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TRAINING ACTIVITIES IN THE INSTITUTE

I. Two Days Workshop on the Concept and Techniques of Mediation for the Principal Judges and Additional Principal Judges, Family Court – Phase II

Under the guidance of the Acting Chief Justice, Hon'ble Mr. Justice Manoj Kumar Gupta, and under the aegis of the Hon'ble Committee for Sensitization of Family Court Matters, headed by Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow, a two days' workshop on the 'Concept and Techniques of Mediation' for the Principal Judges and Additional Principal Judges, Family Court (Lucknow and Allahabad Cluster) was organized at JTRI on 2nd and 3rd December 2023, in which 62 Principal Judges and Additional Principal Judges, Family Court from the districts Bahraich, Bareilly, Hardoi, Lakhimpur Kheri, Lucknow, Pilibhit, Shahjahanpur, Shravasti, Sitapur (Lucknow cluster), Allahabad, Kaushambi, Banda, Chitrkoot, Fatehpur, Hamirpur, Jalaun at Orai, Jhansi, Kanpur Nagar, Lalitpur, Mahoba, Raibareli, Unnao (Allahabad Cluster) participated.

This IInd Phase of two-day workshop was organized to recapitulate and deliberate the outcome of 1st Phase which concluded in August 2023 and to sensitize the participating Judges on the concept and techniques of mediation, matters involving core concepts of Communication Skills, Management Strategies of Impasse, Option Generation Strategies, Role of mediator, lawyers, parties, Ethical principles of mediator, Role and responsibilities of referral Judges.

The inaugural session of the workshop was held on 2nd December, 2023 from 09.30 a.m. to 10.00 a.m. in the Meemansa Lecture Hall of JTRI. The workshop was inaugurated by Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow & Chairperson, Committee for Sensitization of Family Court Matters and Hon'ble Mr. Justice Kshitij Shailendra, Judge, Allahabad High Court.

The Chief Guest in her inaugural speech said that mediation plays a vital role in quick disposal of matrimonial matters. She said that the first phase Mediation Workshop was successful and participants are expected to share their experiences of mediation in family courts in this workshop for better results in future.



Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court delivering the inaugural address and Hon'ble Mr. Justice Kshitij Shailendra, Judge, Allahabad High Court Sharing Dias in the inaugural session



Participating Officers in the Session

The Workshop started with the recapitulation and deliberations on Phase I of the workshop. The issue of understanding the psychology of the parties and controlling their emotions was explained by the resource persons(Mediation Trainer, MCPC, Supreme Court) Sri Anoop Kumar Srivastava, Sri Niraj Upadhyay, Ms. Rajlakshmi Sinha and Sri Sandeep Saxena. On the first day, pre-lunch session stressed on the communication skills dealing with pertinent aspects of active listening, body language and empathy with neutrality.

Post lunch session focused on management strategies of Impasse, Assessment Strategies, Option Generation Strategies. In the second day of workshop, the aspect of role of a mediator, lawyers & parties, issue identification, ethical principles of a mediator, detachment from the confidential information, role and responsibility of referral judges were discussed. Role play exercises were also conducted.

Last session was the valedictory session which was presided over by Hon'ble Mrs. Justice Sangeeta Chandra, Judge, Allahabad High Court at Lucknow and Chairperson, Committee for Sensitization of Family Court Matters. Hon'ble Mrs. Justice Sangeeta Chandra, impressed upon the participating judges to be fearless of transfer petitions while mediating the matrimonial cases. Mediation is very useful tool for the protection of the basic unit of society i.e. family. Her Lordship also stressed upon the fearlessness and impartiality of the family court judges and lastly Her Lordship offered the Vote of Thanks.

The Sessions were conducted by Smt. Shikha Srivastava, Additional Director (Administration), JTRI.

II. Refresher Training Programme for Civil Judges (J.D.)

A refresher training programme for Civil Judges (J.D.) was organized from **29.11.2023 to 12.12.2023** in which about 57 officers participated. This refresher training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

The refresher training programme covered diverse areas of discussion from execution of decrees, execution of injunction decree including mandatory injunction, procedure for seeking police help, application under Order 21 Rule 97 & 99 CPC, various facets of Section 311 CrPC and 313 CrPC, legality of imposition of costs for recall of witness, remand and its practical issues vis-a-vis challenges and precautions, change from Section 167 to Section 209 and Section 309 CrPC, dealing with various applications filed during remand, administrative works of civil judge (J.D.), work and duties of nodal officers, inspection of office, practical issues with respect to cancellation of instrument, standard of proof in case of will & sale deed, valuation and payment of court fees, protection orders under Domestic Violence Act and Senior Citizens Act, plea-bargaining, compounding, conviction order, principles of sentencing, necessities associated with recording of statement and confession u/S 164 Cr.P.C. etc.

