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

Quarterly Digest

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

July – September, 2015

Volume: XXXX **Issue No.: 3**

FROM THE CHAIRMAN'S DESK

The most important recent development in the field of law is the judgment of the Supreme Court of India delivered on 16.10.2015 by a Constitution Bench of 5 Judges striking down National Judicial Appointment Commission Act (NJAC Act) and the 99th Constitutional Amendment by a majority of four is-to one. The Supreme Court held that it "cannot risk judiciary being caught in the web of indebtedness towards the Government". The Supreme Court mainly based its judgment on the ground that the Act and the constitutional amendment interfered in the independence of judiciary which was undisputedly basic structure of the Constitution. Even the Government had not contended that judicial independence was not part of basic structure of the Constitution, however, its argument was that the constitutional amendment and the Act did not jeopardize the same in any manner. The Supreme Court did not accept the last argument. It held that primacy of judiciary in

appointment of High Court and Supreme Court Judges was essential part of independence of judiciary and the Act and the Constitutional Amendment had curtailed the same.

However, the Supreme Court Bench candidly observed that the collegium system (criticized as judges appointing judges like a club) in practice was not hundred percent OK and required changes. For the said purpose suggestions were invited and the case was directed to be listed again for the said purpose on 3.11.2015. The judgment has been applauded as well as criticized with equal vehemence by different persons and groups.

Sri Arun Kumar Jaitly, Finance Minister who has been an advocate of the Supreme Court has severely criticized the judgment, terming it as tyranny of unelected. The critics say that nowhere in the world judges appoint judges.

In 'The Hindu' dated 27.10.2015 Ajit Prakash Shah has written an article 're-envisioning the collegium'

emphasizing that "the true worth of the NJAC Judgment will be tested only when the Supreme Court implements the urgent reform that is needed in the collegium system."

In another article written in 'The Hindu' dated 30.10.2015 by Suhrith Parthasarthi under the heading "An anti-constitutional judgment" it has been mentioned that "it is indisputable that judicial independence, based on the principle of separation of powers is part of the Indian Constitution's basic structure. However, the majority judgment in the NJAC case has wrongly interpreted judicial independence to mean primacy in appointments. The Supreme Court was particularly critical of the provision of the Act providing that two eminent persons were to be part of the six member committee/ collegium to select the judges. It held that they could veto any appointment. Sri Parthasarthi has mentioned in his article that this was the provision in the Act and not in the 99th Constitutional Amendment, hence, it defied logic to render the entire

amendment invalid solely because of this provision.

Justice Vishnu Sahai Commission which was formed to look into the Muzaffar Nagar riots of 2013 submitted its report to the Government in the first week of October, 2015.

On 7.10.2015 the Supreme Court refused to modify its earlier interim order dated 11.8.2015 limiting the role of Aadhar.

In the Times of India Lucknow edition dated 28.10.2015 it is reported that the Government has set up panel to simplify income-tax laws aimed at boosting ease of doing business in the Country.

It is reported in Times of India Lucknow edition dated 1.11.2015 that the State Government has approved setting up of 490 new courts in U.P. including 238 Fast Track Courts, 38 District Courts and 113 Gram Nyayalayas. The plan was mooted by the Chief Justice of Allahabad High Court and announced by him in the convocation of Ram Manohar Lohiya National Law University Lucknow held on

31.10.2015. The Chief Justice stated that the process of land identification in each of 75 districts where new court buildings were to be set up with all modern facilities had started.

Of late all is not well in Madras High Court. Disturbance of the working of the court on the ground that Tamil must be made the official language of the High Court is on the rise. Even the judges are not feeling safe. The matter was raised before the Supreme Court also and it showed its grave concern. Madras High Court has suggested that Bar Council of India should stop the 3 years law course and retain only the 5 years degree course. This observation was made on the basis that normally non-serious advocates come through the 3 years course after graduation and those who opt for 5 years law course after intermediate are normally serious in profession.

Jayant Shriram has written an article in 'The Hindu' dated 11.10.2015 with the title 'Inside the court, outside the

law' highlighting that no professional community organizes protests and strikes as frequently as lawyers do and the Bar Council of India and its State wings have been virtually powerless to stop them so far. Now, finally the community seems to have crossed the invisible line and it looks as if the higher courts are prepared to throw the book at them. In U.P. the situation has improved a lot and now there are very few strikes in District Courts due to constant monitoring of the situation by the Seven Judges Full Bench in PIL *No. 15895 of 2015 in Re: v. Zila Adhivakta Sangh Allahabad* referred to in 'from the Chairman's Desk' in volume 38 of Quarterly Digest, January to March, 2015.

In September, the High Court set aside the order of the State Government regularizing the services of Shiksha Mitras in U.P.

* * * * *

SUBJECT INDEX

(Supreme Court)

Sl.No.	Name of Act
1.	Administrative Law
2.	Advocates Act
3.	Air Act
4.	Armed Forces Tribunal Act
5.	Civil Procedure Code
6.	Constitution of India
7.	Contract Act
8.	Copyright Act
9.	Criminal Procedure Code
10.	Criminal Trial
11.	Evidence Act
12.	Family and Personal Laws
13.	Guardians and Wards Act
14.	Hindu Marriage Act
15.	Hindu Minority and Guardianship Act
16.	Hindu Succession Act
17.	Indian Penal Code
18.	Indian Succession Act
19.	Juvenile Justice (Care and Protection of Children) Act
20.	Land Acquisition Act
21.	Motor Vehicles Act
22.	Narcotic Drugs and Psychotropic Substances Act
23.	Negotiable Instruments Act
24.	Panchayat Laws
25.	Prevention of Corruption Act
26.	Rent Laws
27.	Service Law
28.	Specific Relief Act

29. Terrorist and Disruptive Activities (Prevention) Act
30. Transfer of Property Act

* * *

SUBJECT INDEX

(High Court)

30. U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules
31. U.P.Z.A. and L.R. Act
32. Statutory Provisions
33. Waqf Act
34. Words and Phrases
35. Legal Quiz

* * *

NOTE:

This Journal is meant only for reference and guidance. For authentic and detailed information, readers are advised to consult referred Journal(s).

LIST OF CASES COVERED IN THIS ISSUE
(SUPREME COURT)

S.No.	Name of the Case & Citation
1.	**ABC v. State (NCT of Delhi) AIR 2015 SC 2569**
2.	**Abhijit Ghos Dastidar v. Union of India and others 2015(9) SCALE 39**
3.	**Ajay Kumar Choudhary vs. Union of India, (2015) 7 SCC 291**
4.	**All India Judges Association v. Union of India, AIR 2015 SC 2731**
5.	**Anirudh Kumar vs. Municipal Corporation of Delhi, (2015) 7 SCC 779**
6.	**Ashok Versus State Of Maharashtra (2015) 2 SCC (Cri) 636 ; (2015) 4 SCC 393**
7.	**Bablu Kumar and others v. State of Bihar and others, 2015(8) SCALE 53**
8.	**Bachpan Bachao Andolan v. Union of India & others, 2015(9) SCALE 669**
9.	**Basisth Narayan Yadav v. Kailash Rai and others, 2015(7)SCALE 454**
10.	**Bhanuben & other v. State of Gujrat, 2015(9) SCALE 716**
11.	**Bilaspur Raipu Kshetriya Gramin Bank v. Madan Lal Tandon, *AIR 2015 SC 2876***
12.	**CBI v. Rathin Dandapat and others, (2015)9 SCALE 120**
13.	**Central Bank of India v. C.L. Vimal, AIR 2015 SC 2280**
14.	**Central Bank of India v. Jasbir Singh AIR 2015 SC 2070**
15.	**Chandra Babu @Moses v. State through Inspector of Police, 2015(7) SCALE 529**
16.	**Chandra Prakash Tyagi v. Banarsi Das, AIR 2015 SC 2297**
17.	**D. T. Virupakshappa Versus C. Subash AIR 2015 SC 2022**
18.	**D. Velayutham Vs. State Rep. By Inspector Of Police, Salem Town, Chennai AIR 2015 SC 2506**
19.	**D. Velayutham Vs. State Rep. By Inspector Of Police, Salem Town, Chennai AIR 2015 SC 2506**
20.	**Daya Ram & Ors. Versus State Of Haryana AIR 2015 SC 2550**
21.	**Devidas Ramachandra Tuljapurkar Versus State Of Maharashtra & Ors. AIR 2015 SC 2612**
22.	**Dhannu Lal v. Ganesh Ram, AIR 2015 SC 2382**
23.	**Dharam Chandra v. Chairman, New Delhi, Municipal Council, AIR 2015 SC 2819**
24.	**Dr. Ambika Prasad v. Mohd. Alam AIR 2015 SC 2459**
25.	**Dr. Smt. Manorama Tiwari v. Surendra Nath Rai, 2015(9) SCALE 747**

