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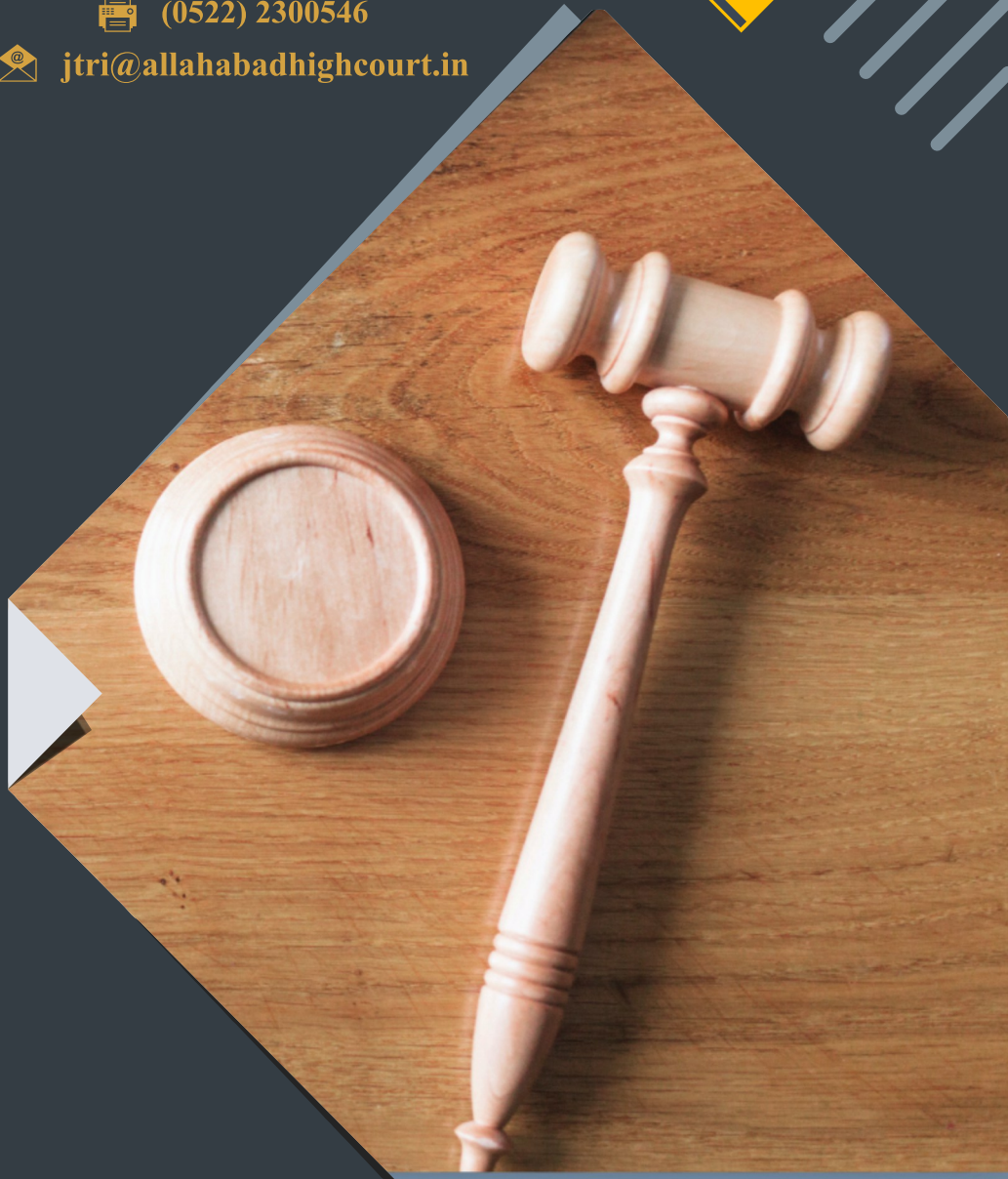

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PATRON-IN-CHIEF

HON'BLE MR. JUSTICE PRITINKER DIWAKER
Chief Justice, Allahabad High Court

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Judge, Allahabad High Court, Lucknow Bench
& Chairman Supervisory Committee JTRI

Hon'ble
Mr. Justice Ajay Bhanot
Judge, Allahabad High Court

Hon'ble
Mr. Justice Jaspreet Singh
Judge, Allahabad High Court at Lucknow

Hon'ble
Mr. Justice Om Prakash Shukla
Judge, Allahabad High Court at Lucknow

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TRAINING ACTIVITIES IN THE INSTITUTE

I. Conference on Development of Environment of Continuous Learning for Judicial Officers and Staff

One Day Conference for all the of District Judge Cadre officers in the State of Uttar Pradesh was organized on "Development of Environment of Continuous Learning for Judicial Officers and Staff in all the Judgeships of Uttar Pradesh" on 08 October, 2023 at the Institute.

The Conference was inaugurated by **Hon'ble Sri Justice Pritinker Diwaker**, Chief Justice, Allahabad High Court in the august presence of **Hon'ble Sri Justice Attau Rahman Masoodi**, Senior Judge, Allahabad High Court at Lucknow, **Hon'ble Sri Justice Ashwani Kumar Mishra Judge**, Allahabad High Court, **Hon'ble Sri Justice Rajan Roy**, Judge, Allahabad High Court at Lucknow and Chairman, Supervisory Committee, JTRI and **Hon'ble Sri Justice Ajay Bhanot**, Judge, Allahabad High Court.

Hon'ble Sri Justice Pritinker Diwaker, Chief Justice, Allahabad High Court, **Hon'ble Sri Justice Attau Rahman Masoodi**, Senior Judge, Allahabad High Court at Lucknow, **Hon'ble Sri Justice Ashwani Kumar Mishra**, Judge, Allahabad High Court, **Hon'ble Sri Justice Rajan Roy**, Judge, Allahabad High Court at Lucknow and **Hon'ble Sri Justice Ajay Bhanot**, Judge, Allahabad High Court sharing dais in the inaugural session

Hon'ble Sri Justice Rajan Roy, Judge, Allahabad High Court at Lucknow and Chairman, Supervisory Committee, JTRI delivering the address

Hon'ble Sri Justice Rajan Roy, Judge, Allahabad High Court at Lucknow and Chairman, Supervisory Committee, JTRI presented the welcome address and stressed that learning is a continuous process for giving meaningful life and making it stress free. Enhancement of decision making abilities requires a proper training. Development of continuous learning for judicial officers and staff in all the judgeships of Uttar Pradesh encompasses creation of stress free environment, capacity building and inter-personal relationship.