SHORT ARTICLE

Changing Nature of Victim Participation in Criminal Trials

By Dr. Humayun Rasheed Khan *

A New Beginning

The Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged. It has also been realized that where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. It has recently been observed that victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.

Traditional Criminal Jurisprudence

The traditional criminal justice system has been accused centric as fair trial rights were primarily meant to be the rights of accused only but the scenario has now undergone a sea change. It has now been acknowledged that the victim of a crime also has a right to be heard at all important stages such as at the time of remand, framing of charge, recording of evidence, recording of statement u/s. 313, final arguments and at the time of sentence. It needs to be mentioned that in traditional criminal justice system the victim was generally out of sight during the course of trial. The vast majority of crime victims remained without help, assistance, care or compensation. However, it is necessary to mention that victim compensation schemes, victim assistance programmes and other victim services have been in existence for over a quarter of a century in many parts of the world. The global historical background would indicate that the State Compensation Programme started in New Zealand in the early 1960s. In some countries, governments decided to transfer the financial burden of victim compensation to offenders through a levy called victim fine surcharge.

There are proposals for a **Universal State Insurance System** for crime victims similar to traffic accident insurance in some of the countries. In many countries, State Compensation Schemes are strictly and explicitly limited to victims of violent or sex crimes (**Hari Kishan v. Sukhbir Singh, AIR 1988 SC 2127**). The Supreme Court directed to draw the attention of all courts to exercise the provisions u/S 357 CrPC liberally and award adequate compensation to the victims particularly when an accused is released on admonition or probation.¹

In fact, the rights of victim have been crystalized and VIA has been directed to be considered by State Authorities. The Apex court considered and recognized the right of appeal with certain riders. It has also considered the concept of victims of crime and their rights and directed the state to formulate new scheme. In **Dinubhai Bogabhai Solanki v. State of Gujarat**

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¹ Ankush Shivaji Gaikwad v. State & Maharashtra, AIR 2013 SC 2454, Surinder Singh Deswal & Others v. Virender Gandhi, AIR 2019 SC 2956 and Mallikarjun Kodagali v. State of Karnataka & Others, AIR 2010 SC 5206

AIR 2017 SC 5690, the Apex Court emphasized the duty to give equal importance to both the victim and the accused. The role of both accused and victim was explained and they were said not to be silent spectators but important stakeholders in the justice delivery system.

It is important to note that the Hon'ble Apex Court observed in **Jagjeet Singh v. Ashish Mishra, AIR 2022 SC 1918** that the 'victim', which is the de facto sufferer of a crime unfortunately had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. The victim's right to participate in criminal trial and her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognized.

It was further observed that the right of a victim under the amended Cr.P.C. are substantive, enforceable and are another facet of human rights. These rights are totally independent, incomparable and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony.

When we look at the question as to who could be termed as 'victim', the **UN Declaration on Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985**, defines 'victim' as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the 'victim'.

It is noteworthy to mention that in **154th Report of the Law Commission of India**, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a **Committee on the Reforms of Criminal Justice System** in its Report in 2003 suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The committee recommended the rights of the victim or his/her legal representative (**Rekha Murarka v. State of West Bengal and another, (2020) 2 SCC 474**). **The Code of Criminal Procedure (Amendment) Act, 2008** not only inserted the definition of a 'victim' under **Section 2 (wa)** but also statutorily recognized various rights of such victims at different stages of trial.

The next important case on the plight of victim is **Jaswinder Singh (Dead) through Legal Representative v. Navjot Singh Sidhu, AIR 2022 SC 2441** where it was held that an important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society cannot long endure under serious threats and if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed.