26. **Fatehji and Co. v. S.L.M. Nag Pal, AIR 2015 SC 2301**
27. **Foreshore Coop. Housing Society Ltd. vs. Praveen D. Deasi, (2015)6 SCC 412**
28. **Ganga Dhar Kalita Versus The State of Assam and others AIR 2015 SC 2304**
29. **Ghusabhai Raisangbhai Chorasiya & Ors. Versus State of Gujarat AIR 2015 SC 2670**
30. **Govt. of SCT of Delhi v. Jagjeet Singh, AIR 2015 SC 2683**
31. **Gurjit Singh Alias Gora And Anr. Versus State Of Haryana (2015) 2 SCC (Cri) 624 ; (2015) 4 SCC 380**
32. **H.L. Reddy v. L.V. Reddy, AIR 2015 SC 2499**
33. **Indian Performing Rights Society Ltd. v. Sanjay Dalia & others, (2015)7 SCALE 574**
34. **Indra Dalal Versus State of Haryana 2015 (5) Supreme 457**
35. **Inspector of Police and another Versus Battenapatla Venkata Ratnam and another AIR 2015 SC 2403**
36. **Jagdish Chandra Sharma v. N.S. Sani, AIR 2015 SC 2149**
37. **Jogendra Yadav v. State of Bihar, 2015 (8) SCALE 442**
38. **Karnail Kaur v. State of Punjab, AIR 2015 SC 2041**
39. **Khenyei v. New India Assurance Co. Ltd., AIR 2015 SC 2261 (3 judges)**
40. **Kirpal Kaur v. Jitender Pal Singh & others, 2015(8) SCALE 38**
41. **Kirshna Texport & Capital Markets Ltd. Versus Ila A. Agrawal & Ors. Criminal AIR 2015 SC 2091**
42. **Krishna Moorthy v. Sivakumar, AIR 2015 SC 1921**
43. **L. Laxmikanta VS State by Superintendent of Police, Lokayukta (2015) 2 SCC (Cri) 575 ; (2015) 4 SCC 222**
44. **M/s G.M.G. Engineering Industries v. M/s I.S.S.A. Grand Power Solution, AIR 2015 SC 2675**
45. **Mahila Ram Kali Devi v. Nand Ram, AIR 2015 SC 2270**
46. **Mainuddin Abdul Sattar Shaikh Versus Vijay D. Salvi AIR 2015 SC 2579**
47. **Major Singh & Anr. Versus State Of Punjab AIR 2015 SC 2081**
48. **Manmeet Singh Alias Goldie Vs. State of Punjab (2015) 3 SCC (Cri) 44 ; (2015) 7 SCC 167**
49. **Mohan Lal v. State of Rajasthan AIR 2015 SC 2098: (2015)8 SCALE 627**
50. **Mohd. Khalid Khan Vs. State of Uttar Pradesh & Another, (2015)9 SCALE 16**
51. **Monoj Lal Seal v. Octavious Tea & Industries, AIR 2015 SC 2855**
52. **Mr. Robert John D. Souza & others v. Mr. Stephen v. Gomes & others, (2015)8 SCALE 95**
53. **Munna Lal Jain vs. Vipan Kumar Sharma, (2015) 6 SCC 347**
54. **N.K. Rajender Mohan v. T. Rubber Co. AIR 2015 SC 2556**

55. **Nand Kishor Lal Bhai Mehta v. New Era Fabrics Pvt. Ltd., (2015) 7 SCALE 665**
56. **Nanjappa v. State of Karnataka, (2015)8 SCALE 171**
57. **National Institute of Technology v. Panna Lal Chaudhary, AIR 2015 SC 2846**
58. **P. Pramila and others versus State of Karnataka and another, AIR 2015 SC 2495**
59. **Parhlad v. State of Haryana, 2015(8) SCALE 436**
60. **Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh & Anr. AIR 2015 SC 2050 (Mnaju Nath Case)**
61. **Purushottam Dashrath Borate & Anr. Versus State of Maharashtra AIR 2015 SC 2170**
62. **Quantum Securities Pvt. Ltd. & others v. New Delhi Television Ltd., 2015(7) SCALE 329**
63. **Raj Bala v. State of Haryana and others, 2015(9) SCALE 25**
64. **Rajan Versus Joseph & Ors. AIR 2015 SC 2359**
65. **Rajasthan Housing Board vs. New Pink Civy Nirman Sahkari Samiti Ltd., (2015) 7 SCC 601**
66. **Rajdeep Sardesai Vs. State Of Andhra Pradesh & Ors. AIR 2015 SC 2180**
67. **Ram Narain v. State of U.P., 2015 (8) SCALE 562**
68. **Ravinder Kaur Versus Anil Kumar AIR 2015 SC 2447**
69. **Rozann Sharma vs. Arun Sharma, (2015) 8 SCC 318**
70. **S. Satyanarayana Versus Energo Masch Power Engineering & Consulting Pvt. Ltd. & Ors. AIR 2015 SC 2066**
71. **S.M. Asif v. Virendra Kumar Bajaj, 2015(9) SCALE 729**
72. **S.R. Sukumar Versus S. Sunaad Raghuram AIR 2015 SC 2757**
73. **Sanjeev Kumar Gupta Versus State of U.P. (Now State of Uttarakhand) 2015(5) Supreme 369**
74. **Sanjeev Versus State of Haryana (2015) 2 SCC (Cri) 630 ; (2015) 4 SCC 387**
75. **Saroj Kumar v. Union of India and others, 2015(9) SCALE 35**
76. **Shakuntala Bai v. Mahavir Prasad, AIR 2015 SC 2769**
77. **Shamima Farooqui Versus Shahid Khan AIR 2015 SC 2025**
78. **Shanti Devi v. Kaushalya Devi, 2015(9) SCALE 829**
79. **Sirajul v. The State of U.P., (2015)(7) SCALE 523**
80. **State (Govt of NCT of Delhi) v. Nitin Gunwant Shah, 2015(9) SCALE 761**
81. **State of J&K Versus Wasim Ahmed Malik @ Hamid and another2015 (5) Supreme 176**
82. **State of Karnataka v. Chand Basha, 2015(9) SCALE 809**
83. **State of M.P v. Madanlal, 2015(7) SCALE 261**

84. **State of M.P. v. Anoop Singh, 2015(7)SCALE 445**
85. **State of M.P. v. Ashok & others, 2015(7) SCALE 324**
86. **State of M.P. v. Munna @ Shambhoo Nath, 2015(9) SCALE 815**
87. **State of M.P. Versus Mehtaab (2015) 2 SCC (Cri) 764 ; (2015) 5 SCC 197**
88. **State Of Rajasthan Versus Salman Salim Khan AIR 2015 SC 2443**
89. **Sunil Bharti Mittal Versus Central Bureau Of Investigation (2015) 2 SCC (Cri) 678 ; (2015) 4 SCC 609**
90. **Surya Vadanan v. State of Tamil Nadu, AIR 2015 SC 2243**
91. **T. Vasanthakumar Versus Vijayakumari AIR 2015 SC 5540**
92. **Tomaso Bruno & Anr Versus State Of U.P. (2015) 3 SCC (Cri) 54 ; (2015) 7 SCC 178**
93. **Ultra Tech Cement Ltd Versus Rakesh Kumar Singh & Anr AIR 2015 SC 2512 9Criminal Appeal No.717 Of 2015)**
94. **Union of India and others vs. Shri Hanuman Industries, (2015) 6 SCC 600**
95. **Union of India vs. Shri Kant Sharma, (2015) 6 SCC 773**
96. **V.K. Mishra v. State of Uttarakhand, 2015(8) SCALE 270**
97. **Vijay Pal Versus State (GNCT) Of Delhi (2015) 2 SCC (Cri) 733 ; (2015) 4 SCC 749**
98. **Vijay Shankar v. State of Haryana, 2015 (8) SCALE 517**
99. **Vikram Singh @Vicky & another v. Union of India, 2015(9) SCALE 183**
100. **Vinod Kumar Subbiah v. Saraswathi Palaniappan, AIR 2015 SC 2504**
101. **Vinod Kumar Versus State of Haryana 2015(6) Supreme 108**
102. **Vinod Kumar Versus State Of Punjab 2015 (6) Supreme 1**
103. **Yunus Zia Vs. State Of Karnataka & Anr. AIR 2015 SC 2376**

