansari & Anr. V. III Addl. Dist. Judge, Saharanpur & Ors.; 2006 (4) ALJ 666)**

◆ **S. 21(1)(a) – Balance of comparative hardship would be against the tenant if an alternate shop available to him.**

As far as comparative hardship is concerned tenant acquired another shop and let that out on higher rent. Thereafter he agreed to sell (or sold)

the same to another person. Explanation of the tenant that the said shop was meant for vegetable business and he had no experience about the said business hence he could not start business there from is utterly untenable. Tenant clearly had available with him another shop which he had not utilized hence balance of hardship squarely lay against him. Hence, finding of the appellate court in respect of comparative hardship is also perfectly legal and confirmed. **(M/s. Kewal Krishna Om Prakash Pansari & Anr. V. III Addl. Dist. Judge, Saharanpur & Ors.; 2006 (4) ALJ 666)**

Representation of People Act

◆ **Ss. 57, 58-(A) – Adjournment of poll – If no polling was recorded at two booths, poll was not required to be adjourned.**

Though electors are allowed free and fair right to vote in favour of candidate but there is no corresponding duty that electors must exercise their franchise. In the instant case electors did not choose to exercise their right and decided to boycott election. Due to this fact no polling was recorded at some booths, on account of this, poll was not required to be adjourned. There was thus no violation of Ss. 57, 58-(A) of Act. **(Sushil Singh v. Parbhu Narain Yadav & Ors.; AIR 2006 (All) 187)**

Service Law

◆ **Departmental Enquiry – Acquittal in Criminal Trial – Departmental enquiry and Criminal Trial based on same set of facts, charges and witnesses – Dismissal of employee is unjust, unfair and oppressive.**

It is pertinent to mention here that a criminal complaint was also lodged against the appellant under Section 5(1)(e) r/w S. 5(2) of the Prevention of Corruption Act, 1947 which was based on same set of facts, charges, evidence and witnesses. The criminal court honourably acquitted the appellant of the said offence by holding that the prosecution failed to prove the charges leveled against the appellant.

This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other

departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. **(G.M. Tank v. State of Gujarat & Others; (2006) 5 SCC 446)**

- **Judicial Review of punishment – Scope of Court's interference is very much limited.**

The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed. **(Union of India & Another v. K.G. Soni; (2006) 6 SCC 794)**

Societies Registration Act

- **S. 3 – Renewal of certificate of society – What does it implies.**

The power of grant of renewal implies the power of withdrawal of such grant also, provided good and proper cause is shown. Therefore this implied power was used by the Assistant Registrar in this case; the learned Single Judge in his Lordship's discretion has found such use of power by the Assistant Registrar to be valid and not vitiated. **(Rashtriya Junior High School (Society) Babhaniyaon v. Assistant Registrar, Firms, Societies & Chits, Varanasi & Ors.; AIR 2006 (All) 186)**

- **S. 25(1) – Order passed by prescribed authority U/s. 25(1) in quasi-judicial proceedings would prevail over any administrative order passed by Vice Chancellor/Chancellor U/s. 2(13) of the University Act.**

The power to be exercised under S. 2(13) of the State Universities Act is a purely an administrative power, provided for day to day working of the management of an affiliated degree college affiliated under the State Universities Act. While a power under S. 25(1) is a quasi judicial power wherein the lis between two parties with regard to election of the office bearers of a registered society is to be adjudicated by the Prescribed Authority, subject to the orders which may be passed in regular civil proceeding, where the rights of the parties are finally determined. Therefore, the orders passed under S. 25(1) by the Prescribed Authority in a quasi judicial proceeding, which directly deal with the legality of the elections of the office bearers of the society (which in the facts of the case ipso facto become the office bearers of the degree college) must prevail over any administrative order passed by the Vice Chancellor/Chancellor U/s. 2(13) of the State Universities Act. **(Management, the C.C.P.G. College, Muzaffarnagar v. Dy. Reg., Soc. & Chits Meerut; 2006(4) ALJ 296)**

Specific Relief Act

◆ **S. 37 – Relief of injunction – Cannot be claimed as of right – It is discretionary relief under Act.**

'Injunction' Decree cannot be claimed as of right. It is a discretionary relief (and not as of right) under Specific Relief Act; and Court can refuse to grant it on the ground of conduct of plaintiff or for other reasons which may be expedient and in the interest of justice and equity. **(Anwar & Ors. v. State of U.P. & Ors.; 2006 (5) ALJ 127 (DB))**

◆ **Ss. 31 & 34 – Document void *ab initio* - There is no need of a decree in such a case as such document would be a nullity.**

When a document is valid, no question arises of its cancellation. When a document is *void ab initio*, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity, Section 31 of the Specific Relief Act, 1963 refers to both *void* and *voidable* documents. It provides for a discretionary relief. **(Prem Singh & Others v. Birbal & Others; (2006) 5 SCC 353)**

◆ **Stamp Act S. 47-A Sale deed – Market value of property – Determination of.**

What is to be seen is the value of the land at the time of its purchase and not the potentiality of the land or projected value of the land. The stamp duty charged is on the value of transaction for sale and not for the value, which might be increased in future because of the development of the area. Here it is not the case of the respondents that the petitioners have actually paid higher amount for purchase of the said plot. Merely on surmises that the said land may be used for commercial. Purposes, the value of the transaction has been enhanced and deficiency of stamp duty has been assessed, on which penalty has also been directed to be paid. The impugned orders having been passed merely on the projected value of the plot on the basis that it has potential for being used for commercial purposes, is not justified and is liable not be set aside. **(Narendra Singh & Ors. v. State of U.P. & Ors.; AIR 2006 All 164.)**

◆ **S. 47-A (U.P.) – U.P. Stamp Rules (1942), Rule 341 – Levy of Stamp duty.**

Market value of land has to be determined in accordance with Criteria and guiding factors provided under Stamp Rules. Question of future potential of land cannot be determining factor for purpose of stamp duty. **(Hukam Singh v. Commissioner, Garhwal Mandal, Dehradun & Anr.; 2006 (4) ALJ (NOC) 818 (All)).**

Tort

◆ Negligence – Ingredients of -the basic ingredients of negligence is that the act is likely to cause injury or endanger life.