It has, thus, been observed that the punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated.² The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. Criminal jurisprudence with the passage of time has laid emphasis on victimology, which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context and, thus, victim's rights have to be equally protected.³

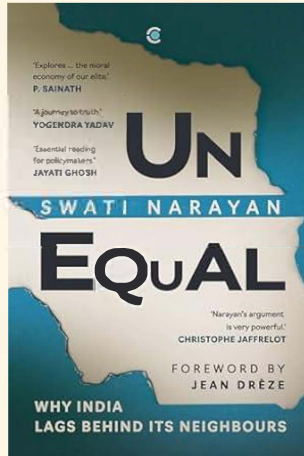
The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the 'crime'. The US Supreme Court has also moved in the same direction in **Payne v. Tennessee** while examining the aspect of the Victim Impact Statement in a case of capital offence at the time of sentencing. It is, therefore, now well established that indifference to the rights of the victim of crime is fast eroding the faith of the society in general and the victim of crime in particular in the criminal justice system. The time has come that the victims of crimes not only deserve their rightful place in criminal trials but also need to be given what they rightfully deserve in terms of 'monetary compensation'.

² Raviji v. Surajbhan Singh, (2014) 7 SCC 323: (AIR 2014 SC 2840

³ Rattiram v. State of M.P. (2012) 4 SCC 516: (AIR 2012 SC 1485

BOOK REVIEW

By Dr. Humayun Rasheed Khan*



Title of the Book

Unequal: Why India Lags Behind its Neighbours

Author

Swati Narayan

Publisher

Context

Year of Publication

2023

This book comes as one of the finest examples of pure empirical research in recent times. The author has undertaken journey to different parts of not only India but of its neighbours such as Bangladesh, Nepal and Sri Lanka to conduct research and gather empirical data on child mortality, child development, life expectancy, fertility, sanitation, school participation, gender equity and much more.

It may be observed in this research that the atmosphere of the schooling system in India is anything but cooperative. However, the caste reflections are also visible in the schooling system as the study indicates that the privileged children are being prepared for India's elite institutions of higher education. The study also indicates that upper caste teachers are not always convinced that education is important for underprivileged children.

This empirical study also forcefully argues that India is mired in a unique and vicious circle of interdependent inequalities, starting with its pernicious caste system but then inequality permeates entire South Asia and not India alone and the author says that unfortunately India seems to be a champion. The research also shows India's continued failure to eliminate open defecation that has something to do with the difficulties of turning sanitation into a widely-shared social responsibility in a country where disposing of shit was traditionally considered to be the job of a specific caste.

The book under review comes as a careful research as well as a fine example of intensive field work in India, Bangladesh, Nepal and Sri Lanka. The author presents a well-researched and lively account of her research findings addressed to a very wide audience not only in India but in its neighbouring countries as well. This work sheds light on the price of inequality in South Asia in general and India in particular but it also points out to be possibility of change where the efforts of South Indian States and also Nepal are offered as good examples for positive change.

* Additional Director (Research), JTRI

The author of this book is an academician and activist who is involved in serious academic inquiry and search for truth and positive change. She is currently Associate Professor at the School of Public Health and Human Development at O. P. Jindal University. For more than a decade, she has been an activist and researcher with pioneering social movements and civil society organizations which is well reflected in this outstanding work on many areas of human development.

This book is nicely divided into eight chapters covering about 200 pages. Chapter one deals with what is termed as 'human development puzzle' reflecting on the scenario in large number of countries. The second chapter is titled 'India Trumped?', which covers crucial issues from human development to happiness reflecting on world happiness index and India's current position in such index.

The third chapter covers 'Eastern Neighbours: Ear to the Ground' where discussion is made on schools and health centers, social equity, women's freedom, the cost of inequality and neighbours shine. This chapter primarily focuses on comparative analysis in the state of Bihar in India, Nepal and Bangladesh. Chapter four is specifically devoted to 'Bangladesh' covering areas such as monopolistic patriarchy, Ashrafisation, Sulatana's dream and Sonar Bangladesh.

Chapter five has particular emphasis on 'Nepal' focusing Naya Nepal, jan andolan, daughters of the Everest and peace divided. The state of Bihar in India is the focus of chapter six dealing with the issues such as development stasis, silenced revolution, land and conflict, nari puja and absent state. Chapter seven covers 'Southern Super Models: Sri Lanka, Kerala and Tamil Nadu' which emphasizes on commonalities, social reform movements, universal public services, women's agency, cultural ties and land reforms.