****

LIST OF CASES COVERED IN THIS ISSUE
(HIGH COURTS)

S.No.	Name of the Case & Citation
1.	**Akshay Asthana v. State of U.P. & another 2015 (4) ALJ 742**
2.	**Anil Kumar Gera v. State of U.P. and others 2015 (128) RD 316**
3.	**Ashfaq Ahmad v. Abdul Sattar And 2 Other, 2015 (2) ARC 594**
4.	**Badri Prasad and another v. Gyan Prakash and others, 2015 (128) RD 740**
5.	**Bal Kishun v. Dy. Director of Consolidation, Varanasi and others 2015 (112) ALR 83**
6.	**Balveer Singh Ponia v. State of U.P. and others 2015 (111) ALR 785**
7.	**Bhanu Prakash Chaturvedi v. Smt. Jairani And Ors. 2015 (2) ARC 592**
8.	**Bhim Sen and others v. State of U.P., 2015 (90) ACC 454**
9.	**Canara Bank and another v. M. Mahesh Kumr 2015 (33) LCD 2058**
10.	**Central Bank of India v. C.L. Vimala and others 2015 (128) RD 632**
11.	**Chaitu and others v. Dy. Director of Consolidation, Maharajgang and others 2015 (128) RD 323: 2015 (111) ALR 803**
12.	**Dalip Singh and others v. Vikram Singh and others, 2015 (128) RD 666**
13.	**Devendra Kumar Sharma v. Ajit Kumar Jain, 2015 (111) ALR 627**
14.	**Dr. Gorakhnath v. Judge, Small Causes Court, Gorakhpur and others, 2015 (128) RD 724**
15.	**Dr. Tarun Rajput v. State of U.P. and others, 2015 (112) ALR 210**
16.	**Duryodhan and others v. Collector, D.D.C., Basti and others, 2015 (112) ALR 87**
17.	**Gorakhnath (Dr.) Judge, Small Cuases Court and Others 2015 (2) ARC 527**
18.	**Govind Ram v. Jugul Kishor Paliwal and another, 2015 (3) ARC 169**
19.	**Gujarat Maritime Board v. G.C. Pandya 2015 (2) ARC 802**
20.	**Gyan Prakash Gupta v. Sri Ahmad Magsood Naquvi, 2015 (33) LCD 1908**
21.	**Gyandas and others v. Chief Revenue officer, Basti and 2015 (128) RD 334**
22.	**Habib Ali v. State of U.P. and Others 2015 (33) LCD 2260**
23.	**Har Swaroop and others v. Dy. Director of Consolidation, Bijnor and other, 2015 (112) ALR 102**
24.	**Hari Dutt Tiwari, Constable v. State of U.P. and another 2015 (90) ACC 365**
25.	**High Court Bar Association, Allahabad v. Hon'ble High Court of Judicature at Allahabad & another AIR 2015 (All) 151**
26.	**Ishwar Chand Sharma v. State of U.P. and others, 2015 (112) ALR 98**

27. **Jagat Narain and others v. State of U.P. and others 2015 (4) ALJ 420**
28. **Jagdev v. D.D.C. Pratapgarh and another 2015 (128) RD 658**
29. **Jai Kumar v. State of U.P. and another 2015 (90) ACC 506**
30. **Kamla Varma (Smt.) v. Union of India 2015(2) ARC 514**
31. **Krishna Mohan Mahrotra v. Additional District Judge Court No. 3, Lakhimpur & others 2014 (4) ALJ 773**
32. **Lt. Col. (Military Nursing Services) Madhu Lata Gaur v. Armed Forces Tribunal Regional Bench thru its V.C. Lko. and others 2015 (4) ALJ 748**
33. **M/s GMG Engineering Industries and Others v. M/s ISSA Green Power Solution and others 2015 (33) LCD 1713**
34. **Mahavir v. State of U.P., 2015 (90) ACC 810**
35. **Mahoj Kumar v. Union of India and others 2015 (111) ALR 856**
36. **Mahrab and another v. Hullan Khan and others 2015 (112) ALR 126: 2015 (4) AWC 3732**
37. **Manager, United India Insurance Company v. Swaroop Medhavi and others, 2015 (33) LCD 2090**
38. **Manager, United India Insurance Company, Divisional office Meerut v. Anand Swaroop Medhavi and another 2015 (111) ALR 392**
39. **Mehboob v. Zahira and others 2015 (128) RD 305**
40. **More Singh v. Chandrika Prasad 2015 (2) ARC 850**
41. **Moti Lal v. Dy. Director of Consolidation, Jhansi and others, 2015 (128) RD 661**
42. **Mushafir Yadav v. State of Uttar Pradesh and another, 2015 (9) ACC 911**
43. **N.O.I.D.A. v. Surendra Singh, 2015 (128) RD 748**
44. **Nagappa v. Ramasamy and another, 2015 (128) RD 627**
45. **Power Grid Corporations of India v. State of U.P. and another, 2015 (128) R.D. 620**
46. **Prabuddhan Naagrik Chetna Manch, Gonda v. Union of India and Another, 2015 (33) LCD 2283**
47. **Prahlad Tamoli v. Rajesh Kumar Agrawal, 2015 (111) ALR 685**
48. **Prakash Agarwal v. Registrar General, Allahabad High Court, Allahabad and Others 2015 (33) LCD 1962**
49. **Prayag Gaurav Samman Evan Sanskritik Ayojan Jan Seva v. State of U.P. and 6 Others, 2015 (3) ARC 218**
50. **Pyari Mohan Parida v. Multani Mal Modi Degree Society 2015 (3) ARC 220**
51. **Raeesul Hasan v. State of Uttar Pradesh Through Secy. Education and others , AIR 2015 All. 139: 2015 (3) ARC 300**
52. **Raj Kishore and others v. Hira and others, 2015 (111) ALR 874**

53. **Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another 2015 (33) LCD 1762**
54. **Rajendra Prasad and others v. Dy Director of Consolidation, Mau and others, 2015 (128) RD 677**
55. **Rakesh Kumar and others v. Ashok Kumar and another 2015 (111) ALR 541**
56. **Ram Lakhan Gupta v. M/s Taksal Theatres Pvt. Ltd., 2015 (111) ALR 689**
57. **Rameshwar and another v. State of U.P. and others 2015 (112) ALR 100**
58. **Ravindra Nath Yadav v. State of U.P. and another, 2015 (111) ALR 550**
59. **Rehanul Haq @Kallu v. Imranul Haq, 2015 (3) ARC 176**
60. **Satya Veer And another v. State of U.P. and others, 2015 (4) AWC 3557**
61. **Saudagar Singh and others v. D.D.C., Ghazipur and others, 2015 (128) RD 801**
62. **Shiv Narayan Goswami v. Jagdish Prasad Gupta (Died) & Others, 2015 (3) ARC 171**
63. **Shriram General Insurance Co. Ltd., Jaipur v. Smt. Alka and others 2015(111) ALR 713**
64. **Smt. Damanjeet Kaur v. State of U.P. and another 2015 (33) LCD 2208**
65. **Smt. Jai Kumari Devi and others v. Smt. Pushpa Gupta and another 2015 (111) ALR 434**
66. **Smt. Munni and others v. State of U.P. and others, 2015 (9) ACC 528**
67. **Smt. Prabha Devi and Others v. Ram Asrey, 2015 (33) LCD 1835**
68. **Smt. Pushpa Sarin v. State of U.P. 2015 (111) ALR 264**
69. **Smt. Saira and others v. Additional District Judge and others, 2015 (112) ALR 116**
70. **Smt. Shashi Agrawal and others v. Additional Collector (F&R) D.D.C. and others 2015 (111) ALR 295**
71. **Smt. Somwati v. State of U.P. and others 2015 (33) LCD 2077**
72. **Smt. Striti Sharma v. Director of Consolidation, Jhansi and other 2015 (128) RD 359**
73. **Smt. Suman Devi v. State of U.P. and another 2015 (90) ACC 839**
74. **Smt. Umman Bibi v. Board of Revenue, U.P. Lucknow and others, 2015 (128) RD 654**
75. **State of U.P. and others v. Raj Surya Pratap Singh Chauhan, 2015 (4) AWC 3000**
76. **State of U.P. v. Daiya Charitable Society, 2015 (112) ALR 138**
77. **State of U.P. v. M/s. Harnam Singh AIR 2015 All. 133**
78. **State of U.P. v. Smt. Satyavati Devi and others 2015 (4) ALJ 465**
79. **Sudhakar and others v. Dy. Director of Consolidation, Mau and others, 2015 (128) RD 650**