While inaugurating the conference, **Hon'ble Mr. Justice Pritinker Diwaker, Chief Justice, Allahabad High Court** said that as we grow old receptibility of knowledge decreases. Experience plays an important role in legal profession; therefore continuous training at district level becomes all the more pertinent. It is a duty of senior Judges to have good behavior towards junior Judges and to guide them from time to time. His Lordship also stressed upon having good disposition of the Judges. A Judge should have good attitude towards litigants and advocates and court staff. Training module for judicial officer at district level should comprise of aspects relating to mutual understanding, work efficiency, inter-personal behavioural skill and continuous learning.

Hon'ble Sri Justice Pritinker Diwaker, Chief Justice, Allahabad High Court delivering the inaugural address

Hon'ble Sri Justice Attau Rahman Masoodi, Senior Judge, Allahabad High Court at Lucknow addressing participating officers

Hon'ble Sri Justice Attau Rahman Masoodi, Senior Judge, Allahabad High Court at Lucknow said that injustice anywhere is a challenge for the judiciary. Every judge is intelligent but development of skill and knowledge requires constant training. Judges should learn the art of judging which requires through persistent experience. District Judges face several problems in the judgeship like strike of Advocates. Therefore, Judges should have practical knowledge to tackle such problem tactfully.

Hon'ble Sri Justice Ashwani Kumar Mishra, Judge, Allahabad High Court said that the task of judging is divine but judges are not. His Lordship stressed upon the role of District Judges for teaching and making understand the junior judges. Judges should live by example and develop the capacity of problem solving. The training programme at district level should also focus on behavior and personal aspect of judges.

Hon'ble Sri Justice Ashwani Kumar Mishra, Judge, Allahabad High Court delivering his talk

Hon'ble Sri Justice Ajay Bhanot, Judge, Allahabad High Court tendering vote of thanks

Hon'ble Sri Justice Ajay Bhanot, Judge, Allahabad High Court delivered the Vote of Thanks and addressed the gathering. His Lordship said that development of an environment of continuous learning is very essential for judges of district courts. Learning is not a one stop event, but a continuous process for transformation of an individual. Emotional Intelligence is also an essential requisite for a successful person. Junior Officers have a duty to learn from senior officers.

Hon'ble Mr. Justice Mohd Faiz Alam Khan, Hon'ble Mr. Justice Rajeev Singh, Hon'ble Mr. Justice Saurabh Lavania, and Hon'ble Mr. Justice Subhash Vidyarthi, (R to L) Judges, Allahabad High Court at Lucknow attending the inaugural session

Hon'ble Mr. Justice Om Prakash Shukla and Hon'ble Mr. Justice Narendra Kumar Johari, (R to L) Judges, Allahabad High Court at Lucknow attending the inaugural session

The one day conference had technical sessions touching the diverse aspects of development of an environment of continuous learning. Roadmap for continuous learning, curriculum design, formation of training team, role of nodal officers and target oriented approach were the facets deliberated upon in the Conference. Lastly, in an open house session reflections were made by the participants on the curriculum design in a participative way.

Sri Vinod Singh Rawat, Director, JTRI delivering his talk in the technical session

Smt. Shikha Srivastava, Additional Director (Administration), JTRI compering in the session

Sri Nishant Dev, ADJ, Lucknow / OSD, JTRI compering in the session

Sri Vinod Singh Rawat, Director, JTRI and other Faculty Members of the JTRI were present during the Conference. The sessions were conducted by Smt. Shikha Srivastava, Additional Director (Administration), JTRI and Sri Nishant Dev, ADJ, Lucknow / OSD, JTRI.

II. 40 Hours MCPC Training of Advocate Mediators

In compliance of the directions of Hon'ble Court, the Member Secretary, U. P. State Legal Services Authority, made a request to this institute for arranging the 40hrs Mediation training for 70 Advocates of different district courts of U.P. In response of the request of Member Secretary, U. P. State Legal Services Authority, Lucknow, the Institute organized 03 training programmes for 70 Advocates Mediators in the month of October. The details of the Proposed Programmes are as follows:

S. No.	Programme No.	Target Group	Duration	No. of Participants
1.	40 Hrs Med. Trg. – 1	Advocates	09.10.2023 to 13.10.2023	25
2.	40 Hrs Med. Trg. – 2	Advocates	09.10.2023 to 13.10.2023	25
3.	40 Hrs Med. Trg. – 3	Advocates	09.10.2023 to 13.10.2023	20

III. Special Training Programme for Additional District & Sessions Judges exercising power of Remand and Trial under NDPS Act

A special training programme on NDPS issues was organized for Additional District & Sessions Judges from **18.10.2023 to 20.10.2023** in which about **65** officers participated. This special training programme was organized in the institute which was inaugurated by Sri Vinod Singh Rawat, Director of the institute.

The special training programme covered diverse areas of discussion from combating illicit drug traffic and drug abuse: global and national regime understanding culpable mental state interpretation of presumptions under the NDPS Act, retracted confessions vis a vis Section 67, NDPS Act, mandatory compliances under the NDPS Act, measures to bring awareness against drug abuse among students, youths and general public - extent of drug abuse in India, drug disposal committee - composition and function, disposal of narcotics contraband/vehicles, practice and procedure: collection, extraction and sampling of narcotic contrabands etc.

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

A refresher training programme for Civil Judges (J.D.) was organized from **26.10.2023 to 08.11.2023** in which about **68** 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 ARTICLES

The New Tenancy Act, 2021: Genealogy and Significant features

By Nishant Dev*

The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (U.P. Act no. 16 of 2021) was enacted on August 24, 2021. It replaced the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act 1972 (U.P. Act no. 13 of 1972). The Act was preceded by an Ordinance of the year 2021 itself. The Act aims to establish Rent Authority and Rent Tribunals to regulate renting of premises and to protect the interests of landlords and tenants and to provide speedy adjudication mechanism for resolution of disputes and matters connected therewith or incidental thereto.

The rent control legislations have their genesis in the two World Wars witnessed by the world in the first half of the twentieth century. During World War I, there was a severe shortfall of housing in New York. The construction was stalled as the resources required for construction were diverted for the wartime efforts. With no new inventory of housing coming up, the demand was unmet, and the house vacancy rates went to a nadir. Landlords started exploitative practices with high rate of rent. This led to widespread protests and paved the way for the passing of 'Rent Control Program' providing relief from baseless evictions and keeping rents in check.