The closing chapter talks about the price of inequality where the author says that the data from her unique cross border primary survey across eighty villages shows that India's poorer eastern neighbours 'Bangladesh' and 'Nepal' performed better on a range of human development indicators. While closing the book, the author offers the inspirational examples of southern Indian States such as Kerala and Tamil Nadu that proves the consistent commitment to social welfare and social reform which can dilute even inter-generational inequalities. Hence, she ends up on a very positive note and says that the transformative progress in the lives of the citizens in northern India is definitely within reach in times to come.

LEGAL JOTTING

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“In fact, the signature on the cheque having not been disputed, and the presumption under Section 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138.”

Hon'ble Mr. Justice Aravind Kumar
Judge, Supreme Court of India
Rajesh Jain v. Ajay Singh,
AIR 2023 SC 5018: AIR On Line SC 807

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SUPREME COURT

1. **Sub-Registrar, Amudalavalasa and another v. Dankuni Steels Limited and others, (2023) 10 SCC 601**

Stamp Act, 1899 Ss. 4 to 6 r/w Ss. 3 and Section 8 TPA

Plant and machinery embedded in/attached to the earth - Exigibility of stamp duty when property of company under liquidation sold to auction-purchaser.

Allowing the appeal, Hon'ble Supreme Court

Held:

The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery, whether such embedment was intended to be temporary or permanent.

The second respondent was, undoubtedly, the auction-purchaser. The auction- sale related to the assets of the company, which included the land, the building, the plant and machinery and other assets. The vendee, who under the sale deed is the first respondent, being the nominee of the second respondent. It has been recited that the vendee has paid the full consideration. More significantly, it is stated that as per the terms of the sale properties have been sold by the vendor to the vendee on "as is where is whatever there is basis". The total sale

consideration, it is clear again from the sale deed itself, is Rs 8.35 crores, for the land, building, civil works, plant and machinery and current assets, etc. However, what had been done is an amount of Rs 1,01,05,000 has been taken as the value of the land, building and civil works based on the offer received by the Liquidator, when the assets were put up for sale individually.

It is further stated that the purchaser has agreed to pay the stamp duty/registration fees/transfer fees as per the value derived by the Sub-Registrar. This last statement is traceable to order dated 15-6-2004 passed in Civil Appeal No. 1202 of 2004. A copy of the said order is enclosed with the sale deed.

In the recital clause, thereafter, what has been purported to be done is that it is shown that the vendors have sold, transferred, conveyed, alienated, assigned to the vendee all the scheduled property. The matter does not end there. The aforesaid recital is followed up with the words "along with all the rights, easements, interests, etc.. the rights which ordinarily passed on through such sale on and over the said land in favour of the vendee and to hold and enjoy the same as absolute owner". In the schedule, no doubt, what is mentioned is 46 acres and a little over 71 cents.

Furthermore, they have also sought the benefit of the exemption provided under GOMs No. 103 dated 7-2-2001, which Government Order purported to provide for certain concessions in the form of exemption from stamp duty and registration fee in favour of industrial units. The unit was purported to be operated as a going concern and apparently the first respondent did not intend to dispose of the plant and machinery as scrap.

The Amicus submitted that plant and machinery would constitute "distinct matters" within the meaning of Section 5 of the Stamp Act, 1899. To put it differently, distinct matters are dealt with in one instrument viz. the sale deed in question. If different instruments had been executed purporting to convey land, building, plant and machinery, it would be the aggregate of the value of such matters, which would have exposed them to duty. If instead of separate instruments, distinct matters are made subject-matter of one instrument, then, it would hardly matter and the liability to pay duty would be still found within the four walls of Section 5 of the Stamp Act.

It is, no doubt, true that what is purported to be conveyed, going by the recital clause, is, at first blush, the land as comprised in the schedule viz. 46 and odd acres. What is conveyed is immovable property. Immovable property has been defined in the General Clauses Act, 1897 as "including land, benefits to arrive out of land and things attached to the earth or permanently fastened to anything attached to the earth". When it comes to the definition of "immovable property" in the Transfer of Property Act, it has been defined as "not including standing timber, growing crops or grass". In the Registration Act, 1908, immovable property includes, apart from land and buildings, things attached to the earth or permanently fastened to anything which is attached to the earth but not including standing timber, growing crops or grass.