80. **Sudhir Bansal and another v. Girish Bansal 2015 (111) ALR 403**
81. **Suraj Singh And Another v. Rakesh and Another 2015 (2) ARC 845**
82. **Suresh Chandra Mishra v. State of U.P. and others, 2015 (33) LCD 2251**
83. **Swapnil Verma & another v. Principal Judge, Family Court, Lucknow AIR 2015 All 153**
84. **The C/M, Jawwad Ali Shah Imambara Girls P.G. College and Another v. State of U.P. and others, 2015 (33) LCD 2155**
85. **The Oriental Insurance Co. Ltd. v. Dharmendra and another, 2015 (4) ALJ 701**
86. **Transport Corporation of India, Varanasi through its Regional Manager v. Vijayanand Singh @ Vijaymal Singh and another 2015 (112) ALR 57**
87. **Umang Gyanchandani v. Debts Recovery Tribunal, Lucknow, 2015 (33) LCD 1986**
88. **Umesh Kumar Singh v. State of U.P. Through its Chief Secretary, Ministry of Finance, Govt. of U.P., 2015 (112) ALR 176**
89. **Vinod Kumar Agarwal and others v. C.B.I., 2015 (9) ACC 360**

****

PART – 1 (SUPREME COURT)

Administrative Law

The doctrine of promissory estoppels is an equitable doctrine that yields when equity so requires. The same had been evolved to avoid injustice where it is demonstrated that a party acting on the words or conduct of another, amounting to clear and unequivocal promise and intended to create legal relations or effect legal relationships to arise in the future had altered his position, then the promise would be binding on the promisor and he would not be permitted to renege therefrom unless it would be inequitable to compel him to do so. While extending this doctrine to the Government as well, if it can be shown that having regard to the facts as had subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise the equity in favour of the promise and enforce the promise against the Government. The doctrine of the promissory estoppels would be displaced in such as case, because on the facts, equity would not require that the Government should be held bound by the promise made by it. That aside in a case of overriding public interest against enforcement of the doctrine qua the Government, it would be still competent for it to depart from the promise on giving reasonable notice which need not be a formal one, affording the promisee a reasonable opportunity of resuming his position, was underlined.

Furthermore, it is a fundamental legal diktat that delay has to be explained by cogent, convincing and persuasive explanation to justify condonation thereof. However, in the facts of the present case, the respondents herein in view of their deliberate laches, negligence and inaction have disentitled themselves to the benefit of the adjudication in the earlier lis given to the co-applicants. In the accompanying facts and circumstances of the present case, it would be iniquitous and repugnant as well to the public exchequer to entertain the belated claim of the respondents on the basis of the doctrine of promissory estoppels which is even otherwise inapplicable to the case in hand. [**Union of India and others vs. Shri Hanuman Industries, (2015) 6 SCC 600]**

Constructive Notice

The party must have either actual or constructive communication of the order which is an essential requirement of fair play and natural justice. Constructive notice means a man ought to have known a fact. A person is said to have notice of a fact when he actually knows a fact but for wilful abstension

from inquiry or search which he ought to have made, or gross negligence he would have known it. Constructive notice is a notice inferred by law, as distinguished from actual or formal notice; that which is held by law to amount to notice.

In the instant case, the House Society was aware of the land acquisition process and determination of compensation and had filed objections which stood rejected on 4-9-1982. The society had also actively participated in the other pending cases with respect to determination of compensation in which award had been passed on 2-1-1989. Thus the constructive knowledge of the award is fairly attributable to it when it was so passed. The reference sought on the strength of the notice under Section 12(2) issued and received on 31-12-1988 would not provide limitation to the society reference with respect to the cases in which the award was passed on 31-11-1982 as notice to it was wholly unnecessary in view of rejection of its objection on the ground that it was not having right little or interest in the land. Thus it could not be said to be "person interested" in view of the order dated 4-9-1982. The notice was issued for reasons best known to the Special officer. It is surprising how and for what reasons notice was issued after six years. However, in the facts and circumstances, the Society, had a constructive notice of the award dated 30-11-1982. Thus in view of the conjoint reading of Sections 12(2) and 18(2) of the Rajasthan Land Acquisition Act, it was not open to LAO to refer the acse to the civil court on the basis of the time-barred application. [**Rajasthan Housing Board vs. New Pink Civy Nirman Sahkari Samiti Ltd., (2015) 7 SCC 601]**

Void Transaction

The original khatedars are "Bairwa" by caste which is a Scheduled Caste and they are entitled to the protection of Section 42 of the Rajasthan Tenancy Act which declares the transaction entered into by a Scheduled Caste with any person other than a person of a Scheduled Caste or by a Scheduled Tribe with any other tribe to be void. The so-called agreements of 1974 and 1976 which were purportedly entered into by the Society with the khatedars were thus clearly void as per the mandate of Section 42 of the Rajasthan Tenancy Act. The Notification in the instant case under Section 4 was issued on 12-1-1982. The plea of part-performance under Section 53-A of the Transfer of Property Act was also not available to the Society as transaction is void. (Paras 19 to 21) Equally futile is the submission that since the Society is a juristic person, sale cannot be said to be in contravention of Section 42 as the expression "person" in Section 42(b) refers to a natural person and the Society cannot be a person of Scheduled Caste. In view of the dictum in Aanjaney Organic Herbal (P) Ltd.,

(2012) 10 SCC 283, it is clear that the sale of land by Scheduled Caste/Tribe person to the Society which is a juristic person is ab initio void and not recognisable in the eye of the law. Thus in the instant case, the transaction is ab initio void, that is, right from its inception and is not voidable at volition by virtue of the specific language used in Section 42. There is a declaration that such transaction of sale of holding "shall be void". As the provision is declaratory, no further declaration is required to declare prohibited transaction a nullity. No right accrues to a person on the basis of such a transaction. The person who enters into an agreement to purchase the same, is aware of the consequences of the provision carved out in order to protect weaker sections of the Scheduled Castes and Scheduled Tribes. The right to claim compensation accrues from right, title or interest in the land. When such right, title or interest in land is inalienable to non-SC/ST, obviously the agreements entered into by the Society with the khatedars are clearly void and decrees obtained on the basis of the agreement are violative of the mandate of Section 42 of the Rajasthan Tenancy Act and are a nullity. Such a prohibited transaction opposed to public policy, cannot be enforced. Any other interpretation would be defeasive of the very intent and protection carved out under Section 42 as per the mandate of Article 46 of the Constitution, in favour of the poor castes and downtrodden persons, included in the Schedules to Articles 341 and 342 of the Constitution of India.[**Rajasthan Housing Board vs. New Pink Civy Nirman Sahkari Samiti Ltd., (2015) 7 SCC 601]**

Advocates Act

Sections 35 and 49 – Bar Council of India Rules.

If an advocate first appears for a party in a suit for appointment of his client as legal guardian of a minor's property and thereafter he appears in the subsequent suit instituted for specific performance against his client in the first case and the property involved in both the suits is same then it amounts to a conflict of interest giving rise to professional misconduct. [**Chandra Prakash Tyagi v. Banarsi Das, AIR 2015 SC 2297]**

Advocates- Bar Council of India Rules, 1975- Pt. VI Ch. II- Preamble and Session II (Rr. 15 to 19) thereof- Duties and ethical standards under- Irrelevance of specific legal stream of practice, seniority at the Bar or designation of an advocate as a Senior Advocate- Duty of every lawyer to obtain necessary instructions from the clients or the authorized agent

before making any concession/statement/admission/compromise/settlement before the court for and on behalf of the client- Advocates Act, 1961, Ss. 29, 30, 33 and 35.