Negligence is failure to be something which you ought to do or failure to show proper care and concern for something that you are responsible for. (Chayya Khanna v. State of U.P., 2006 (55) ACC 766)

Transfer of Property Act

◆ **S. 58 – Mortgage – What constitutes.**

One of the tests applied for clearing the confusion between a transaction of mortgage described as a sale on the one hand and a real sale on the other is the consideration paid for the property in relation to its market value. If the transfer is made for a consideration far below the market value of the property it suggests of a mortgage even though it is described as a sale. **(Smt. Bhagwan Devi v. Smt. Beni Bai; 2006 (4) ALJ 43)**

◆ **Ss. 105, 106 – Termination of tenancy – Service of notice of termination of tenancy upon close relative of tenant and filing of suit for eviction against him cannot be said to be illegal.**

Even if the version of the defendant that he was licencee and close relation of tenant is accepted, then he becomes agent of the tenant for all purposes and service of notice of termination of tenancy upon him and filing suit for eviction against him can not be said to be illegal. The plea of defendant that chief tenant has not been given any notice and has not been impleaded in the suit, can be taken only by the chief tenant. **(Man Mohan**

Bhatnagar v. 8th Addl. Distt. & Sessions Judge, Meerut & Anr.; 2006 (4) ALJ 361)

◆ **S. 106 (4) – Notice – Service of – Words "at his residence" in S. 106 relate only to service upon family or servants of tenant.**

There is no comma immediately after the words 'or to one of his family or servants'. The portion between the last two commas is as follows:-

"or to one of his family or servants at his residence".

It is therefore quite clear that the words "at his residence" relate only to service upon family or servants of the tenant. Notice in the instant case was sent at the tenanted shop in dispute in the suit. Service through refusal was proved by the Postman also, hence it was perfectly valid. **(Smt. Sudha Agarwal v. VII Additional District Judge, Ghaziabad; 2006 (4) ALJ 545)**

U.P. Consolidation of Holdings Act

◆ **Ss. 9-A, 11 & 48 – Increase or decrease in settlement area – Consolidation authorities not competent to do so.**

The consolidation authorities under the scheme of the U.P. Consolidation of Holdings Act are wholly incompetent to increase or decrease the settlement area. It was further held that consolidation proceedings are initiated to rectify the mistake and not to perpetuate the mistake committed by the subordinate consolidation staff. It brooks no dispute that the Consolidation authorities were wholly incompetent to increase the area of the petitioner in utter disregard of what is recorded in the basic year/settlement area. In my considered view, the Deputy Director of Consolidation rightly passed the order to correct the area of aforesaid plots according to the area recorded in the settlement records. **(U.K. v. Dy. Director, Consolidation, Muzaffar Nagar; 2006 (3) AWC 2325)**

◆ **S. 40 – Jurisdiction of Consolidation Authorities – Consolidation authorities are competent to decide right, title, interest and liability in relation to land of tenure holder.**

It is clear that the Consolidation authorities had jurisdiction to decide questions relating to the rights of tenure holders. A dispute as to who is the Mahant or Sarbakar of Math is a dispute of a civil nature cognizable by a Civil Court. It cannot be said to be a dispute relating to the rights of tenure holders. Upon the death of Mahant or Sarbakar no question of mutation or succession to the right of the tenure holder arise. Therefore, the dispute as to who is the Mahant or Sarbakar of a Math cannot be decided by the Consolidation authorities and is totally beyond their jurisdiction. **(Ram Nagina Das Chela v. Dy. Director of Consolidation, Deoria & Anr.; 2006 (4) ALJ 466)**

◆ **Ss. 48 & 11 – Maintainability of revision – Revision can be directly filed under Section 48 against appealable order passed by Consolidation Officer without having filed appeal under Section 11.**

Deputy Director of Consolidation can exercise revisional jurisdiction under Section 48 in respect to an appealable order passed by the Consolidation officer where no appeal has been filed. **(Faujdar v. Deputy Director of Consolidation, Azamgarh; 2006 (3) AWC 2243)**

◆ **Rule 65 – Whether S.O.C. under Rule 65 can pass any order to transfer jurisdiction of area to some other Consolidation Officer? – No.**

Court observed that such order cannot be said to fall within the scope of Rule 65 of the U.P. Consolidation of Holdings Rules which envisages that Settlement Officer Consolidation may withdraw any case from the file of any consolidation officer and may refer the same for disposal to any other consolidation officer but cannot pass any order to transfer the jurisdiction of the area to some other consolidation officer. However, in the facts of the present case where the Settlement Officer Consolidation has passed an order after hearing both the parties and considering each and every aspect, whereby transfer application was rejected on merits does not suffer from any error of law apparent on the face of the record. **(Taj Mohammad v. Deputy Director of Consolidation, Basti; 2006 (3) AWC 2491)**

U.P. Excise Act

S. 29 – Evasion of excise duty – Imposition of penalty/damages must be done through a valid subordinate legislation and not by way of issuance of circular by Excise Commissioner.

A provision which confers powers upon a statutory authority in terms whereof a penalty is to be imposed, damages are to be paid for non-payment of excise duty, must be done through a valid subordinate legislation and not by way of issuance of a circular letter. Legislation relating to excise duty is relatable to Entry 51, List II of the Seventh Schedule of the Constitution. If that be so, provision for imposition of such duty or evasion thereof must be provided in terms of the law. By reason of an executive order, a presumption cannot be raised. No penalty can be levied. The matter would have been different, if the same was provided for by way of terms and conditions of licence or in terms of the rules. By reason of an executive instruction, the provisions of the law cannot be effaced. A legislative policy, furthermore, must be laid down by the State. The matter relating to an excise policy must be framed by the State. It cannot be done by the Excise Commissioner. **(State of U.P. & Ors. v. Saraya Industries Ltd; 2006 (5) ALJ 347)**

U.P. Government Servants (Conduct) Rules

R. 29 – Misconduct – If Government Servant found guilty of bigamy, he can't be asked to continue in service after award of minor or lesser punishment.