It was observed that section 8 TPA declares that in the absence of an express or implied indication, a transfer of property passes to the transferee all the interests, which the transferor was capable of passing in the property and in the legal incidents thereof. Such incidents includes,

inter alia, where the property is land, all things attached to the earth. When the property is machinery attached to the earth, the movable parts thereof also are comprehended in the transfer.

In the recital clause, a proper reading of the same would tend to indicate that what is conveyed is rights over the scheduled property, which, no doubt, is the land, as described in the schedule but it includes all the rights, easements, interests, etc. i.e. the rights which ordinarily passed on such sale over the land. It is from a reading of the said recital in conjunction with Section 8 TPA that the intention of the parties become self-evident that the vendor intended to convey, all things, which inter alia stood attached to the earth.

The mere fact that there is no express reference to plant and machinery in the recital clause cannot mean that the interest in the plant and machinery which stood attached to the land, which was scheduled, was not conveyed to the first respondent. The value of, what was actually purchased, has been expressly set out in the Preamble to the sale deed. The value has been reflected as Rs 8.35 crores. The sum of Rs 8.35 crores had been, in unambiguous terms, indicated as the total sale consideration for the asset sold to the first respondent, comprising of land, building, civil works, plant and machinery and current assets, etc. The first respondent has taken out the value of the land, building and civil works, and shown it at Rs 1,01,05,000, and then indicating only the said amount as value. This is apparently to tide over the liability to stamp duty for what was actually, in law, conveyed to the first respondent.

The sale deed operated to convey the rights over the plant and machinery as well, which was comprised in the land scheduled in the sale deed. As far as the plant and machinery is concerned, it must, however, be only such plant and machinery, which was permanently embedded to the earth and answering the description of the immovable property as defined. It would appear that such an inquiry was not done to ascertain the same by the appellants.

The proviso to Section 27 of the Stamp Act, added by the Andhra Pradesh Amendment Act (8 of 1988), does empower the Officer to inspect the property. make local inquiries in the facts, call for connected records, examine them and satisfy that the provisions of Section 27 are complied with. Section 27, undoubtedly, provides that the consideration, if any, and the other facts and circumstances, affecting the chargeability of any instrument or the amount of duty, must be fully and correctly set forth. Equally, Section 47-A of the Andhra Pradesh Amendment Act (8 of 1988), empowers the Registering Officer to deal with undervalued instruments.

In the nature of the transaction, and what was actually sold by the Official Liquidator, plant and machinery, such as would answer the description of immovable property, must also be found part of the property for the purpose of the stamp duty and other charges as per law.

At the request of the second respondent, the Company Court ordered that the sale deed be executed in favour of its nominee viz. the first respondent. The first respondent, accordingly, became the vendee under the sale deed. It is the first respondent, which is liable in law as vendee to pay the stamp duty.

Another aspect is that the matter may have to go back to consider the actual plant and machinery as would answer the description of immovable property as correctly pointed out by the Amicus. The passage of time may have its bearing but it may have to be carried out. The second appellant will also go into the question, whether the first respondent would be entitled to

the benefit of the exemption of stamp duty, etc., as claimed while taking a decision and make available the exemption, if entitled in law.

2. R. Hemalatha v. Kashthuri, (2023) 10 SCC 725

Registration Act, 1908-S. 49 proviso and S. 17(1-A)-Relative scope and combined effect explained.

It was observed that as per the proviso to Section 49 of the Registration Act, an unregistered document affecting the immovable property and required by the Registration Act to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered document.

It was further observed that the proviso to Section 49 of the Registration Act came to be inserted vide Act 21 of 1929 and thereafter, Section 17(1-A) came to be inserted by Act 48 of 2001 with effect from 24-9-2001 by which the documents containing contracts to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act is made compulsorily to be registered if they have been executed on or after 2001, and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of said Section 53-A of the Transfer of Property Act. So, the exception to the proviso to Section 49 of the Registration Act is provided under Section 17(1-A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1-A) of the Registration Act shall be applicable.

It was held that under the circumstances, as per the proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by the Registration Act or the Transfer of Property Act, 1882 to be registered, may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1-A) of the Registration Act.

3. Bhaktu Gorain and another v. State of West Bengal, (2023) 10 SCC 749

Penal Code, 1860 Ss. 302/34 and 341: Common intention to murder - Murder of woman for allegedly practicing witchcraft - Conviction confirmed.