The appellant Cooperative Housing Society had 150 members, including the respondents, who had enrolled themselves with the Society for allotment of residential quarters/apartments. The Society raised a demand for payment towards the said allotment. In view of the default in payment of initial deposit amount, the Society after following the due procedure passed a resolution expelling the respondents from its membership. The said resolution was confirmed by the Registrar of Cooperative Societies under Rule 36 of the Delhi Cooperative Societies Rules, 1973. The order passed by the Registrar was assailed in a revision petition filed under Section 80 of the Delhi Cooperative Societies Act, 1972. The Revisional Authority affirmed the order passed by the Registrar. Aggrieved thereby, the respondents approached the High Court under Articles 226 and 227 of the Constitution of India. The High Court affirmed the orders passed by the said authorities. However, on a request made by the respondents seeking issuance of direction to the Society for consideration of their request to construct and allot the additional quarters/apartments to them, considering that the said request was agreed to by the counsel appearing for the Society, the High Court directed the Society to construct additional quarters/ apartments and allot them to the respondents. The Society sought a review of that order on the ground that it had not authorized the counsel appearing on its behalf to make any concession. The said review petition was dismissed. Hence, the present appeals. Allowing the appeals, the Supreme Court.

Lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically

authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. [**Himalaya Coop. Group Housing Society vs. Balwan Singh, (2015) 7 SCC 373]**

Air Act

Section 43 of the Air Act - cognizance of complaints filed by the Board or any officer authorised by the Board - Board could delegate the above power to the Chairman of the Board – he could not have further delegated the authority vested in him - cognizance of offences under the Air Act - on the complainat by the person authorised by the Chairman of the Board - not in consonance with law

It is apparent from Section 43 of the Air Act, that Courts would take cognizance of complaints filed by the Board, or any officer authorised by the Board, in that behalf. The notification/resolution dated 29.3.1989 indicates that the officer authorised was the Chairman of the Board. The Board could delegate the above power to the Chairman of the Board, because Section 43(1) of the Air Act, authorised the Board to do so. In that view of the matter, either the Board or the Chairman of the Board could have filed the complaints in terms of the mandate contained in Section 43(1) of the Air Act. The power to file the complaint could not be exercised by any other authority/officer. Under the principle of 'delegatus not potest delegare', the delegatee (the Chairman of the Board) could not have further delegated the authority vested in him, except by a clear mandate of law. Section 43 of the Air Act vested the authority, to file complaints with the Board. Section 43 afore-mentioned, also authorised the Board to delegate the above authority to any "officer authorised in this behalf by it". The "officer authorised in this behalf" was not authorised by the provisions of Section 43 of the Air Act, or by any other provision thereof, to further delegate, the authority to file complaints. The Chairman of the Board, therefore, had no authority to delegate the power to file complaints, to any other authority, for taking cognizance of offences under the Air Act. It is apparent, that the determination to initiate action against the appellants, and other similarly placed persons, against whom action was proposed to be taken, by the Chairman of the Board, vide his order dated 4.4.2006, was not in consonance with law. [P. Pramila and others versus State of Karnataka and another, AIR 2015 SC 2495]

Armed Forces Tribunal Act

Ss. 14, 15, 30, 31 and 33 r/w Arts 136 (2), 226 and 227 (4) of the Constitution- Jurisdiction of Armed Forces Tribunal- Nature and Scope- The Scheme of the Act makes it clear that jurisdiction of the Trinunal constituted under the

Armed Forces Tribunal Act is in substitution of the jurisdiction of the Civil Court and the High Court so far as it related to suit pertaining to conditions of service of the persons subject to the Army Act, 1950.

The respondent Army personnel approached the Tribunal for adjudication or trial of disputes and complaints with respect to service conditions. Having denied relief, they assailed the order passed by the Tribunal before the respective High Courts under Article 226 of the Constitution.

The issues raised in the instant batch of appeals is whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Armed Forces Tribunal with the leave of the Tribunal under Section 31 of the Act or leave granted by the Supreme Court, or bar of leave to appeal before the Supreme Court under Article 136(2) of the Constitution, bars jurisdiction of the High Court under Article 226 regarding matters related to the Armed Forces.

At the outset, in all the writ petitions a preliminary objection was raised on behalf of the Union of India as to the maintainability of the writ petition on the ground that against the impugned orders a remedy of appeal to the Supreme Court is provided under Section 30 of the 2007 Act.

Setting aside the impugned judgments passed by the Delhi High Court and upholding the judgments and orders passed by the Andhra Pradesh High Court and the Allahabad High Court, the Supreme Court.

Held:

The Armed Forces Tribunal Act, 2007 has been enacted to provide for adjudication or trial by the Armed Forces Tribunal of disputes and complaints with respect to commission, appointments, enrolment and conditions of service in respect of persons subject to the Army Act, 1950; the Navy Act, 1957; and the Air Force Act, 1950, and also to provide for appeals arising out of orders, findings or sentences of court martial and for matters connected therewith or incidental thereto.

As per Section 14 of the Armed Forces Tribunal Act, in relation to service matters, the Tribunal is empowered to exercise the jurisdiction, powers and authority, exercisable by all courts except the power of the Supreme Court or a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution.

A remedy of appeal to the Supreme Court against any final order passed by the Tribunal under Section 30 with the leave of the Tribunal is

provided under Section 31 of the Act. In case leave is refused by the Tribunal, an application to the Supreme Court for leave can be made under Section 31(2). Against any order or decision of the Tribunal made under Section 19 in exercise of its jurisdiction to punish for contempt, an appeal under Section 30(2) lies to the Supreme Court as of right. Section 33 excludes the jurisdiction of the civil courts and not the High Court under Articles 226 and 227 of the Constitution. Section 34 relates to transfer of pending cases, suits and cases pending in other courts including the High Court. The suit pending before any court or the High Court may stand transferred if the cause of action comes under the jurisdiction of the Armed Forces Tribunal but it does not affect the power of the High Court under Articles 226 and 227.)

Article 226 empowers High Courts to issue prerogative writs while Article 227 relates to power of superintendence of High Courts over all courts and tribunals. Article 136 provides special leave to appeal to the Supreme Court. However clause (2) of Article 136 expressly excludes the judgments or orders passed by any court or tribunal constituted by or under any law relating to the Armed Forces. The aggrieved person cannot seek leave under Article 136 to appeal, but right of appeal is available under Section 30 with leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007. There is a constitutional bar also under Article 227(4) with regard to entertaining any determination or order passed by any court or tribunal under law relating to the Forces.

Judicial review under Articles 32 and 226 of the Constitution is a basic feature of the Constitution beyond the plea of amendability. While under Article 32 of the Constitution a person has a right to move before the Supreme Court by appropriate proceedings for enforcement of fundamental rights, no fundamental right need to be claimed to move the High Court by appropriate proceedings under Article 226. Moreover, the power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226. Though the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 32 cannot be circumscribed by the provisions any enactment, but they certainly have due regard to the legislative in it evidenced by the Acts and exercise their jurisdiction consistent with the A Furthermore, when statutory forum is created by law for redressal of grievance a writ petition should not be entertained ignoring the statutory dispensation. Thus, the High Court should not entertain petition under Article

226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of itself contains a mechanism for redressal of grievance.

In view of Article 141 of the Constitution the law laid down by the Supreme Court is binding on all courts in India including the High Courts.

If the High Court entertains a petition under Article 226 of the Constitution of India against an order passed by the Armed Force Tribunal under Section 14 of Section 15 of the Act bypassing the machinery of statute i.e. Section 30 and 31 of the Act, there is likelihood of anomalous situation of the aggrieved person in praying for relief from the Supreme Court. [**Union of India vs. Shri Kant Sharma, (2015) 6 SCC 773]**

Civil Procedure Code

Order 9, Rule 13 – condition of entire decreetal amount for allowing registration application and application for condonation of delay in filing registration application is unreasonable. The Supreme Court directed to deposit 1/3rd of the decreetal amount. [**M/s G.M.G. Engineering Industries v. M/s I.S.S.A. Grand Power Solution, AIR 2015 SC 2675*]***

Order 12 Rule 6 – Transfer of Property Act – Judgment on Admission – Depends upon the discretion of the Court-

When the defendant has raised some objections which go to the root of the case, it would not be appropriate to exercise the direction under Order XII Rule 6 C.P.C., but in that even the court should provide an opportunity to put forth his defence and contest the suit.