Rising inflation during the World War I led to the enactment of tenancy legislations in India as well. The Rent Control Act, 1918 was passed in the Bombay Presidency in order to keep rents within reasonable limits, and a similar Act was also enacted in Kolkata in 1920. The Delhi Act was born in 1938 under the Defense of India Rules at the onset of the Second World War. These enactments were temporary measure. However, what started as a temporary relief measure continued, and a Central Rent Control Act was passed in 1948 by Independent India and was carved out as an exception to the Transfer of Property Act, 1882.

The tenancy legislations fall in Entry 18 of the State List of the Constitution which empowers the state governments to enact laws on "land tenures including relation of landlord and tenant". All States are therefore duty-bound to enact and enforce rent control legislation as they deem fit, making it a quagmire for anyone trying to delve through the intricacies of the Acts passed by different State Legislatures of India.

The draft Model Tenancy Act was prepared by Ministry of Housing and Urban Affairs, Government of India in 2019 as a model for various state governments. It is believed that the **existing rent control laws are restricting the growth of rental housing and discourage owners from renting out their vacant houses due to fear of repossession.** One of the potential measures to unlock the vacant house is to **bring transparency and accountability to the existing system of renting premises and to balance the interests of both the property owner and tenant in a judicious manner.**

* Additional District Judge, Lucknow attached to JTRI

As per Census 2011, more than 1 crore houses were lying vacant in urban areas. Earlier, almost a third of all Indians were living in urban areas, their proportion is rising to 31.16% in 2011 from 27.82% in 2001. By 2050, more than half of India would be living in cities or towns, mainly due to migration.

The UP Regulation of Urban Premises Tenancy Act, 2021 was enacted following the draft Model Tenancy Act, 2019 prepared by the Government of India. According to Ministry of Housing and Urban Affairs (MoHUA), Model Tenancy Act has been enacted by only four states, i.e., Andhra Pradesh, Tamil Nadu, Uttar Pradesh, and Assam.

Salient Features of the UP Regulation of Urban Premises Tenancy Act, 2021

The Act 16 of 2021 has changed the landscape of tenancy legislation in U.P. The salient features of the Act are as follows-

1. **Application of the Act-** It is applicable to every city, municipal area, development area, special development area, industrial development area, regulated area and every area relating various housing schemes. The State Government can in the interest of general public extend it to any other local area by notification in the Gazette.
2. **Categories of buildings exempted from the application of the Act minimized-** The Act exempts only four categories of buildings i.e. government owned, owned by a company, university or organization and given on rent to its employees as part of service contract, owned by Waqf and owned by religious or charitable institutions. Even by an agreement to the contrary in writing, the Act can be made applicable on these premises.
3. **Tenancy agreement to be in Writing with information to the Rent Authority-** The Act makes it mandatory that all tenancy created after the enactment of the Act shall be by written agreement. In case of pre legislation tenancy, they must be reduced to writing within 3 months of commencement of the Act. The parties should inform the Rent Authority jointly in the form prescribed in the first schedule to the Rent Authority within a period of two months from the date of agreement. The agreement shall also be signed by the tenant and the landlord, the original to be kept with landlord and the copy to be given to the tenant.
4. **Digital Platform-** The Act provides for maintain the information on digital platform with unique identification number to the parties.
5. **Death of Landlord or tenant-** Section 6 provides that the terms of agreement shall be binding on the successor in case of death of the landlord or the tenant for the remaining period of tenancy.
6. **Sub-letting permitted-** The Act permits for the sub-letting of the whole or part of the premises, with intimation to the Rent Authority within 2 months.
7. **Rent Payable-** Since the Act talks about written agreement, the rate of rent should be as per the agreement written between the parties.
8. **Revision of Rent-** The Revision of rent shall be as fixed by the parties in the Rent Agreement. In absence of the terms, it will be 5% in residential accommodation and 7%

in case of non-residential premises compounded on yearly basis. The dispute shall be decided by the Rent Authority on application by either parties.

9. **Security Deposit-** The security deposit shall be refundable on vacation of premises and in case of residential premises shall not exceed two months' rent and 6 months in case of non-residential premises.
10. **Rent Authority-** The Rent Authority is created to exercise the power of eviction and other defined work under the Act. The District collector shall appoint an officer, not below the rank of Additional District Collector to be the Rent Tribunal.
11. **Rent Tribunal-** The Rent Tribunal is created as an appellate authority against the order of the Rent Authorities. The Rent Tribunal shall be presided over by the District Judge himself or by Additional District Judge nominated by the District Judge.
12. **Procedure-** The principles of natural justice has to be followed by both the Rent Authority and the Rent Tribunal.
13. **Adjournments-** A cap of 3 adjournments at the request of a party throughout the proceedings have been fixed.
14. **Time limit for disposal-** The cases before the Rent Authority and the Rent Tribunal has to be disposed as expeditiously as possible not exceeding a period of 60 days.
15. **Mode of Service of Summons-** In addition to the procedure given in Code of Civil Procedure, 1908, the service of notice to landlord or tenant may also be effected through e-mail, WhatsApp, SMS or other recognized electronic mode.
16. **Mandatory Negotiated Settlement of Disputes-** The Rent Authority and the Rent Tribunal shall in appropriate cases refer the parties to appropriate authority under the Legal Services Authorities, Act, 1987.

Though the Act provides for certain unique features, it has certain flip sides as well. The Act is silent about the registration of the tenancy agreement as per Indian registration Act. The Act also is silent about the clash of jurisdiction of Small Causes Courts and Rent Authority. The Digital Platform for mandatory recording of tenancy has not yet seen the light of the day. Since the Civil Courts are legally better equipped to tackle cases relating to tenancy, the taking away jurisdiction from civil Court is a matter of debate

The pre-liberalization era and the ensuing intense Cold War masqueraded the tenancy laws as fight between bourgeoisie landlord and proletariat tenant. However, the enactment which started as war time effort continued for over a century. Therefore, the Act is welcome step in the wake of new economic order.

Strengthening the use of Video Conferencing in District Courts

By Virek Aggarwal*

The Rules for Video Conferencing for Courts in the State of Uttar Pradesh, 2020 have come into force on November 27, 2020. However these Rules have not achieved the full potential in daily court practices as yet, especially in the field of recording evidence of formal witnesses through Video Conferencing devices. A lot of time and cost would be saved if evidence of witnesses are recorded through online mode. For instance recording evidence of Principal of Schools in age-determination Inquiries by Juvenile Justice Boards, to recording Doctor's evidence in POCSO Courts, would save not only the time of Courts but also such witnesses who could save the time in performing their work, thus achieving greater efficiency at both the ends and consequentially for the serving the public interest at large. Further, the benefit of Video Conferencing can be tapped not only for evidence recorded in court but also for mediation processes. This Article critically examines the process of recording evidence through Video Conferencing, it's Advantages, and practical difficulties/hurdles which hinder in implementing it and humble suggestions are made to strengthen the use of Video Conferencing in District Courts of Uttar Pradesh.