It was observed by the Hon'ble Apex court that the submission is devoid of any merit as admittedly an altercation had taken place between the parties on the previous night in which all the five accused persons were present and it is in furtherance of the said quarrel that all of them had appeared in the morning with reinforced vengeance. The very fact that they had assembled in the morning and surrounded the deceased with deadly weapons is sufficient indication to infer that they had surrounded in a preplanned manner with a predetermined mind. Thus, the

submission that they had no common intention stands completely ruled out. Moreover, the nature of injuries which have been caused on the head of the deceased with the deadly weapons proves that they had assembled with the common intention and not merely to threaten her or to deter her from practicing witchcraft.

It was further held that as per detention certificate, one of the accused served a total period of 15 yrs, 9 months and 24 days and the second accused served 11 yrs, 7 months and 5 days (without remission). Resultantly, it was held that both these accused, were entitled and permitted to seek remission in accordance with the prevailing policy of the State and their application/ representation, if, made by them, directed to be duly considered on its own merits.

4. Yadaiah and another v. State of Telangana and others, (2023) 10 SCC 755

S. 11 of CPC, 1908 - Res judicata - Only determinations which are essential or fundamental to the substantive decision, and not collateral thereto, held, would result in application of doctrine of res judicata.

The court held that only those findings, without which court cannot adjudicate a dispute and also form vital steps in the reasoning of a definite conclusion on an issue on merits, constitute res judicata between same set of parties in subsequent proceedings. However, in process of arriving at a final conclusion, if court makes any incidental, supplemental or non-essential observations which are not foundational to final determination, same would not tie down hands of courts in future.

It was observed that by now it is a globally settled principle of common law jurisprudence that only determinations which are fundamental would result in the application of the doctrine of res judicata. Only those findings, without which the court cannot adjudicate a dispute and also form the vital cog in the reasoning of a definite conclusion on an issue on merits, constitute res judicata between the same set of parties in subsequent proceedings. However, in the process of arriving at a final conclusion, if the court makes any incidental, supplemental or non-essential observations which are not foundational to the final determination, the same would not tie down the hands of courts in future.

Difficulty in the actual application of these conceptions is to distinguish the matters fundamental or cardinal to the prior decision on judgment, or necessarily involved in it as its legal justification or foundation, from matters which, even though actually raised and decided as being in the circumstances of the case the determining considerations, yet are not in point of law the essential foundation of a groundwork of the judgment. In order to understand this essential distinction, one has always to inquire with unrelenting severity is the determination upon which it is sought to find an estoppel so fundamental to the substantive decision that the latter cannot stand without the former. Nothing less than this will do. Even where this inquiry is answered satisfactorily, there is still another test to pass: viz. whether the determination is the "immediate foundation" of the decision as opposed to merely "a proposition collateral or subsidiary only i.e. not more than part of the reasoning supporting the conclusion". It is well settled that a mere step

in reasoning is insufficient. What is required is no less than the determination of law, or fact or both, fundamental to the substantive decision.

Effective test to distinguish between a fundamental or collateral determination is hinged on the inquiry of whether the determination concerned was so vital to the decision that without which the decision itself cannot stand independently. Any determination, despite being deliberate or formal, cannot give rise to application of the doctrine of res judicata if they are not fundamental in nature.

It was held that the doctrine of constructive res judicata will not be applicable in the present case for the simple reason that the issues raised in the Second SCN were never adjudicated upon in the first place. The plea that the same should have been raised in the earlier proceedings, is irrelevant in light of the liberty granted by the High Court in its order dated 21-4-2006 whereby the Revenue Authorities were expressly permitted to initiate fresh proceedings for violation of assignment conditions. The Division Bench of the High Court is therefore right in recording finding that this liberty was not for "future contraventions only" as perceived by the Single Judge in his order dated 5-2-2010, for it would render the liberty granted in order dated 21-4-2006 as obsolete. Therefore, in light of the liberty granted by the High Court vide order dated 21-4-2006, the Second SCN would neither constitute an abuse of process of court nor will attract the doctrine of constructive res judicata. In light of the above discussion and observations, it can be held that the proceedings emanating out of the Second SCN are not barred by the doctrine of res judicata or the extended doctrine of constructive res judicata.