Once the misconduct of the petitioner has been found proved, the scope of interference in the matter of punishment is extremely limited. It is only when the punishment imposed is so disproportionate to the act or omission constituting misconduct that it shocks the conscience of the court or a person of ordinary prudence, only then the court may interfere and not otherwise. In any country where bigamy is an offence, a government servant guilty of committing an offence cannot ask to continue in service after award of minor or lesser punishment. Therefore, Court did not found any reason to hold that the punishment imposed in the present case is arbitrary or so disproportionate to the act of misconduct so as to warrant interference by the Court in exercise of powers under Article 226 of the

Constitution. **(Veerpal Singh v. Senior Superintendent of Police, Agra & Ors.; 2006 (5) ALJ 307)**

U.P. Recruitment of Dependents of Government Servants (Dying-in-Harness) Rules, 1974

◆ **Rule – 5 – Compassionate appointments – Whether petitioner/son of deceased employee would be entitled to compassionate appointment while his mother getting family pension and received more than Rs. 66,000/- after death of her husband – "No".**

Any appointment under the Rules is to be offered by judicious approach looking into the facts and circumstances of each case and not in every case indiscriminately. From the record it appears that the widow of the deceased is being paid family pensions every month. She was also paid more than Rs. 66,000 after the death of her husband. The amount would be sufficient to meet the bare necessities on the death of bread earner. Appointment under the Rules is not a matter of right. It is an appointment apart from normal mode of recruitment for which availability of posts, work etc. is also to be considered. It would result in over-staffing and surplus appointment if direction is given in every case for appointment of dependents of deceased employees under the Rules. **(Vimlesh Singh Yadav v. State of U.P.; 2006 (3) AWC 2465)**

Words & Phrases

◆ **Per incuriam – Where applicable?**

The doctrine of per incuriam is applicable where by inadvertence a binding precedent or relevant provisions of the Statute have not been noticed by the Court. In Halsbury's Laws of England (4th Edn.) Vol. 26 on pages 297-98, para 578 per incuriam has been stated as follows:

> "A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow: or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision: or when the decision is

given in ignorance of the terms of a statute of rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the Court had not the benefit of the best argument, and, as a general rule, the only cases in which decision should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake". **(Faujdar v. Deputy Director of Consolidation, Azamgarh; 2006 (3) AWC 2243)**

- **Forest – Includes things embedded in earth like mines quarries with their produce locked up in land.**

The word 'forest' would include all that goes with it and even the mines and quarries which remained beneath the surface of the earth with minerals, stones and other products locked up in the land, will form part of the forest. Such goods are being brought from the forest as during transportation they cross the forest, they would be covered under the definition of forest produce under sub-clause (iv) of clause (b) of sub-section (4) of Section 2 of the Act. **(Ashok Kumar Anandani v. State of U.P.; 2006 (3) AWC 2295)**

- Habitually

The expression "habitually" means "repeatedly" or "persistently". It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit".

The word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word "habitually" means "usually" and "generally".

The expression 'habitually' is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. **(R. Kalavathi v. State of Tamil Nadu; (2006) 3 SCC (Cri.) 11)**

◆ **'Cause of action' it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit.**

As in S. 209 of CPC cause of action means every fact, which it is necessary to establish to support a right to obtain a judgment.

Cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise.

The expression "cause of action" has acquired a judiciously settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compenditiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which necessary to prove each fact, comprises in "cause of action".

The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances, which constitute either the infringement, or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which plaintiff must prove in order to succeed. These are all

those essential facts without the proof of which the plaintiff must fail in his suit.

The expression "cause of action" is generally understood to mean a situation or state of facts that entitled a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person.

"'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact, which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action". **(Om Prakash Srivastava v. Union of India, (2006) 3 SCC (Cri) 24)**

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
NO. 43 OF 2005

[13th September, 2005.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.-(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of section 22;

(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II

DOMESTIC VIOLENCE

3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III

POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.-(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate.-A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.-If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.-If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.-(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.-(1) It shall be the duty of the Protection Officer-

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers.-(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to-

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done

or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.-The Central Government and every State Government, shall take all measures to ensure that-

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate.-(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.-(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.-(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.-In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.-If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

17. Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, 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.

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.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled 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.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Custody orders.-Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act 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:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders.-In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, 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 that respondent.

23. Power to grant interim and ex parte orders.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost.-The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders.-(1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings.-(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure.-(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal.-There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

CHAPTER V

MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.-The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

31. Penalty for breach of protection order by respondent.-(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer.-If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. Cognizance of offence committed by Protection Officer.-No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

36. Act not in derogation of any other law.-The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. Power of Central Government to make rules.-(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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MINISTRY OF WOMEN AND CHILD DEVELOPMENT

NOTIFICATION

New Delhi, the 17th October, 2006

G.S.R. 644(E).-In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. – (1) These rules may be called the Protection of Women from Domestic Violence Rules, 2006

(2) They shall come into force on 26th day of October, 2006

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

(a) "Act" means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

(b) "complaint" means any allegation made orally or in writing by any person to the Protection Officer;

(c) "Counsellor" means a member of a service provider competent to give counseling under sub-section (1) of Section 14;

(d) "Form" means a form appended to these rules;

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

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

3. Qualifications and experience of Protection Officers. (1) The Protection Officers appointed by the State Government may be of the Government or members of non-governmental organizations:

Provided that preference shall be given to women.

(2) Every person appointed as Protection Officer under the Act shall have at least three years experience in social sector.

(3) The tenure of a Protection Officer shall be a minimum period of three years.

(4) The State Government shall provide necessary office assistance to the protection Officer for the efficient discharge of his or her functions under the Act and these rules.

4. Information to Protection Officers. (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.

(2) In case the information is given to the protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.

(3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. Domestic incident reports. – (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form 1 and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers is that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in **Form 1** and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate. (1) Every application of the aggrieved person under section 12 shall be in **Form II** or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in **Form III**.

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

7. Affidavit for obtaining *ex-parte* orders of Magistrate. – Every affidavit for obtaining *ex-parte* order under sub-section (2) of section 23 shall be filed in **Form III**.

8. Duties and functions of Protection Officers. (1) It shall be the duty of the Protection Officer –

(i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;

(ii) to provide her information on the rights of aggrieved persons under the Act as given in **Form IV** which shall be in English or in a vernacular local language;

(iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;

(iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in **Form V**, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;

(v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;

(vi) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;

(vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;

(viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;

(ix) to scrutinize the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;

(x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;

(xi) to maintain a record and copies of the report and documents forwarded under sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or these rules;

(xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence.