The Process of Recording Evidence of Witness virtually:

The Process of Recording Evidence of Witness virtually, could be better understood, by referring to the relevant Rules on Video Conferencing, while simultaneously discussing hypothetical example of recording doctor's evidence in Court and of a Principal of School in age determination Inquiries by Juvenile Justice Board.

	Relevant Rules on Video Conferencing (hereinafter referred to as "the Rules")	**Doctor's Evidence Virtually**	**School Principal Evidence in Age Determination Inquiry**
1.	**Basic Requirements:** The Rules at foremost require a "Coordinator" at the Court Point and at the Remote Point. Only Remote Point coordinator is required when a witness or a person accused of an offence is to be examined. Remote Point, being the place from which any Required Person is to be examined or heard.	In case of Hospitals administered by the Central Government, the State Government or local bodies it is the Medical Superintendent or an official authorized by him or the person in-charge of the said hospital.	As per the Rules, In case of any other location, The concerned Court may appoint any person deemed fit and proper who is ready and willing to render services as a Coordinator to ensure that the proceedings are conducted in a fair, impartial and independent manner and according to the directions issued by the Court in that behalf.

* ACJM, Prayagraj

	The List of coordinators at the remote point is provided in Rule 5.3. (Rule 5)		Thus a person from Computer Section of the School, or from Management may be appointed in such case. It would not be appropriate to appoint the Principal as Remote Point coordinator, as he would be the "Required Person" to be examined as a witness.
2.	**Relevant rules relating to the stage of making Application for Virtual Recording of Evidence and hearing.** Any party to the proceeding or witness, save and except where proceedings are initiated at the instance of the Court, may move a request for video conferencing. A party or witness seeking a video conferencing proceeding shall do so by making a request in the form prescribed in Schedule II. (Rule 6) Any proposal to move a request for video conferencing should first be discussed with the other party or parties to the proceeding, except where it is not possible or inappropriate to do so, for example, extremely urgent cases/applications. On receipt of such a request and upon hearing all concerned persons, the Court will pass an appropriate order. Thus the proceedings for Recording Virtual Evidence can be initiated on the Application of a party or a witness or by the court Suo Motu.	The Applicant or the Learned Counsel representing him, can file an Application for examining the Doctor online, or even the doctor(witness) can make an Application through Ld. APO, for being examined virtually (The Form for the same is prescribed in Schedule II). After giving hearing to all the parties, the court can pass an appropriate order, fixing time, schedule of VC hearing.	The Applicant or the Ld. Counsel claiming Juvenility can make application for examining the Principal online, for the purpose of verifying the original School Records. The Opposite party will also have to be heard, and the court can thereupon pass appropriate order. Including cost if any to be borne. The Board can direct the Applicant making the request to provide Official Email Id of the School/ Email Id on the letter head, for making correspondence with the Coordinator at remote point.

3.	**Rules to be followed at the time of passing the orders for VC hearing and issuing Summons.** While allowing a request for video conferencing, the Court may also fix the schedule for convening the video conferencing. Costs, if directed to be paid, by the order convening proceeding through video conferencing shall be deposited within the time specified in the said order. Before the scheduled video conferencing date, the Coordinator at the Court Point shall ensure that ' the Coordinator at the Remote Point receives certified copies, printouts or a soft copy of the non-editable scanned copies of all or any part of the record of proceedings which may be required for recording statements or evidence, or for reference. (Rule 5.8) Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgment with the Court in this behalf. (Rule 8.4) If a person is examined with reference' to a particular document then the summons to	The Court while allowing the Application shall fix time and date on which evidence shall be recorded. The courts can also provide the link in the Summons/Orders on which the proceedings shall be conducted.The Court Point Coordinator shall inter alia share the link of the video conferencing hearing with such Remote User(s). PDF scanned copies of the Medical record shall be sent with the email, with a direction to witness to acknowledge the receipt of the same within a specified time. It shall also direct the witness to attend in person along with proof of identity or an affidavit to that effect.	The Court while allowing the Application shall fix time and date on which evidence shall be recorded. The court can also provide the link in the Summons/Orders on which the proceedings shall be conducted. The Court Point Coordinator shall inter alia share the link of the video conferencing hearing with such Remote User(s). PDF scanned copies of the School Record shall be sent with the email, with a direction to witness to acknowledge the receipt of the same within a specified time. It shall also direct the witness to attend in person along with proof of identity or an affidavit to that effect.

	witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited at the Court Point in accordance with the deposition of the concerned person being examined. Summons issued to a witness who is to be examined through video conferencing, shall mention the date, time and venue of the concerned Remote Point and shall direct the witness to attend in person along with proof of identity or an affidavit to that effect. (Rule 7)		
4.	**Examination Process:** Rule 8 of the Rules covers the details regarding the examination of the witnesses. Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India. In the absence of such proof, an Affidavit can be given. The oath will be administered to the person being examined by the Coordinator at the Court Point. If a person is examined with reference to a particular document then the summons to witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited	The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue. If the document is at the Court Point, by transmitting a copy or image of the document to the Remote Point electronically, including through a document visualizer. After the evidence is recorded the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official	After administering the oath to the Principal of the School, and ensuring his/her identity, the examination would commence. Here it is noteworthy that while the Juvenile submits the educational record, such as matriculation certificate, or Transfer Certificate, the same are available at the court point and can be marked as Exhibits, however very often the School Authorities, also bring with them the Admission Register or the Scholar Register, at the time of examination, which they submit in the examination in chief, in such situation, while recording the fact of submission of the documents, the same can be shown by document visualizer, while also providing a soft copy to the opposite party, mainly the

	at the Court Point in accordance with the deposition of the concerned person being examined. The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained. If digital signatures are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point, A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.	email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post.	Ld. Counsel appearing for the State, and self-attested copies of the record can be send along with the non-editable scanned format of the transcript duly signed by the witness which is sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. A hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognised courier/registered speed post. As per Rule 10.7, On completion of the video conferencing proceeding, the Court shall mention in the order sheet the time and duration of the proceeding, the software used (in case the software used is not the Designated Video Conferencing Software), the issue(s) on which the Court was addressed and the documents if any that were produced and transmitted online. In case a digital recording is ten-dered, the Court shall record its duration in the order sheet along with all other requisite details

Practical difficulties: As the process of recording Evidence through Video Conference is quite new, and often the litigants, Learned Advocates and the Court Staff are reluctant to adopting to new changes, and rather prefer traditional mode of recording evidence in person, thus with fewer

Applications of recording evidence through video conferencing, seldom such option is exercised. Further, the non-availability of recording devices for recording the entire process of examination by the computer sections of the District Courts is another hurdle for the practical implementation of these rules. In this regard it is pertinent to mention that Rule 8.9 mandates that an audio-visual recording of the examination of person examined shall be preserved and an encrypted master copy with hash value shall be retained as a part of the record. Thus non availability of recording devices for recording the examination makes it impossible to practically implement the Rules.