In this case respondent/Landlord filed a suit for eviction. The appellant-tenant admitted relationship of tenancy and the period of lease agreement, but resisted the suit, by setting up a defence plea of agreement to sale. According to appellant/tenant he paid an advance of Rs.82.50 lakhs, which was denied by the respondent-landlord. Appellant/tenant had also filed the Suit for Specific Performance,

During the pendency of the suit for eviction an application under Order 12 Rule 6 CPC read with Section 151 CPC was filed by the landlord/respondent. The Trial Court had allowed the application and directed the tenant/respondent to vacate the premises and handover possession of the

suit premises to the landlord/respondent. High Court dismissed the appeal.

Apex Court held that the Court is not bound to decree the suit on the basis of admission. It depends upon the discretion of the Court. When the defendant in addition to some admission has also raised some objections which go to the root of the case, it would not be proper to exercise the discretion under Order XII Rule 6. So, the appeal was allowed. The matter was remitted back to the Trial Court. [**S.M. Asif v. Virendra Kumar Bajaj, 2015(9) SCALE 729]**

Or. 14 R. 2. (a) Scheme of Or. 14 R.2 and effect of CPC (amendment Act), 1976, (b) Earlier and amended provisions, compared and explained in detail.

Order 14 Rule 2 CPC confers power upon the court to pronounce judgment on all the issues. But there is an exception to that general rule i.e. where issues both of law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on the issue of law, it may try that issue first if that issue relates to the jurisdiction of the court or a bar to the suit created by any law. A comparative reading of Order 14 Rule 2 CPC as it existed prior to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as a preliminary issue has now been made permissible only in limited cases. In the unamended CPC, the Categorization in Order 14 Rule 2 CPC was only between issues of law and of fact and it was mandatory for the court to try the issues of law in the first instance and to postpone the settlement of issues of fact until after the issues of law had been determined. On the other hand, in the amended Order 14 Rule 2 C.P.C. there is a mandate to the Court the notwithstanding that a case may be disposed of on a preliminary issue, the court has to pronounce judgment on all the issues. The only exception to this is contained in Order 14 Rule 2(2) CPC. Order 14 Rule 2(2) CPC relaxes the mandate to a limited extent by conferring discretion upon the court that if the court is of opinion that the case or any part thereof may be disposed of "on an issue of law only", it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the court or a bar to the suit created by a law in force.

It is well settled that essentially jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has reised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the court has no jurisdiction it cannot confer upon it by consent or waiver of the parties.

Section 3 of the Limitation Act, 1963 clearly provides that every suit instituted, appeal preferred and application made after the prescribed period of

limitation, subject to the provisions contained in Sections 4 to 2, shall be dismissed although the limitation has not been set up as a defence.

The aforesaid observations were made by Apex Court while dealing with provisions of Or. 14 R. 2 CPC and Section 9A- as amended by CPC Maharashtra Amendment Act, 1977. There is an express mandate u/s 9A to decide preliminary issue of jurisdiction prior to proceeding with suit or passing any interim order.

Section-9A (as inserted by CPC Maharashtra Amendment Act, 1977) Whereby an application for interim relief is sought or is sought to be set aside in any suit and objection to jurisdiction is taken, such issue to be decided by the court as preliminary issue at hearing of the application.

> (1) If, at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of injunction, appointment of a receiver or otherwise, made in any suit, an objection for the jurisdiction of the Court to entertain such suit is taken by any of the parties to the suit, the Court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.
>
> (2) Notwithstanding anything contained in sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction.

After given anxious consideration to the provisions of the Code of Civil Procedure together with the amendments introduced by the State Legislature, Hon'ble Supreme Court held that the provision of Section 9-A as introduced by the Maharashtra Amendment Act is mandatory in nature. It is a complete departure from the provisions of Order 14 Rule 2 CPC. Hence, the reasons given by the High Court in the impugned order are fully justified. We affirm the impugned orders passed by the High Court. [**Foreshore Coop. Housing Society Ltd. vs. Praveen D. Deasi, (2015)6 SCC 412]**

Order 22 Rule 3 – Limitation Act – Article 120 of Schedule – Substitution application – Original plaintiff died on 14-12-1994 during the pendency of appeal. No substitution application was moved by the heirs of the deceased plaintiff, appeal stood abated on expiry of 90 days of death of plaintiff-appellant. Appeal was dismissed in default on 21-03-1997. After a period of 11 years on 13-04-2006, substitution application was moved on behalf of the

daughter of the deceased along with the application for condonation of delay, which were allowed by the Courts below.

In her application for condonation of delay the daughter of the deceased took the following grounds-

(1) That she was living away from his father.
(2) That after the death of their father, she had requested her uncle's daughter Smt. Archna and her husband to move application for bringing on record the L.Rs. of the deceased. Application moved by Smt Archna Gupta was dismissed on 09-01-2004.
(3) That the brother of the applicant was missing.

But it was found that the brother of the respondent was not missing he was living in Aliganj, Lucknow. The respondent was aware of the litigation since very beginning. The counsel of the respondent and Archna Gupta was same. So in these circumstances it was held that reasons as mentioned in the application for condonation of delay were not sufficient and reasonable. Therefore order allowing the substitution application was set aside. [**Shanti Devi v. Kaushalya Devi, 2015(9) SCALE 829]**

Order 39 Rule 1 & 2, & Contempt of Court Act 1971 – Section 12 & 19 – Exparte ad-interim Relief – An exparte interim relief is granted which is violated later on. Contempt proceedings alleging violation of exparte interim order filed. There is no justification on the part of parties to the lis to keep main notice of motion pending and prosecute its off-shoot proceedings in preference to the main case. It is always in the larger interest of the parties to the Lis to get the main case decided first on its merits as far as possible rather than to pursue their off-shoot proceedings on merits by keeping the main case undecided. **[Quantum Securities Pvt. Ltd. & others v. New Delhi Television Ltd., 2015(7) SCALE 329]**

Constitution of India

Article 19(6)- Wooden shop / Kiosk had rightly been shifted from the vicinity of the Supreme Court. The decision has been taken in view of series issue of safety and security of the court. It is reasonable restriction of right to trade. It cannot be said that such a shifting / relocation cannot be done unless during recent past some serious incident like bomb blast takes place. [**Dharam Chandra v. Chairman, New Delhi, Municipal Council, AIR 2015 SC 2819]**

Arts. 226, 32, 14, 19, 21, 48-A and 51-A(g). PIL on ground of public health, safety and peace of local residents and safety of building, due to running of pathological lab in residential building.

The appellant was residing on the second floor of building concerned, Respondents 6 and 7 (the respondent owners), initially started a pathological lab in the name of "Dr. Dang's Diagnostic Centre" in the year 1995 on the basement and ground floor of the concerned building and later on, in the year 2005-2006 the first floor of the premises was also purchased by them from its owner, whereby they expanded the activities of the pathological lab even to the mezzanine floor and first floor by installing heavy medical equipments to make it fully equipped with the latest technology. There was a major parking problem in and around the vicinity of the Diagnostic center since a large number of patients visited the Centre every day.

The appellant made various complaints pertaining to the violation of the Master Plan to the concerned. But no heed was given to the same. The High Court by the impugned orders of the Single Judge as affirmed by the Division Bench, rejected the challenge to the regularization certificate issued on 11.7.2006 to the Diagnostic Centre as the same was issued by MCD under clause 15.7.1 of the MPD 20121 approved by the Ministry of Urban Development, Government of India. Clause 15.7.1 (b)(i) permitted nursing homes and Clause 15.7.1 (b) (ii) permitted clinic, Dispensary, pathology lab and diagnostic centre. The High Court further refused to decide the violation under Clause 7 of the regularization certificate on the ground that the petition was motivated by a private dispute rather than owing to any nuisance and hardship to any local resident as none of the other local residents had approached the Court with any complaint pertaining to nuisance. The appellant was before the Supreme Court there against.

Allowing the appeal and directing closure/sealing of the lab, the Supreme Court held-

> "The running of the pathological lab by the respondent owners creates air and sound pollution rampantly on account of which the public residents' health and peace is adversely affected. Therefore, public interest is affected and there is violation of rule of law. Hence, we have examined this appeal on all aspects of the matter and on merits. This position of law is well settled in a catena of decisions of this Court."