(xiii) To liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;

(xiv) To maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section 91) of section 9, it shall be the duty of every Protection Officer –

(a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;

(b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

9. Action to be taken in cases of emergency. – If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection officer or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

10. Certain other duties of the Protection Officers. (1) The Protection Officer, if directed to do so in writing, by the Magistrate shall –

(a) Conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting *ex-parte* interim relief to the aggrieved person under the Act and pass an order for such home visit;

(b) After making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the court;

(c) Restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

(d) Assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the court.

(e) Assist the court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the court.

(f) Take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.

(3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers. (1) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service

as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(2) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration;

Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

(3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely:-

(a) It should have been rendering the kind of services it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.

(b) In case an applicant for registration is running a medical facility, or a psychiatric counseling center, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.

(c) In case an applicant for registration is running a shelter home, the State Government shall, through an officer or any authority or agency authorized by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that –

(i) the maximum capacity of such shelter home for intake of persons seeking shelter;

(ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;

(iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates;

(3) The State Government shall provide a list of service providers in the various localities to the concerned Protection Officers and also publish such list of newspapers or anon its website.

(4) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notices. (1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.

(2) The service of notices shall be made in the following manner, namely:-

(a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case maybe.

(b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.

(c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable maybe adopted.

(d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order

V of the Civil Procedure Code, 1908 or Chapter VI of the Code of Criminal Procedure, 1973 respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorized to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner; no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

(2) The following persons shall not be eligible to be appointed as Counselors in any proceedings, namely:-

(i) any person who is interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing.

(ii) Any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.

(3) The Counsellors shall as far as possible be women.

14. Procedure to be followed by Counsellors. (1) The Counsellor shall work under the general supervision of the court or the Protection Officer or both.

(2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

(3) The factors warranting counseling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counseling proceedings before the counselor or as permissible by law or order of a court of competent jurisdiction.

(4) The Counsellor shall conduct the counseling proceedings bearing in mind that that the counseling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.

(5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counseling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the Counselling proceeding should be made known to the respondent, before the proceedings begin.

(6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counseling proceedings before the Counsellor.

(7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counseling and reformulating the terms for the settlement, wherever required.

(10) The Counsellor shall not be bound by the provisions of the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908, or the

Code of Criminal Procedure, 1973, and his action shall be guided by the principles of fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.

(13) The court may, onbeing satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.

(14) The court shall, on being so satisfied with the report of counseling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.

(15) In cases, where a settlement cannot be arrived at in the counseling proceedings, the Counsellor shall report the failure of such proceedings to the Court and the court shall proceed with the case in accordance with the provisions of the Act.

(16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference maybe drawn or an order may be passed solely based on it.

(17) The Court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

15. Breach of Protection Orders. – (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the code of Criminal procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include –

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;

(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;

(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;

(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

(e) an order prohibiting the consumption of alcohol or other drugs;

(f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person. – (1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10.

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical Facility to the aggrieved person. – (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

FORM 1

[See rule 5(1) and (2) and 17(3)]

Domestic Incident Report under sections 9(b) and 37(2)(c) of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)

1. Details of the complainant/aggrieved person

(1) Name of the complainant/aggrieved person:

(2) Age:

(3) Address of the shred household:

(4) Present Address:

(5) Phone Number, if any:

2. Details of Respondents:

S.No.	**Name**	**Relationship with the aggrieved person**	**Address**	**Telephone No. if any**

3. Details of children, if any, of the aggrieved person:

(a) Number of Children:

(b) Details of children:

Name	Age	Sex	With whom at present residing

4. Incidents of domestic violence:

S.No.	Date, Place and time of violence	Person who caused domestic violence	Types of violence	Remarks
			Physical violence	

			Causing hurt of any kind, please specify	
(ii) Sexual violence **Please tick mark [/] the column applicable**				
			❑ Forced sexual intercourse ❑ Forced to watch pornography or other obscene material ❑ Forcibly using you to entertain others ❑ Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below);	
(ii) verbal and emotional abuse				
			❑ Accusation/aspersion on your character or conduct, etc. ❑ Insult for not bringing dowry, etc. ❑ Insult for not having a male child ❑ Insult for not having any child ❑ Demeaning, humiliating or undermining remarks/statement ❑ Ridicule ❑ Name calling ❑ Forcing you to not attend school, college or any other educational institution. ❑ Preventing you from taking up a job ❑ Preventing you from leaving the House ❑ Preventing you from meeting any particular person ❑ Forcing you to get married against your will ❑ Preventing you from marrying a person of your choice ❑ Forcing you to marry a person of his/their own choice ❑ Any other verbal or emotional abuse (please specify in the space provided below)	
(iii) Economic violece				

			❑ Not providing money for maintaining you or your children ❑ Not providing food, clothes, medicine, etc. for you or your children. ❑ Forcing you out of the house you live in. ❑ Preventing you from accessing or using any part of the house. ❑ Preventing or obstructing you from carrying on your employment. ❑ Not allowing you to take up an employment. ❑ Non-payment of rent in case of a rented accommodation ❑ Not allowing you to use clothes or articles of general household use. ❑ Selling or pawing your stridhan or any other valuables without informing you and without your consent. ❑ Forcibly taking away your salary, income or wages etc. ❑ Disposing your stridhan ❑ Non-payment of other bills such as electricity, etc. ❑ Any other economic violence (please specify in the space provided below)	
(iv) Dowry related harassment				
			❑ Demands for dowry made, please specify: ❑ Any other detail with regard to dowry, please specify Whether details of dowry items, stridhan, etc. attached with the form ❑ Yes ❑ No	
(v) Any other information regarding acts of domestic violence against you or your children				

(Signature or thumb impression of the complainant/aggrieved person)

5. List of documents attached

Name of document	Date	Any other detail
Medico legal certificate		
Doctor's certificate or any other prescription		
List of Stridhan		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005

S.No.	Orders	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 18		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

7. Assistance that you need

S.No.	Assistance available	Yes/No	Nature of assistance
(1)	(2)	(3)	(4)
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter home		
(5)	Medical facilities		
(6)	Legal Aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this From discloses an offence under the Indian Penal Code or any other law, the police officer shall –

(a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1973)

(b) if the aggrieved person does not want to initiate criminal proceedings, then make daily dairy entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

(c) If any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

Place: (Counter signature of Protection Officer/Service provider)

Date: Name:

Address:

(Seal)

Copy forwarded to:-

1. Local Police Station
2. Service Provider/Protection Officer
3. Aggrieved person
4. Magistrate

FORM II

[See rule 6(1)]

Application to the Magistrate under section 12 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)

To

The court of Magistrate

……..