Moreover, as per Rule 12 of the Rules, the video conferencing is to be conducted only through a Designated Video Conferencing Software. However till date no particular Designated Video Conferencing Software has been recognized to conduct recording of Evidence through Virtual mode. As per prevailing practice and guidelines issued during Covid/Pandemic period JITSI Software is being currently used, but with the difficulty in recording the entire proceedings without any recognized software and in preserving its soft copy, it is hardly possible to implement the recording of evidence through Video Conferencing.

Suggestions: In order to strengthen the system of recording evidence by means of Video Conferencing, following humble suggestions are proposed:

1. The Rule (Rule 8.9) regarding preserving a soft copy of the entire recording (of evidence) and preserving the Hash Value may be deleted. This rule which appears to be inserted as a precaution for ensuring accuracy of recorded evidence, rather creates a practical difficulty by adding another condition/rider to recording of Electronic Evidence. Like physical recording of evidence, in evidence recorded through virtual mode, the parties/deponents make their sworn submissions before the Judicial Officers, and they countersign it from their respective places, after going through the contents of the same, which itself ensures accuracy. Moreover, there is particularly no such requirement while recording physical evidence in person in court. Hence the Rule may be amended to facilitate smoother recording of electronic evidence with simpler process. With the doing away of the above provision, it would also facilitate recording evidences by other software's/Applications used in daily lives for making video calls in future in case exigencies demand
2. With the objective of reaching out to maximum people and eliminating the fear of litigants of taking repeated rounds of courts even for attempting voluntary settlements, the process of mediation through video conferencing by Mediation Centres and courts should also be considered in matrimonial disputes on case to case basis, especially in cases where the parties are residing in different states, or holding public offices. This would ensure that the parties do not suffer harassment, and can express and open up before the mediator in an environment comfortable and suited to them. In fact the mediation notice served on the parties should specify the link which will be available on the first date of appearance of parties before the mediator, so as to ascertain their willingness if they want to opt for the above online/virtual mode.
3. With the purpose of familiarising with the new technological use in day to day court practices, every court may be assigned few hours once in every week to conduct virtual proceedings as a starting pilot step, so that the litigants, Advocates, court staff, all gradually get familiar to the new mode of recording virtual evidence. During this process of familiarization, the courts should endeavour to conduct "only virtual mode hearings", fixing one or two matters, once every week.

Advantages: The recording of evidence of witnesses through Video Conferencing saves time and cost of the litigants, witnesses, Advocates as well as the Courts. The witnesses and litigants do not have to travel all the way to courts for recording their evidence. Recording such evidences for Public witnesses or formal witnesses like doctors, Investigating Officers, Principals of Schools, FIR Writers etc. would serve larger public interest.

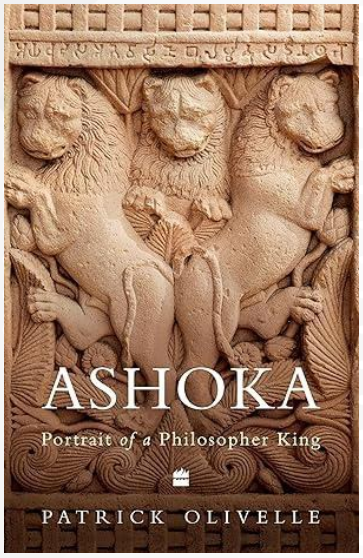
While recognizing that the use of technology by the Bar and the Bench is no longer an option but a necessity and that member of the Bench, the Bar and the litigants must aid each other to create a technologically adept and friendly environment, Hon'ble Supreme Court recently in the Order dated October 6, 2023 in Sarvesh Mathur v. The Registrar General High Court of Punjab and Harayana (Writ Petition(s)(Criminal) No(s).351/2023), observed that :

> *"...it must be noted that technology plays an essential role in securing access to courtrooms and as a result, access to justice for citizens across the country. Lawyers and litigants using electronic gadgets to access files and legal materials cannot be asked to turn the clock back and only refer to paper books. In the march of technology, the Courts cannot remain tech averse. Placing fetters on hybrid hearings, like mandating an age criteria, requiring prior application, and frequent denial of access to virtual participants has the direct effect of discouraging lawyers and litigants to use technology. Not only does this affect the efficiency and access to courts, but it also sends out the misguided message that access to courts can be restricted at whim to those who seek justice..."*

In today's era when more number of people are getting accustomed to using phone, and making video calls in daily lives, the courts should also take steps to record evidence and encourage and inculcate new practices, which would not only be in tune with the modern times but also of convenience to all the stake holders. A step towards modernisation of courts will go a long way in shaping court practices in the near future and thus endeavour should always be made to open the doors to new ventures and avenues which are in tune with the changing times.

BOOK REVIEW

By Dr. Humayun Rasheed Khan*



Title of the Book
Ashoka: Portrait of a Philosopher King

Author
Patrick Olivelle

Publisher
Harper Collins India

Year of Publication
2023

The famous British historian Eric Hobsbawm said about history as 'the study of linkages.' It seems an apt description of history not only for different ages and timelines but also for a particular era. The book under review is a beautiful presentation of linkages of the different facets of life of one of the greatest kings in ancient Indian history after whom the book is titled. The author of the book Patrick Olivelle has his roots in Sri Lanka as he was born and raised in the Island State but got educated in England and United States. He is currently Professor, Emeritus in University of Texas at Austin, and has authored thirty books.