Citing Noise Pollution (5), In re **(2005) 5 SCC 733** the Apex Court placed reliance on following observations of the case in which it was held that noise was included in the definition of "air pollutant" in the Air (Prevention and Control of Pollution) Act, 1981 and therefore, the provisions of the said Act

became applicable in respect of the noise pollution also. It was also held that although there is no specific provision to deal with noise pollution, the Environment (Protection) Act, 1986 confers powers on the Government of India to take measures to deal with various types of pollution including noise pollution. [**Anirudh Kumar vs. Municipal Corporation of Delhi, (2015) 7 SCC 779]**

Contract Act

Section 128

If under the guarantee clause guarantor agrees to be bound by any judgment or award obtained by lender bank against the principal debtor and thereafter in the proceedings a settlement takes place between the lender bank and the barrower for payment of dues through sale of the property of guarantor then the said settlement / compromise and the decision on the basis thereof is binding upon the guarantor. Accordingly if guarantor's property was auctioned under the compromise order, it cannot be set aside particularly after 8 years.

Auction purchaser alleged that he was paying about Rs. 5 lacs interest per month on the amount which he had barrowed for purchasing the property. Accordingly on the principle of equity and good conscience sale cannot be set aside. [**Central Bank of India v. C.L. Vimal, AIR 2015 SC 2280]**

Copyright Act

Section 62, Trade Marks Act 1999 – Section 134(2), Civil Procedure Code –Section 20-

Territorial Jurisdiction – Plaintiff/appellants Head office was situated at Mumbai. While his Branch office was situated at Delhi. The plaintiff/appellant had filed a suit at Delhi praying that defendant No.1 be sustained from infringing the right of plaintiff without obtaining the license. The defendant owns cinema halls in Maharashtra and Mumbai when infringement is alleged and entire cause of action as alleged with plaint had also arisen.

Section 20 of the Civil Procedure Code enables a plaintiff to file a suit where the defendant resides or where cause of action arose. By Section 62 of the Copyright Act and Section 134 of the Trade Marks Act an additional forum has been provided by including a District Court within whose limits the plaintiff actually and voluntarily resides or carries on business or personally works for gain.

Hon'ble the Apex Court held that, the provision of Section 62 of Copyright Act and Section 134 of the Trade Marks Act have to be interpreted in the purposive manner. No doubt about it, that a suit can be filed by the plaintiff at a place where he is residing or carrying on business or personally works for gain. However if the plaintiff is residing or carrying on business etc. at the place, where cause of action wholly or part has also arisen, he has to file a suit at that place. Therefore the suit should have been filed at Bombay, where the plaintiff had his principal office and the cause of action had also arisen therein. [**Indian Performing Rights Society Ltd. v. Sanjay Dalia & others, (2015)7 SCALE 574]**

Criminal Procedure Code

Under section 2(d) of the Cr.P.C. Act- Suo-moto - Take cognizance of the offence/offences - On the basis of the reports published.

The reports published in the Newspapers were taken into consideration suo-moto by complainant, wherein he has registered the FIR after being satisfied with the material facts published in the Newspapers that there is a cognisable offence to be investigated by the police against the appellant. The same cannot be found fault for the reason that the complainant, who is on deputation to the Lokayukta, is an Inspector of Police attached to the State of Karnataka. Therefore, he has got every power under Section 2(d) of the CrPC, to act suo-moto and take cognisance of the offence/offences alleged to have been committed by the accuse on the basis of the reports published against him, which according to him warranted registration of an FIR and investigate the matter against him in accordance with law. There is no need for the registration of the FIR under Section 9 of the Lokayukta Act, in relation to the matters to be investigated under Section 8 of the Lokayukta Act. [Yunus Zia Vs. State Of Karnataka & Anr. AIR 2015 SC 2376]

Section 99 -Capacity of official discharge - be determined by regular trial after examining the facts, circumstances and evidence on record.

A news item on various dates in the year 2007, allegedly making false implication against Rajiv Trivedi, Additional Commissioner of Police (Crimes and SIT), Hyderabad, Andhra Pradesh, with regard to the Sohrabuddin encounter case was published by the appellants in the respective publications and was telecast on CNN-IBN. A representation was given by

the him to the Andhra Pradesh State Government seeking previous sanction under Section 199(4)(b) of the Code of Criminal Procedure (in short 'Cr.P.C.') for prosecution of the appellants for offences punishable under the provisions referred to supra. Accordingly, the previous sanction was accorded by the State Government in favour of the second respondent permitting him to file complaints against the appellants through the State Public Prosecutor before the appropriate court of law against the individuals connected with electronic and print media.

The determining the question on whether or not the accused while committing the alleged act at the point of time was in the capacity of his official discharge of his public functions or otherwise, is to be determined by regular trial after examining the facts, circumstances and evidence on record. [Rajdeep Sardesai Vs. State Of Andhra Pradesh & Ors. AIR 2015 SC 2180]

Section 125

Whether Section 125 CrPC is applicable to a Muslim woman who has been divorced. In view of the law settled in Shamim Bano v. Asraf Khan (2014) 12 SCC 636 : AIR 2014 SC (Supp) 463 ; Union of India (2001) 7 SCC 740 : AIR 2001 SC 3958 and Khatoon Nisa v. State of U.P. (2014) 12 SCC 646, held YES.

It needs no special emphasis to state that when an application for grant of maintenance is filed by the wife the delay in disposal of the application, to say the least, is an unacceptable situation. It is, in fact, a distressing phenomenon. An application for grant of maintenance has to be disposed of at the earliest. The family courts, which have been established to deal with the matrimonial disputes, which include application under Section 125 CrPC, have become absolutely apathetic to the same. (para 12)

As regards the second facet, it is the duty of the Court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on for ever." (para 13)

Solely because the husband had retired, there was no justification to reduce the maintenance by 50%. It is not a huge fortune that was showered on the wife that it deserved reduction.(para 19). [Shamima Farooqui Versus Shahid Khan AIR 2015 SC 2025]

Section 154

Criminal complaints - in respect of property disputes of civil in nature - the prima facie case makes out - regarding collusion and the intention to cheat - from the very beginning - declining to interfere.

No doubt, where the criminal complaints are filed in respect of property disputes of civil in nature only to harass the accused, and to pressurize him in the civil litigation pending, and there is prima facie abuse of process of law. The accused fraudulently got executed the power of attorney, and one executor was minor (aged nine years) on the date when the deed was said to have been signed by him. It is also alleged that another person who executed the power of attorney, was away from India on the date of alleged execution of the Deed. Thus neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The prima facie case makes out against the accused persons regarding collusion and the intention to cheat from the very beginning to hand over a huge sum of money to them. Declining to interfere with the criminal proceedings initiated against the accused. [Ganga Dhar Kalita Versus The State of Assam and others AIR 2015 SC 2304]

Sections 161 and 162 of – Evidence Act, Section 145 – Statements to Police- Section 161 Cr.P.C. titled "Examination of witnesses by police" provides for oral examination of a person by any investigating officer when such person is supposed to be acquainted with the facts and circumstances of the case. The purpose for and the manner in which the police statement recorded under Section 161 Cr.P.C can be used at any trial are indicated in Section 162 Cr.P.C.

Section 162 Cr.P.C. bars use of statement of witnesses recorded by the police except for the limited purpose of contradiction of such witnesses as indicated there. The statement made by a witness before the police under Section 161(1) Cr.P.C. can be used only for the purpose of contradicting such witness on what he has stated at the trial as laid down in the proviso to Section 162 (1) Cr.P.C. The statements under Section 161 Cr.P.C. recorded during the investigation are not substantive pieces of evidence but can be used primarily for the limited purpose:- (i) of contradicting such witness by an accused under Section 145 of Evidence Act; (ii) the contradiction of such witness also by the prosecution but with the leave of the Court and (iii) the re-examination of the witness if necessary.