……..

……..

……...

Application under section _____of the

SHOWETH:

1. That the application under section …….. of Protection of Women from Domestic Violence Act, 2005 is being filed alongwith a copy of Domestic Incident Report by the

   (a) Aggrieved person

   (b) Protection Officer

   (c) Any other person on behalf of the aggrieved person

   (tick whichever is applicable)

2. It is prayed that the Hon'ble court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case.

   (a) Pass protection orders under section 18 and/or

   (b) Pass residence orders under secton 19 and/or

   (c) Direct the respondent to pay monetary relief under section 20 and/or

   (d) Pass orders under section 21 of the act and/or

   (e) Direct the respondent to grant compensation or damages under section 22 and/or

   (f) Pass such interim orders as the court deems just and proper;

   (g) Pass any orders as deems fit in the circumstances of the case.

3. Orders required:

   (i) Protection Order under section 18

   - Prohibiting acts of domestic violence by granting an injunction against the Respondent/s from repeating any of the

acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application

- ❑ Prohibiting Respondent(s) from entering the school/college/workplace
- ❑ Prohibiting from stopping you from going to your place of employment
- ❑ Prohibiting Respondent(s) from entering the school/college/any other place of your children
- ❑ Prohibiting from stopping you from going to your school
- ❑ Prohibiting any form of communication by the Respondent with your
- ❑ Prohibiting alienation of assets by the Respondent
- ❑ Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same
- ❑ Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- ❑ Any other order, please specify

(ii) Residence Order under section 19

- ❑ An order restraining Respondent(s) from
- ❑ Dispossessing or throwing me out from the shared household
- ❑ Entering that portion of the shared household in which I reside
- ❑ Alienating/disposing/encumbering the shared household
- ❑ Renouncing his rights in the shared household
- ❑ An order entitling me continued access to my personal effects
- ❑ An order directing Respondent(s) to
    - o Remove himself from the shared household

- Secure same level of alternate accommodation or pay rent for the same

- Any other order, please specify

(iii) Monetary reliefs under section 20

- Loss of earnings, Amount claimed
- Medical expenses, Amount claimed
- Loss due to destruction/damage or removal of property from the control of the aggrieved person,

  Amount claimed
- Any other loss or physical or mental injury as specified in clause 10(d)

  Amount claimed
- Total amount claimed
- Any other order, please specify

(iv) Monetary reliefs under section 20

- Directing the Respondent to pay the following expenses as monetary relief
  - Food, clothes, medications and other basic necessities, Amount …….. per month
  - School fees and related expenses Amount ….. per month
  - Household expenses Amount …… per month
  - Any other expenses Amount……per month
- Any other order, please specify

(v) Custody Order under section 21

Direct the Respondent to hand over the custody of the child or children to the

- Aggrieved persons
- Any other person on her behalf, details of such person

(vi) Compensation order under section 22

(vii) Any other order, please specify

4. Details of previous litigation, if any

(a) * Under the Indian Penal Code, Sections ….. Pending in the court of ……

*** Disposed off, details of relief**

(b) * Under Cr.P.C., Sections …….Pending in the court of ……..

* Disposed off, details of relief

(c) * Under the Hindu Marriage Act, 1956, Sections ….Pending in the court of ……..

* Disposed off, details of relief

(d) * Under the Hindu Adoptions and Maintenance Act, 1956, Sections …. Pending in the court of …….

* Disposed off, details of relief

(e) * Application for Maintenance, under section …….. under ……Act

Interim maintenance Rs. …….p.m.

Maintenance granted Rs. …… p.m.

(f) * Whether Respondent was sent to Judicial Custody

* For less than a week

* For less than a month

* For more than a month

Specify period

(g) Any other order

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief(s) claimed therein and pass such order or others other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place: COMPLAINANT/AGGRIEVED PERSON

Dated: THROUGH COUNSEL

VERIFICATION:

Verified at …… (place) on this day of ……. That the contents of Paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

Countersignature of Protection Officer with date.

Form III

[See rule 6(4) and 7]

AFFIDAVIT UNDER SECTION 23(2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

IN THE COURT OF ……., MM. …….

IN THE MATTER OF:

Ms. …….. & Others …….COMPLAINANT

VERSUS

Mr. ……. & Others ……..….RESPONDENT

AFFIDAVIT

I, ……., w/O Mr. ……., R/o ……D/o Mr. ……., R/o ……., presently residing at …… do hereby solemnly affirm and declare on oath as under:

1. **That I am the Applicant in the accompanying Application for …….. filed for myself and for my daughter/son.**
2. That I am the natural guardian of ……
3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
4. that the Deponent had been living with the Respondent/s at ……since……..to…….
5. That the details provided in the present Application for the grant of relief under Section(s) …….. have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/Hindi/any other local language (Please specify …….)
7. That the contents of the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.
9. That the Respondent has threatened the Applicant that …… …… ……
10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte ad-interim basis.
11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT

VERIFICATION:

Verified at ……. On this ……. Day of …….. 20…… That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from.

DEPONENT

Form IV
[See rule 8(1) (ii)]
Information on rights of aggrieved persons under the Protection of Women from Domestic Violence Act, 2005

If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from domestic Violence Act, 2005, gives you the right to claim protection and assistance against domestic violence.

You can receive protection and assistance under the Act, if the person(s) with whom you are/were residing in the same house, commits any of the following acts of violence against you or a child in your care and custody –

1. Physical Violence:

For example –

(i) Beating,

(ii) Slapping,

(iii) Hitting,

(iv) Biting

(v) Kicking,

(vi) Punching,

(vii) Pushing,

(viii) Shoving or

(ix) Causing bodily pain or injury in any other manner.