The author calls Samrat Ashoka as 'unique' because according to him, he is singular; there is no one remotely like him in world history. The author says that Samrat Ashoka stands alone. He was not just a king with strong convictions, but a king who was deeply introspective, a person who was perhaps the lone king in world history who was strong enough to say: "I am sorry." The author moves on to explore uniqueness in Samrat Ashoka. He says that Ashoka enjoyed being a writer and the author says that he has found some of the king's writing charming. It is due to these reasons that Ashoka's own words become a key source for the book under review.

The author has explored beautifully the aspect of moral philosophy of Ashoka and says that he was rare among rulers in having a distinctive moral philosophy, which he sought to have imbibed among his subjects. His moral philosophy was well planned and deeply felt. The word 'Dharma' appears more than 100 times in an extant literary corpus. The author says that Samrat Ashoka was a man whose passion was education of his population in the centrality of the moral living. His emphasis on decency of language, guarding one's speech and controlling the tongue was exceptionally advance in point of time.

* Additional Director (Research), JTRI

The author of the book has also explored Samrat Ashoka as an 'innovator' both in architectural and textual sense. He rightly says that there was no precedent in Indian history to the grand and impressive pillars he had built in the different parts of the sub-continent. To extend the reach of the knowledge contained in these pillars, they were often placed on routes of pilgrimage so as to be better noticed by the subjects passing through the routes.

The concept of 'composite nationalism' was so much visible in Ashokan thought process that has been wonderfully inquired by the author. Although, he was a believer in Buddhism but he was never opposed to other religions. The emperor insisted that people of different faiths could live with and learn from one and another. One of his edicts urged his subjects not to denigrate those who follow a different religion. Another edict asks scholars of different religion to meet one and another listen to each other and also take guidance from each other. His intellectual and religious openness is remarkably visible in his approach to nourish and sustain the 'religious diversity' of his empire rather than homogenize in accordance with the principles of his own faith. In short, he was a great believer in valuable principles of harmony, mutual respect and cooperation among learned men of different religious communities.

This book is nicely divided into four parts with a short chapter scheme to make it simple, understandable, lucid and coherent for the readers. Part I deals with king Ashoka reflecting on his territory, population, governance, the imagined community, diplomacy and society. It also covers Ashoka as 'writer and a builder.' Part II of the work explores the 'religious Ashoka' with emphasis on deepening the faith, exhorting the Sangha and spreading the faith. Part III of the manuscript dwells into the 'moral philosophy of Ashoka' and covers foundational aspects of Dharma, Dharma as moral philosophy and preaching Dharma. The last part of the book explores religious diversity, ecumenism and civil religion.

The book is well researched as it relies on what is termed as '*inscriptional Ashoka*' deciphering the persona of the great Samrat, his administrative and social setup, governance principles, religious philosophy and composite nationalism on the basis of original sources such as minor rock edicts, rock edicts, separate edicts, Buddhists inscriptions and pillar edicts. The style of writing is impressive and interesting, the language is lucid, historical facts are presented in the simplest form with a unique coherence. It is, indeed, an interesting read and gives a unique perspective about a unique king of ancient times who left indelible footprints on the sands of ancient history.

LEGAL JOTTING

"It is not essential for the plaintiff to prove long user to establish reputation in a passing off action. It would depend upon the volume of sales and extent of advertisement."

Hon'ble Mr. Justice Abhay S. Oka
Judge, Supreme Court of India
Brihan Karan Sugar Syndicate Private Limited v. Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana
AIR 2023 SC 4321: AIR Online 2023 SC 721

SUPREME COURT

1. Bhasker and another v. Ayodhya Jewellers, (2023) 9 SCC281

Factual Aspects

The issue which arose for consideration in this appeal was what is the starting point of limitation for filing an application under Rule 95 of Order 21 of the Code of Civil Procedure, 1908.

The property, subject-matter of this appeal, held by the appellants was sold in execution of a decree passed against the appellants in a public auction. The respondent was the purchaser of the property. The order of confirmation of sale in accordance with sub-rule (1) of Rule 95 of Order 21 CPC was passed on 16-7-2009. The sale certificate under Rule 94 of Order 21 CPC was issued by the executing court to the respondent on 5-2-2010. On 27-7-2010, the respondent filed an application under Rule 95 of Order 21 CPC before the executing court. The said application was allowed by the executing court. The appellants applied for a review of the said order. The prayer for review was dismissed by the executing court.

The appellants challenged the orders of the executing court by filing a civil revision application before the High Court of Judicature at Kerala. By the judgment dated 11-4-2017, the High Court dismissed the revision application by holding that the starting point of limitation for making an application under Rule 95 of Order 21 was the date on which the sale certificate was issued by the executing court.

Observations and Reference for Reconsideration by a Larger Bench

The issue for determination before the Supreme Court was: What is the starting point of limitation for filing an application under Order 21 Rule 95 CPC?

Referring the matter to larger Bench, the Supreme Court discussed the matter as below:

On the one hand, Order 21 Rule 95 CPC mandates that an application for possession of the auctioned property can be made by the auction-purchaser only after a sale certificate in accordance with Order 21 Rule 94 is issued. But on the other hand, the starting point for making an application under Order 21 Rule 95, in accordance with Article 134 of the Limitation Act, is the date on which the sale is made absolute in accordance with Order 21 Rule 95. It is the obligation of the executing court to issue the sale certificate as per Order 21 Rule 94 CPC. In practice, there is a substantial delay in issuing the sale certificate. In the present case, the delay is of more than six months. In many cases, there is a procedural delay in issuing the sale certificate for which no fault can be attributed to the auction- purchaser.

However, in para 11 of the decision *in Pattam Khader Khan, (1996) 5 SCC 48* it has been laid down that title of the court auction-purchaser becomes complete on the confirmation of the sale under Order 21 Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgment of a fact already accomplished, stating as to what stood sold. Such act of the court is pristinely a ministerial one and not judicial. It is in the nature of a formalisation of the obvious.

Para 11 of the decision of the Supreme Court in *Pattam Khader Khan case* takes the view that there is nothing in Order 21 Rule 95 CPC which makes it incumbent for the purchaser to file a sale certificate along with the application. However, on a plain reading of Order 21 Rule 95 CPC, unless a certificate of sale is granted under Order 21 Rule 94 CPC, the auction-purchaser does not get a right to apply for delivery of possession by invoking Order 21 Rule 95 CPC. Therefore, the view expressed in para 11 of the decision of the Supreme Court in *Pattam Khader Khan case*, prima facie, may not be correct. The said view is not supported by the plain language of Order 21 Rule 95 CPC.