It is a matter of record that the Second SCN pertains to alleged violation of assignment conditions by transferring the ownership rights through sale deeds executed in the year 1992. However, the period till 2006 could not be counted because the parties were engaged in litigation pursuant to the First SCN and it was only after the liberty was accorded by the High Court in its order dated 21-4-2006 that the Second SCN could be issued. In the facts and circumstances of the present case and taking note of the chronological events, the exercise of suo motu revisionary power while issuing the Second SCN was not vitiated on account of inordinate delay as claimed by the appellants.

It was further observed that the grant of subject land was in the nature of an assignment and not in any form of limited occupancy right. The actual assignment took place only at the time of issuance of temporary pattas and not at any point prior thereto. On perusal of the documents brought on record, which are merely collection of inter-departmental correspondence before the issuance of temporary pattas, it is found that the assignment process was still underway. Inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right.

Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 of the Constitution and then it has to be communicated.

Once it is determined that the regulatory regime which was in vogue and held the field as on 21-10-1961 will govern the assignments, then it also stands crystallised that the 1958 Circular

as well as GOMs No. 1122 being in force at that time, are clearly applicable to the subject land. As a necessary corollary, it is held that there was a conditional bar on alienation of the subject land as provided in the 1958 Circular and GOMs No. 1122. The question whether the lands were assigned under "regular" or "special laoni" under the Laoni Rules, 1950 consequently becomes academic and the Supreme Court did not deem it necessary to express any opinion in relation thereto.

The assignments such as those under Section 58 of the 1317 Fasli Act are free from the rigours specified under Section 58-A of the 1317 Fasli Act. It goes without saying that the assignment of the subject land was not under Section 54 of the 1317 Fasli Act as may be seen from the contents of the 1958 Circular which draws a clear distinction between (a) Land assigned on payment of market value after making an application to the Collector and (b) Land Assigned to the Landless poor persons. The former is the case of assignment under Section 54 of the 1317 Fasli Act and the latter is covered within the ambit of Section 58 of the 1317 Fasli Act. The instant case unambiguously falls in the latter category i.e. "Land Assigned to the Landless Poor Persons".

The term "transfer" as defined under the 1977 Act is much more inclusive than the one employed in the Transfer of Property Act, 1882. The definition under the 1977 Act uses the phrase "any other transaction", which necessarily includes the GPA executed as an instrument to surrender ownership and possessory rights in favour of M in the present case. The intent of "transfer" through the said GPA by the assignees authorising the attorney holder to sell or transfer the subject property without any restriction as is evident from its recitals and for which they admittedly received consideration from M, is beyond any doubt. Therefore, said GPA falls within the ambit of the term "transfer", especially in view of the objective of the 1977 Act, which was manifestly intended to save the landless poor persons from the clutches of the rich and the resourceful, who deprived them of the precious title assigned to them by the Government for their occupation and the source of livelihood.

ALLAHABAD HIGH COURT

1. Radhasoami Satsang Sabha v. State of UP and others, 2023 (12) ADJ 163

U.P. Revenue Code, 2006 - Section 26 – Eviction - Notice for Validity

It was observed that the property in dispute comes within jurisdiction of Nagar Panchayat, therefore, notice under Section 26 of U.P. Revenue Code, 2006 was without jurisdiction. In the impugned order, there is no reference to objections raised by petitioner as to jurisdiction and non-applicability of U.P. Revenue Code, 2006 to present proceedings.

It was held that the impugned order for eviction has been passed in utter disregard to the principles of natural justice as notice was not given to petitioner, time given for reply was not sufficient time and respondent has erroneously rejected application filed by petitioner for extension of time for filing objections. Respondent in order impugned has not at all considered

objection which was filed by petitioner after his application for extension of time was rejected the and order contains no reasons. Therefore, chapter IV of U.P. Revenue Code, 2006 is not applicable. Hence, the order for eviction was quashed.