2. Sexual Violence:

For example –

(i) Forced sexual intercourse;

(ii) Forces you to look at pornography or any other obscene pictures or material;

(iii) Any act of sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature;

(iv) Child sexual abuse

3. Verbal and Emotional Violence:

For example –

(i) Insults;

(ii) Name-calling;

(iii) Accusations on your character or conduct etc.;

(iv) Insults for not having a male child,

(v) Insults for not bringing dowry etc.;

(vi) Preventing you or a child in your custody from attending school, college or any other educational institution;

(vii) Preventing you from taking up a job;

(viii) Forcing you to leave your job;

(ix) Preventing you or a child in your custody from leaving the house;

(x) Preventing you from meeting any person in the normal course of events;

(xi) Forcing you to get married when you do not want to marry;

(xii) Preventing you from marrying a person of your own choice;

(xiii) Forcing you to marry a particular person of his/their own choice;

(xiv) Threat to commit suicide;

(xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example –

(i) Not providing you money for maintaining you or your children,

(ii) Not providing food, clothes, medicines etc. for you or your children,

(iii) Stopping you from carrying on your employment, or

(iv) Disturbing you in carrying on your employment,

(v) Not allowing you to take up an employment or

(vi) Taking away your income from your salary, wages etc. or

(vii) Not allowing you to use your salary, wages etc.,

(viii) Forcing you out of the house you live in,

(ix) Stopping you from accessing or using any part of the house,

(x) Not allowing use of clothes, articles or things of general household use,

(xi) Not paying rent if staying in a rented accommodation, etc.

3. If an act of domestic violence is committed against you by a person/s with whom you are/were residing in the same house, you can get all or any of the following orders against the person(s) -

(a) Under section 18:

(i) To stop committing any further acts of domestic violence on you or your children;

(ii) To give you the possession of your stridhan, jewellery, clothes etc.

(iii) Not to operate the joint bank accounts or lockers without permission of the court.

(b) Under section 19:

(i) Not to stop you from residing in the house where you were residing with the person/s;

(ii) Not to disturb or interfere with your peaceful enjoyment of residence,

(iii) Not to dispose off the house in which you are residing,

(iv) If your residence is a rented property then either to ensure payment of rent or secure any other suitable alternative accommodation which offers you the same security and facilities as earlier residence.

(v) Not to give up the rights in the property in which you are residing without the permission of the court.

(vi) Not to take any loan against the house/property in which you are residing or mortgage it or create any other financial liability involving the property.

(vii) Any or all of the following orders for your safety requiring the person/s to –

(c) General Order:

(i) Stop the domestic violence complained/reported

(d) Special Orders:

(i) Remove himself/stay away from your place of residence or workplace;

(ii) Stop making any attempts to meet you,

(iii) Stop calling you over phone or making any attempts to communicate with you by letter, e-mail etc.

(iv) Stop talking to you about marriage or forcing you to meet a particular person of his/their choice for marriage;

(v) Stay away from the school of your child/children, or any other place where you and your children visit;

(vi) Surrender possession of firearms, any other weapon or any other dangerous substance

(vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article,

(viii) Not to consume alcohol or drugs with similar effect which led to domestic violence in the past.

(ix) Any other measure required for ensuring your or your children's safety.

(e) An order for interim monetary relief under sections 20 and 22 including -

(i) Maintenance for your or your children,

(ii) Compensation for physical injury including medical expenses,

(iii) Compensation for mental torture and emotional distress,

(iv) Compensation for loss of earning,

(v) Compensation for loss caused by destruction, damage, removal of any property from your possession or control.

Note. – 1. Any of the above relief can be granted on an interim basis, as soon as you make a complaint of domestic violence and present your application for any of the relief before the court.

II. A complaint of domestic violence made in Form 1 under the Act is called a "Domestic Incident Report"

4. If you are a victim of domestic violence, you have the following rights:

(i) The assistance of a protection officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.

(ii) The assistance of protection officer, service providers or the officer in charge of the nearest police station to assist you in registering your complaint and filing an application for relief under sections 9 and 10.

(iii) To receive protection for you and your children from acts of domestic violence under section 18.

(iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing.

(v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities facilities therein, by you or your children under section 19.

(vi) To regain possession of your stridhan, jewellery, clothes, articles of daily use and other house hold goods under section 18.

(vii) To get medical assistance, shelter, counseling and legal aid under sections 6, 7, 9 and 14.

(viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.

(ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.

(x) To file complaint or applications for relief under the Act directly to the court under sections 12, 18, 19, 20, 21, 22 and 23.

(xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.

(xii) To get copies of any statements recorded by any authority in connection with Domestic Violence.

(xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.

5. the person providing the form should ensure that the details of all the registered service providers are entered in the manner and space provided below. The following is the list of service providers in the area:

Name of Organization	Service Provided	Contact Details

Continue the list on a separate sheet, if necessary ……

Form V

[See rule 8(1)(iv)]

SAFETY PLAN

1. When a Protection Officer, Police officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.

2. The aggrieved person in case of approaching the court directly may herself provide details in columns C and D.

3. If the aggrieved person leaves columns C and D blank and approaches the court directly, then details in the said columns are to be provided by the Protection Officer to the court, in consultation with the complainant and with her consent.

	A	B	C	D	E
Sl. No.	**Violence by the Respondent**	**Consequences of violence mentioned in Column A suffered by the Aggrieved Person**	**Apprehensions of the Aggrieved Person regarding violence mentioned in Column A**	**Measures required for safety**	**Orders sought from the court**

1	Physical violence by the Respondent	Complainant's perception that she and her children are at risk of repetition of physical violence	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
2	Any sexual act abusing, humiliating or degrading, otherwise violative of your dignity	(a) Depression (b) At risk of repetition of such an act (c) Facing attempts to commit such acts	(a) Repetition (b) Escalation (c) Any other, specify		
3	Attempts at strangulation	(a) Physical injury (b) Mental ill health (c) Any other, specify	(a) Repetition (b) Any other, specify		
4	Beatings to the children	(a) Injury to the children (b) Adverse mental effect of the same on the children (c) Any other, specify	(a) Risk of repetition (b) Adverse effect of violent behaviour/environment on the child		
5	Threats to commit suicide by the Respondent	(a) Violent environment in the house (b) Threat to safety (c) any other, specify	(a) Actually trying to commit the same (b) Repetition (c) Any other, specify		