The Supreme Court in *United Finance, (2017) 3 SCC 123* has already expressed a prima facie view that what is held in para 11 of *Pattam Khader Khan case,* may require reconsideration by a larger Bench.

There are twin conditions which should be fulfilled as a condition precedent for enabling the executing court to pass an order of delivery of possession in favour of the auction-purchaser. One of the two conditions is that the auction-purchaser who applies under Order 21 Rule 95 CPC for delivery of possession, must possess a sale certificate issued under Order 21 Rule 94 CPC. Once there is a confirmation of an auction-sale in accordance with sub-rule (1) of Order 21 Rule 95 CPC, the executing court, in the absence of the prohibitory order of a superior court, is under an obligation to issue a sale certificate to the auction-purchaser in accordance with Order 21 Rule 94 CPC. However, the law does not provide for a specific time-limit within which, a certificate under Order 21 Rule 94 CPC should be issued. In a given case, there can be a long procedural delay in issuing the sale certificate for which the auction-purchaser cannot be blamed. In the present case, the delay is of more than six months.

The Supreme Court disagreed with decision of the Supreme Court in *Pattam Khader Khan case*, that an application under Order 21 Rule 95 can be made even before the certificate of sale is granted to the auction-purchaser in accordance with Order 21 Rule 94 CPC.

Therefore, in prima facie view, the order of confirmation of sale under sub- rule (1) of Order 21 Rule 95 CPC does not give a cause of action to the auction- purchaser to apply for possession by invoking Order 21 Rule 95 CPC. He cannot make such an application unless the executing court issues a sale certificate. Though CPC does not permit an application under Order 21 Rule 95 to be filed before the sale certificate is issued, Article 134 of the Limitation Act proceeds on the footing that cause of action becomes available to the auction-purchaser to apply for possession on the basis of the order of confirmation of sale made under sub- rule (1) of Order 21 Rule 95 CPC.

Therefore, there is an apparent inconsistency between the provisions of Order 21 Rule 95 CPC and Article 134 of the Limitation Act. The question is whether the rule of purposive interpretation can be used to set right the inconsistency or anomaly. Even if the delay is on the part of the executing court in the issue of the sale certificate, the delay in filing an application under Order 21 Rule 95 CPC cannot be condoned as Section 5 of the Limitation Act is not applicable to the applications filed under Order 21 CPC.

Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the legislature intended. Legislative wisdom cannot be replaced by the Judge's views.

As a normal rule, while interpreting the statute, the court will not add words or omit words or substitute words. However, there is a well-recognized exception to this rule. Courts exercise considerable caution before adding or omitting or substituting words. Before interpreting a statute in this way the court must be abundantly sure of three matters:

(1) the intended purpose of the statute or provision in question;
(2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and
(3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed. The third of these conditions is of crucial importance. Otherwise, any attempt to determine the meaning of the enactment would cross the boundary between construction and legislation.

The Court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.

Prima facie, the only way of avoiding inconsistency between Order 21 Rule 95 CPC and Article 134 of the Limitation Act is to read into Article 134 that the starting point for making an

application under Order 21 Rule 95 CPC is the date on which a certificate recording confirmation of auction-sale is actually issued to the purchaser. Such interpretation will satisfy the three tests laid down in *Inco, (2000) 1 WLR 586 (HL).* Therefore, the decision of the Supreme Court in *Pattam Khader Khan, (1996) 5 SCC 48* and especially, what is held in SCC para 11, requires reconsideration by a larger Bench. The larger Bench will have to decide the issue relating to the starting point of limitation for making an application under Order 21 Rule 95 CPC.

2. Yashodhan Singh and others v. State of Uttar Pradesh and another, (2023) 9 SCC 108

Factual Aspects

According to the complainant Respondent 2 got registered an FIR bearing No. 186/2018 on 9-6-2018 at PS Hathras Junction, District Hathras, Uttar Pradesh under Sections 147, 148, 149, 302, 452, 307, 504 of IPC against the appellants alleging that Appellants 1-7 went to the complainant Respondent 2's house and started hurling abuses and firing, which consequently resulted in the complainant's injuries and the death of his two brothers. A charge-sheet was filed against the accused persons but the names of the appellants were not mentioned in it as their role was still under investigation.

The complainant filed an application before the Additional Sessions Judge Court No. 1, Hathras in Case Crime No. 186 of 2018 under Section 319 CrPC to summon the appellants on the basis of his evidence pursuant to which the Additional Sessions Judge passed an order dated 23-9-2022 summoning the accused to join the trial.

Aggrieved by the said order of the Additional Sessions Judge Court No. 1, Hathras, the appellants approached the High Court of Judicature at Allahabad by way of Criminal Revision No. 4235 of 2022. The High Court by way of the impugned order dated 3-1-2023 dismissed the same and affirmed the order passed by the Additional Sessions Judge Court No. 1, Hathras in Case Crime No. 186 of 2018 dated 23-9-2022, to summon the appellants.

Observation

Section 227 CrPC provides for discharge of an accused if the court finds that there is no a sufficient ground or reasons for proceeding against him. Consequently, the proceeding against discharged person is dropped. On the other hand, under Section 319 CrPC, a person who has not been named as an accused is summoned to be tried along with other accused while Section 227 CrPC results in conclusion of proceedings against a person who is an accused on his discharge. On the other hand, a person who is not an accused is summoned to be tried along with other accused under Section 319 CrPC.

It is necessary to state that discharge as contemplated under Section 227 CrPC is at a stage prior to the commencement of the trial and immediately after framing of charge but when

power is exercised under Section 319 CrPC to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319 CrPC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

Moreover, there is no finality attached to Section 319 CrPC. It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on or arrayed as an accused. Reference to and reliance placed upon the opportunity of hearing to a complainant in the form of protest petition when a closure report is filed is wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

A person who is summoned in exercise of the power under Section 319 CrPC cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated.

Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 CrPC. Such a summoned person can assail a summoning order before a superior court and will also have the right of cross-examining the witnesses as well as can let in his defence evidence, if any.

Once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power under Section 319 CrPC. The evidence in this context means the material that is brought before the court during trial. In so far as the material or evidence collected by the investigating officer (IO) at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319 CrPC.

The degree of satisfaction arrived at while exercising power under Section 319 CrPC is greater than the degree which is warranted at the time of framing of charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court, that such power should be exercised. Such power should not be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probabilities of a person’s complicity.