2. Smt. Mobin and another v. Deputy Director of Consolidation and others, 2023 (12) ADJ 2591

U.P. Consolidation of Holdings Act, 1953-Section 9A(2): Land Dispute and Claim of right: Land in dispute was in the name of Y, who has three sons, namely, S, J and F and the eldest son S had married with petitioner-1 on 1.3.1997. However, S died on 27.7.1997. It is the case of petitioner-1 that out of wedlock of S, a daughter was born (Petitioner-2) whereas case of contesting- respondents is that petitioner-1, after death of her husband, remarried and petitioner-2 was born out of wedlock with her second husband. It is further case of contesting respondents that since petitioner-1 has not taken care of her husband during his life time, therefore, S executed a Will dated 12.7.1997 in favour of contesting-respondents, i.e., his two brothers. The DNA test for determining parentage of petitioner 2 could not be ordered as there was High School certificate. Even in view of Section 171 of Act of 1950, petitioners have no right to claim ownership on property of S since petitioner-1 has admittedly remarried. Accordingly any challenge to "Will" at the behest of petitioners has no basis. A factor that petitioner-2 (now major) has independently never taken any step to claim her right, if any, over land in dispute, also held to be against petitioners. Concurrent findings of Courts below not interfered.

3. Kalim Asgar v. State of UP, 2023 (12) ADJ 311 (DB)

Section 302 of IPC and Section 106 of the Indian Evidence Act, 1872

Accused-appellant was husband of deceased victim who was burnt to death. PW-1 was real brother of deceased. PW-1 and PW- 2 were not the eye-witness. It is a case of circumstantial evidence and no smoke was seen at the spot and the dead body of deceased was wet. Presence of appellant on spot cannot be denied. Deceased died at her matrimonial home in an unnatural circumstance. Appellant could not give any plausible explanation with regard to the ante-mortem injuries caused to deceased. Appellant also failed to prove the plea of alibi to prove his non-presence at the place of incident. The Hon'ble High Court, Allahabad found no reason to interfere with impugned order of conviction.

By –

**Dr. Humayun Rasheed Khan,
Additional Director (Research), JTRI**

ABOUT US

Judicial Training and Research Institute, U.P., Lucknow

The Institute was established by the Government of Uttar Pradesh in pursuance of a decision taken at All India Conference of the Chief Justices of High Courts in August/September, 1985 in New Delhi. This landmark conference which was also attended by the Chief Ministers and the Law Ministers of the States, mooted the idea of providing institutional induction and in-service training to the judges of the subordinate courts in the country. The initiative of the state government after being readily agreed to by the Hon'ble High Court of Judicature at Allahabad, saw the Institute coming into existence and becoming functional on 25th April, 1987 with Hon'ble Mr. Justice K.N. Goyal as its first honorary Director. Sri Vinod Singh Rawat is its present Director.

The institute has been established with the overall vision of ensuring ceaseless upgradation of skills and appropriate attitudinal reorientation through induction level and in-service training in consonance with the imperatives of national and global environment.

In the training programmes, case studies, discussion sessions, exercises and activity based studies; book review and case law presentation are used extensively. To make the discussion effective, background material is given before discussion. This helps the trainees to develop analytical skills and decision-making power in addition to enable them in writing orders/judgments.

Keeping in view that in a healthy mind rests a healthy body, the institute has established and developed a gymnasium with latest equipments and machines. The physical training is compulsory part of the training programmes organized by the institute. The facilities of gym have been made available to the trainee officers as well as faculty members.

The Institute believes in continuous involvement of officers in sports activities to relieve the stress and keep them healthy. Besides Volley Ball and Carom, the hostel is also having Badminton Court as well as Table-tennis facilities. The hostel is fully furnished and equipped with the best house-keeping and hospitality facilities. The institute has a big air-conditioned Dining Hall with a dining capacity of about 150 persons at a time. The dining Hall is housed with the officers' hostel in one and the same building.

Judicial reasoning, indeed, is both an art and a science to be cultivated by every judge through study, reflection and hard work. The institute has a beautiful and big library housed into two spacious air-conditioned halls in the 'Training Wing' with one being dedicated to law books, law digest, encyclopedia, commentaries and general books including classics, biographies, fictions (Hindi and English both) memoirs, letters, speeches, words and phrases, books of philosophy, religion, history, politics, computer, management, personality development etc. and the other wing is exclusively meant for storing Journals. This centre of knowledge has more than **25000 books**. The institute has been subscribing **15 Law Journals** of varied nature, **seven newspapers** and **four magazines**. The library has All England Law Reports from 1936 to 2014, Halsbury's Laws of India from 2004 to 2008, Halsbury's Laws of England from 1973 to 1987 and Corpus Juris Secundum from Vol. 1 to 101A, Canadian Law reports, American Law Reports Annotated and Law Commission of India Reports. The institute is working on to develop e-knowledge hub and e-library in near future.