6	Attempts to commit suicide by the Respondent	(a) Violent environment in the house (b) Insecurity, anxiety, depression, mental trauma (c) Any other, specify	(a) Repetition, escalation, aggravation of the same (b) Mental trauma, pain (c) Any other, specify		
7	Psychological & Emotional abuse of the Complainant ….. insults, ridicule, name calling, insults for not having a male child, false accusations of unchastity, etc.	(a) Depression (b) Mental trauma, pain (c) Unsuitable atmosphere for the child/children (d) Any other, specify	(a) Repetition, escalation, aggravation of the same (b) Mental trauma, pain (c) Any other, specify		
8	Making verbal threats to cause harm to the aggrieved person/her children/parents/relatives	(a) Living in constant fear (b) Mental trauma, pain (c) Any other, specify.	(a) Respondent may carry out the mentioned threats (b) Mental trauma, pain (c) Any other, specify		
9	Forcing not to attend school/college/any other educational institution	(a) Depression (b) Mental trauma, pain (c) Any other, specify	(a) Repetition (b) Mental trauma, pain (c) Any other, specify		
10	Forcing to get married when do not want to/forcing not to marry a person of choice/forcing to marry a particular person of Respondent/s'	(a) Depression (b) Mental trauma, pain (c) Fear of being married	(a) Repetition (b) Mental trauma, pain (c) Any other		

	choice	forcibly (d) Any other			
11	Threatening to kidnap the child/children	(a) Living in constant fear (b) Threat to the child/children's safety (c) Any other, specify	(a) Children might be kidnapped (b) Any other, specify		
12	Actually causing harm to the aggrieved person/children/relatives	(a) Living in constant fear of further harm (b) Any other, specify	(a) Repetition (b) Escalation (c) Fear of injury (d) Any other, specify		
13	Substance abuse (drugs/alcohol)	(a) Living in constant fear of abusive and violent behaviour by the Respondent due to substance abuse (b) Deprived of leading a normal life (c) Any other, specify	(a) Physical violence after consuming the same (b) Abusive behaviour after consuming the same (c) Non-payment of maintenance/household expenses (d) Any other, specify		
14	History of criminal behaviour	(a) Constant fear of violence (b) Fear of revenge by the Respondent	(a) Respondent has a tendency to violate law and is likely to flout orders passed by the court against him (b) Respondent might cause harm to the		

			aggrieved person/children for filing any further proceedings (c) Any other, specify		
15	Not provided money towards maintenance, food, clothes, medicines, etc.	(a) Driven towards vagrancy and destitution (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		
16	Stopped, disturbed from carrying on employment or not allowed to take up the same	(a) Not able to fulfill the basic needs for yourself and your children (b) Any other, specify	(a) Have to face great hardship to fulfill the needs and requirements of her child/children and herself (b) Any other, specify		
17	Forced out of the house, stopped from accessing or using any part of the house or prevented from leaving the same	(a) Having no place to stay for yourself and your children (b) Being restricted to a particular area of the house	(a) Safety of her child/children and herself (b) Have to face great hardship in providing shelter for her and her children (c) Any other, specify		
18	Not allowed use of clothes, articles or things of general household use	(a) Losing possession of the same (b) Not having resources to replace the same	(a) The same maybe disposed off by the Respondent (b) Any other		
19	Non payment of rent in case of a rented accommodation	(a) Being asked to leave the same by the	(a) Losing shelter (b) Facing great		

		owner on such non-payment (b) No alternate accommodation to go to (c) No income to afford a rented accommodation	hardship (c) Any other, specify		
20	Sold, pawned stridhan or any other valuables without informing or without consent	(a) Loss of valuables or property (b) Any other, specify	(a) The same maybe disposed off by the Respondent (b) Any other, specify		
21	Dispossessed of stridhan	(a) Deprived of the property in her possession (b) Any other, specify	(a) The same may be disposed off by the Respondent (b) Fear of never receiving the same again (c) Any other, specify		
22	Breach of civil/criminal court order, specify order	Please specify	Please specify		

Signature
Aggrieved Person

Signature
Service Provider/Protection Officer/Police Officer

FORM VI

[See rule 11(1)]

Form for registration as service providers under section 10(1) of the Protection of Women from domestic Violence Act, 2005

1.	Name of the applicant	
2.	Address alongwith phone number, e-mail address, if any	
3.	Services being rendered	❑ Shelter ❑ Psychiatric Counselling ❑ Family counseling ❑ Vocational Training Centre ❑ Medical Assistance ❑ Awareness Programme ❑ Counselling for a group of people who are victims of domestic violence and family disputes ❑ Any other, specify.
4.	Number of persons employed for providing such services	
5.	Whether providing the required services in your institution requires certain statutory minimum professional qualification? If yes, please specify and give details	
6.	Whether list of names of the persons and the capacity in which they are working and their professional qualification is attached?	❑ Yes ❑ No
7.	Period for which the services are being rendered	❑ 3 years ❑ 4 years ❑ 5 years ❑ 6 years ❑ More than 6 years
8.	Whether registered under any law/regulation	❑ Yes ❑ No

	If yes, give the registration Number	
9.	Whether requirements prescribed by any regulatory body or law fulfilled?	
	If yes, the name and address of the regulatory body	
Note: In case of a shelter home, details under column 10 to 10 are to be entered by registering authority after inspection of the shelter home		
10.	Whether there is adequate space in the shelter home	❑ Yes ❑ No
11.	Measured area of the entire premise	
12.	Number of rooms	
13.	Area of the rooms	
14.	Details of security arrangements available	
15.	Whether a record available for maintaining a functional telephone connection for the use of inmates for the last 3 years	
16.	Distance of the nearest dispensary/clinic/medical facility	
17.	Whether any arrangement for regular visits by a medical professional has been made?	❑ Yes ❑ No
	If yes, name of the	

Medical Professional
Address
Contact Number
Qualification
Specialization
18. Any other facilities available, specify
Note:- In case of a counseling center, details under column 19 to 25 are

tobe entered after inspection by registering authority

19. Number of counselors in the center

20. Minimum qualification of the counselors, specify

- ❑ Under graduate
- ❑ Graduate
- ❑ Post graduate
- ❑ Diploma holder
- ❑ Professional degree
- ❑ Any other, specify