3. Bachpan Bachao Andolan v. Union of India and others, (2023) 9 SCC 133

Factual Aspects

This writ petition arose from the strife caused to an individual victim in her painstaking struggle for justice while navigating the police, investigation stage, and court processes, for the prosecution of an offence under the POCSO Act. At numerous stages, she was revictimised, and faced severe hardships; the issues arising from the individual case, have been dealt with by way of continuing mandamus, wherein this Court through a series of orders has monitored the aspects requiring special attention. During those proceedings, it was noticed that the role of a "support person" as envisaged in the Protection of Children from Sexual Offences Rules, 2020 remains unfulfilled, or is given effect to, in a partial or ad hoc manner, thus limiting its positive potential in offering support to victims and their families.

Observation

The enactment and bringing into force of the Protection of Children from Sexual Offences Act, 2012 was not merely in furtherance of this country's commitment to international instruments, but its resolve to and attempt at creating a world as secure and as free from fear, for the most innocent and vulnerable section of its citizens i.e. children and young adults. Behaviour physical, verbal, and non-verbal, ranging from what discomfits a child to as horrifying as rape and physical sexual abuse have been criminalized. Special mechanisms to provide access to the justice delivery system, and ensure speedy justice, have been devised. Yet, a society's commitment to such a cause does not cease by mere enactment of any law, but its willingness, and those governing and administering it, to create and ensure effective overall frameworks which support and strengthen its institutions.

From the point of registering an FIR under the POCSO Act, the victim and their family are required to interact with the police machinery, medical officers and hospitals, the Magistrate, Special Court and/or Juvenile Justice Board, the Child Welfare Committee concerned, and other stakeholders which in itself can be daunting and overwhelming (over and above the already traumatic experience of the crime itself), often dissuading them from pursuing the case altogether. Noticing the need for support at various stages, the role of a "support person" was institutionalized in the POCSO Rules, 2020, to fill this lacuna.

In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the State and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial. The support and care provided through State institutions and offices is vital during this period. Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored. Without this, justice is an empty phrase, an illusion. The POCSO Rules, 2020, offer an effective framework in this regard,

it is now left to the State as the biggest stakeholder in it to ensure its strict implementation in letter and spirit.

The State of Uttar Pradesh was directed to file a report of compliance of these directions on or before 4-10-2023. The Ministry of Women and Child Development, Government of India, is requested to bring this judgment to the notice of the NCPCR, which in turn is directed to file - in furtherance of its obligation under Rule 12(1)(c)-a consolidated status report outlining the progress of all States in framing of guidelines as prescribed under Section 39 of the POCSO Act by 4-10-2023. The Union of India and the NCPCR shall also file an affidavit in this regard before 4-10-2023. A copy of this order shall be marked directly by the Registry to the Union Secretary, Department of Women and Child Development and Chairperson NCPCR, for necessary action.

ALLAHABAD HIGH COURT

1. Mirza Rashid Beg and others v. Board of Revenue, U.P. at Lucknow and others, 2023 (9) ADJ 308 (LB)

Section 100, Order XLII, Rules 2, Order XLI, Rules 11 and 12, CPC - Second Appeal - Non- framing of issues - Without formulating/framing substantial question of law, second appeal was heard on the issue related to Section 49 of Act of U.P. Consolidation of Holdings Act, 1953 and thereafter, on same day, judgment was reserved and subsequently, second appeal was allowed. Whereas, according to law settled as also mode and manner prescribed for deciding appeal from appellate decree under Order XLII CPC, as applicable in State of U.P., which says that Rules of Order XLI and XLI-A shall apply, so far as may be, to appeals from appellate decree and accordingly second appeal, if not dismissed in limine in terms of Rule 11 of Order XLI, should be decided after formulating/framing substantial question of law and thereafter fixing a day for hearing on the same, as would appear from a conjoint reading of Section 100, Rule 11 and 12 of Order XLI and Rule 2 of Order XLII CPC- Order deciding second appeal quashed was and matter remanded for consideration afresh.

2. State of U.P. and others v. Krishna Gopal and another, 2023 (9) ADJ 325 (DB) (LB)

Departmental enquiry-Enquiry procedure-Enquiry found to be vitiated- Course to be followed by Court/tribunal- Order of dismissal was quashed by Tribunal on ground that same was in breach of principles of natural justice apart from other defects in enquiry proceedings. It has been held that the Tribunal ought to have remitted case concerned to Disciplinary Authority to conduct inquiry from the point that it stood vitiated and to conclude same after furnishing charge-sheet to delinquent employee and to give opportunity to delinquent to submit his comments on charge-sheet-Order of reinstatement could not have been passed. Hence, Order of reinstatement quashed, matter remanded to Disciplinary Authority for fresh enquiry.

3. Nangu @ Rambabu v. State of U.P., 2023 (9) ADJ 331 (DB) (LB)

Section 302, IPC-Murder-Circumstantial Evidence-Extra Judicial Confession - Case of prosecution is solely based upon extra judicial confession of accused which is not reliable. This extra judicial confession cannot form the basis of conviction of appellant since it has no corroboration and when examined in the light of settled principles of law, it is inconsequential, thus, accused is entitled to benefit of doubt. Extra judicial confession, besides being inadmissible is also a very weak piece of evidence and in a case of circumstantial evidence one cannot form a valid basis for returning finding of guilt against accused. There is no reason for accused appellant to have made confession before PW-2 as admittedly PW-2 is not in good terms with accused and was also related with PW-1 (cousin brother) who was admittedly having enmity with accused appellant. In the present case, there was neither any eyewitness nor had prosecution proved complete chain of circumstances, there was no direct evidence of involvement of appellant in commission of crime. In any case, objects recovered by police have no link with commission of crime, as such, it would be impermissible in law to use these recoveries against accused for sustaining conviction. No recovery has been made in furtherance to confessional statement of accused. Recovered articles of deceased (pant, vest and underwear) were not sent for chemical analysis by investigating officer nor there is any forensic report on record. In pathology report no sperms were found in slide. Alleged extra judicial confession made before PW-2 is not reliable for reasons that PW-2 is related and inimical witness and moreover alleged extra judicial confession of accused was made before PW-2 after 16-17 days of occurrence. No blood was found by investigating officer on spot. There is an inordinate delay in lodging F.I.R. and the court failed to appreciate medical and other evidence placed on record in its correct perspective. No motive have been established by prosecution for commission of crime by accused. Case of prosecution is based on circumstantial evidence and chain of circumstances proved by prosecution is not complete and prosecution has miserably failed to establish fact that only accused appellant and no one else could have committed offence. Prosecution miserably failed to prove its case beyond reasonable doubt hence conviction and sentence set aside.

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.