21. Experience of the counselors

- ❑ Less than a year
- ❑ 1 year
- ❑ 2 years
- ❑ 3 years
- ❑ More than 3 years

22. Professional qualification/experience of counselors

- ❑ Professional degree
- ❑ Experience in family counseling as a …….(designation) in the ……..(Name of the organization)
- ❑ Experience in psychiatric counseling as ……(designation) in the …….(Name of the organization)
- ❑ Any other relevant experience, please specify

23. Whether a list of names of counselors along with their qualifications has been annexed

- ❑ Yes
- ❑ No

24. Type of counseling provided

- ❑ Supportive one-to-one counseling
- ❑ Cognitive behavioural therapy (CBT) (Mental process that people use to remember, reason, understand, solve problems and judge things)
- ❑ Providing counseling to a group of people suffering
- ❑ Family counseling

7. Facilities provided

- ❑ Offering personal professional and confidential counseling sessions
- ❑ A safe environment to discuss problems and express emotions
- ❑ Information on counseling services, support groups and mental health care resources
- ❑ One to one counseling and group work
- ❑ Therapies, ongoing counseling and health related support
- ❑ Any other, please specify

(c) Any other service

(1) Services being provided

(2) Personnel appointed

(3) Statutory minimum qualifications required for providing such service

(4) Whether a list of names of Personnel engaged for providing service along with their professional qualification is annexed

- ❑ Yes
- ❑ No

(5) Any other details which the service provider desirous of registration may provide

……..If necessary continue on a separate sheet

Place: Signature of authorized official

Date: Designation:

(Seal)

FORM VII

[See rule 11(1)]

NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE

Protection of Women from Domestic Violence Act, 2005

IN THE COURT OF ……; ……..

P/S: …….

IN THE MATTER OF:

Ms. …… …….COMPLAINANT

VERSUS

Mr. ……. …….RESPONDENT

To,

Mr. …….

S/o …….

R/o …….

WHEREAS the Petitioner has filed an application(s) under section ……..of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the …….. day of …… 20…… at …….. O'clock in the ……. noon personally or through a duly authorized counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the court shall proceed ex parte against you.

Given under my hand and the seal of the Court of ……. on the …… day of ……. 20 ……

Signature

Seal of the Court

[F. No. 19-3/2005-WW]

PARUL DEBI DAS, Jt. Secy.

Consumer Protection (Second Amendment) Rules, 2006

1. **Short title and commencement.-** (1) These rules maybe called the Consumer Protection (Second Amendment) Rules, 2006.

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

2. In rule 11 of the Consumer Protection Rules, 1987, -

(i) for sub-rule (1), the following sub-rules shall be substituted, namely:-

"(1) The President of the National Commission shall be entitled to salary, allowances and other perquisites as are available to a sitting Judge of the Supreme Court.

(1-A) The other members of the National Commission appointed on whole time basis shall be entitled to the following honorarium and other allowances with effect from the 1st day of April, 2006, namely:-

(a) the members shall be paid twenty-three thousand rupees per month by way of honorarium:

Provided that the members, who are retired Judges of the High Courts or retired Secretaries to the Government of India shall have the option to either receive consolidated honorarium of twenty-three thousand rupees per month or receive remuneration of last pay drawn less pension;

(b) a woman who has not held an office of profit earlier, on appointment as a member shall be entitled to a pay in the scale of Rs. 24050-26000 per month along with other benefits;

(c) the members shall be provided with Government accommodation or receive house rent allowance of eight thousand rupees per month in lieu thereof;

(d) the members shall be paid conveyance allowance at the rate of ten thousand rupees per month, if no chauffeur driven government vehicle is provided in which event one hundred fifty litres of petrol shall be supplied or the price therefore shall be paid;

(e) the members shall be entitled to one thousand free calls for the telephone installed at their residence, with STD and ISD facilities; and

(f) the members shall be entitled to fifteen days casual leave in a year."

(ii) In sub-rule (2), for the words "The President and the members", the words, "The members" shall be substituted;

(iii) Sub-rule (2-A) shall be omitted.

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 11th July, 2006

S.O. 1042 (II) – In exercise of the powers conferred under sub section (2) of Section 265A of the Code of Criminal Procedure, 1973, the Central Government hereby determine the offences under the following laws for the time being in force which shall be the offences affecting the socio-economic condition of the country for the purposes of sub-section (1) of Section 265A of the said Act, namely.

(i) Dowry Prohibition Act, 1961
(ii) The Commission of Sati Prevention Act, 1987
(iii) The Indecent Representation of Women (Prohibition) Act, 1986
(iv) The Immoral Traffic (Prevention) Act, 1956
(v) Protection of Women From Domestic Violence Act, 2005
(vi) The Infant Milk substitutes, Feeding Bottles and infant foods (Regulation of Production, Supply and Distribution) Act, 1992
(vii) Provisions of Fruit Products Order, 1955 (issued under the Essential Commodities Act, 1955)
(viii) Provisions of Meat Food Products Order, 1973 (issued under the Essential Commodities Act, 1955)
(ix) Offences with respect to animals that find place in Schedule I and Part II of the Schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (Protection) Act, 1972
(x) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
(xi) Offences mentioned in the Protection of Civil Rights Act, 1955
(xii) Offences listed in Sections 23 to 28 of the Juvenile Justice (Care and Protection of Children) Act, 2000
(xiii) The Army Act, 1950
(xiv) The Air Force Act, 1950
(xv) The Navy Act, 1957
(xvi) Offences specified in Sections 59 to 81 and 83 of the Delhi Metro Railway (Operation and Maintenance) Act, 2002

(xvii) The Explosives Act, 1884

(xviii) Offences specified in Sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1995

(xix) Cinematograph Act, 1952

[F.No. 2/3/2003-Judl.Cell(Part III)]
Dr. P.K. SETH, Jt. Secy.
[PUBLISHED IN THE GAZETTE OF INDIA: EXTRAORDINARY, PT-II, Section 3(ii), dated 11.7.2006]

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MINISTRY OF WOMEN AND CHILD DEVELOPMENT
NOTIFICATION

New Delhi, the 17th October, 2006

S.O. 1776(K).-In exercise of the powers conferred by Sub-section (3) of Section 1 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005) the Central Government hereby appoints the 26th day of October, 2006, as the date on which the said Act shall come into force.

[F. No. 19-3/2005-WW]

PARUL DEBI DAS, Jt. Secy.