Court cannot suo moto make use of statements to police not proved

and ask question with reference to them which are inconsistent with the testimony of the witness in the court. The words in Section 162 Cr.P.C. "if duly proved" clearly show that the record of the statement of witnesses cannot be admitted in evidence straightway nor can be looked into but they must be duly proved for the purpose of contradiction by eliciting admission from the witness during cross-examination and also during the cross-examination of the investigating officer. Statement before the investigating officer can be used for contradiction but only after strict compliance with Section 145 of Evidence Act **that is by drawing attention to the parts intended for contradiction.**

Under Section 145 of the Evidence Act when it is **intended to contradict the witness by his previous statement reduced into writing,** the attention of such witness must be called to those parts of it which are to be used for the purpose of contradicting him, before the writing can be used. While recording the deposition of a witness, it becomes the duty of the trial court to ensure that the part of the police statement with which it is intended to contradict the witness is brought to the notice of the witness in his cross-examination. The attention of witness is drawn to that part and this must reflect in his cross-examination by reproducing it. If the witness admits the part intended to contradict him, it stands proved and there is no need to further proof of contradiction and it will be read while appreciating the evidence. If he denies having made that part of the statement, his attention must be drawn to that statement and must be mentioned in the deposition. By this process the contradiction is merely brought on record, but it is yet to be proved. Thereafter when investigating officer is examined in the court, his attention should be drawn to the passage marked for the purpose of contradiction, it will then be proved in the deposition of the investigating officer who again by referring to the police statement will depose about the witness having made that statement. The process again involves referring to the police statement and culling out that part with which the maker of the statement was intended to be contradicted. If the witness was not confronted with that part of the statement with which the defence wanted to contradict him, then the court cannot suo moto make use of statements to police not proved in compliance with Section 145 of Evidence Act that is, by drawing attention to the parts intended for contradiction. [**V.K. Mishra v. State of Uttarakhand, 2015(8) SCALE 270]**

Section 167(2) Proviso, 173(8) and 309(2)

In the incident 9 persons were killed and large numbers of villagers were injured. C.B.I. conducted the investigation and submitted charge sheet

against 21 accused, out of them some were arrested and remaining accused had absconded. It was mentioned in the charge sheet that further investigation of the case was kept open for purposes of collection of further evidence and arrest of absconded. It was also mentioned that further collected evidence during investigation, would be forwarded by filling supplementary charge sheet. Eight accused were declared proclaimed offenders, out of which 5 accused were arrested. Whereafter CBI sought their remand in police custody. The Magistrate rejected prayer of CBI. Revision was filed against the order of Magistrate.

High Court relying on Dinesh Dalmia v. CBI, (2007) 8 SCC 77 rejected the revision petition.

Hon'ble the Apex Court held that the High Court was not justified on the basis of Dinesh Dalmia's case in upholding refusal of remand in police custody by the Magistrate, on the ground that the accused stood in custody after his arrest under Section 309 Cr.P.C.

Three judge bench of the Apex Court in State v. Dawood Ibrahim Kaskar & others, (2000)10 SCC 438 has laid down that police remand can be sought under Section 167(2) Cr.P.C. in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. Supreme Court further clarified in Dawood's case that the expression 'accused if in custody' in Section 309(2) Cr.P.C. does not include the accused who is arrested on further investigation before supplementary charge sheet is filed.

So Hon'ble the Apex Court held that refusal of police remand in the present case is against the settled principle of law. The remand in police custody can be given to the investigation agency in respect of the absconding accused who is arrested only after filing of the charge sheet. [**CBI v. Rathin Dandapat and others, (2015)9 SCALE 120]**

Section 173(8) & 190 – Further Investigation or Re-Investigation by another agency.

In Uma Shankar Singh v. State of Bihar, (2012)9 SCC 460, Hon'ble the Apex Court, scanning the anatomy of Section 190(1)(b) of Cr.P.C. laid down that-

> "19. … even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b)

Cr.P.C."

In Dharam Pal Singh v. State of Haryana AIR 2013 SC 3018:(2014)3 SCC 306, the Constitution Bench, while accepting the view in Kishun Singh v. State of Bihar,(1993)2 SCC 16 has held that-

> "35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.
>
> 36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court."

Thus Magistrate can disagree with the police report and can take cognizance and issue process and summons to the accused. The Magistrate has the jurisdiction to ignore the opinion expressed by the investigation officer and independently apply his mind to the facts that have emerged from the investigation.

Relying upon the Law laid down by the Constitution Bench in Bhagwan Singh v. Commissioner of Police (1985) 2 SCC 537 and the Division Bench in Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762 the Apex Court held that –

(1) In exceptional circumstances, to achieve the ends of Justice the Magistrate can direct further investigation.

(2) While exercising the power under Section 173(8) the Magistrate cannot direct any other agency to conduct further investigation.

(3) The Magistrate does not have any Jurisdiction to direct reinvestigation. Only Courts of higher jurisdiction depending upon the facts and circumstances can direct reinvestigation or investigation-de-novo.

(4) Further investigations conducted under the orders of the Court, including

that of the Magistrate or by police of its own accord and for valid reasons would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Section 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code. [**Chandra Babu @Moses v. State through Inspector of Police, 2015(7) SCALE 529]**

Section 190 Cr.P.C.

In brief, it was alleged that the accused entered into a criminal conspiracy to cheat the complainant and the Company. Further, accused A1 to A3 made false declaration in regard to record maintained under the provisions of the Companies Act, and filed a false declaration purporting to be an extract of Board Resolution of the Company before Andhra Bank, Sowcarpet Branch, Chennai in order to open a bank account. According to the complainant the signatory to the Board Resolution was not even a Director in the Company on the date the bank account was opened. A series of events alleged in the complaint show how the complainant was induced to invest in the Company by acquiring land for the Company at a cost of Rs. 20 lakhs and make payment for the front end fee to IREDA which had in collusion with the other accused sanctioned the financial assistance to the Company to the extent of Rs. 11.50 crores subject to the condition that the promoters should invest Rs. 4.98 crores as their contribution towards the total project cost of Rs. 16.48 crores.

As can be seen from the complaint the allegations are that the accused conspired with each other to cheat the complainant and a series of transactions gave rise to offence under Section 120B read with Section 420 of the Indian Penal Code as also Section 628 of the Companies Act. It is, therefore, clear that if the Special Court has jurisdiction to try offences under both the aforesaid Acts then the trial can certainly continue in respect of the offences which do not require the complainant to belong to the categories specified under Section 621 of the Companies Act. Thus the trial could certainly continue against those accused under the IPC. The Special Court is empowered to try the offences under the Companies Act alongwith other Acts by virtue of a notification issued by the erstwhile Government of Andhra Pradesh dated 13.3.1981 which empowers such special Courts to try offences under specified enactments such as The Companies Act, 1956, The Income-tax Act, 1961, The Wealth-tax Act, 1957 etc.

Even if a number of persons are accused of offences under a special enactment such as 'the Companies Act and as also the IPC' in respect of

the same transaction or facts and even if some could not be tried under the special enactment, it is the special court alone which would have jurisdiction to try all the offences based on the same transaction to avoid multiplicity of proceedings. **[S. Satyanarayana Versus Energo Masch Power Engineering & Consulting Pvt. Ltd. & Ors. AIR 2015 SC 2066]**

Section 197– Indian Penal Code, Section 304A – Medical Negligence – Criminal Prosecution of Medical Officers of the Government Hospital is not maintainable without obtaining the sanction from the State Government. Even complaint is also not maintainable in the absence of sanction. [**Dr. Smt. Manorama Tiwari v. Surendra Nath Rai, 2015(9) SCALE 747]**

Section 197- The police officer exercising his power during investigation of a criminal case and assaulted in order to extract some information with regard to the , and in that connection, one person was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his official duty, the previous sanction is necessary. [D. T. Virupakshappa Versus C. Subash AIR 2015 SC 2022]

Section 197 - Protection from harassment - in public interest - not as shield to protect corrupt officials - cheating, fabrication of records or misappropriation - not discharge of official duty

Public servants have, in fact, been treated as special category under Section 197 CrPC, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; the same cannot be treated as shield to protect corrupt officials. The indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. In such circumstances the view that if at all the view of sanction is to be considered, it could be done at the stage of trial only. [Inspector of Police and another Versus Battenapatla Venkata Ratnam and another AIR 2015 SC 2403]

Section 200 Cr.P.C. contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to

the accused or order an inquiry under Section 202 Cr.P.C. or dismiss the complaint under Section 203 Cr.P.C. Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.P.C. Section 202 Cr.P.C. contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence.

"Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case. [**S.R. Sukumar Versus S. Sunaad Raghuram AIR 2015 SC 2757]**

Section 204 CrPC

Powers to summon – if the charge sheet and the documents/material placed along with the charge-sheet disclose sufficient prima facie material

to proceed against such a person – order must mention about any incriminating material against them - Criminal liability of a corporation - arise when an offence is committed - in relation to the business of the corporation - by a person or body of persons in control of its affairs

In the first instance, we make it clear that there is no denying the legal position that even when a person is not named in the charge sheet as an accused person, the trial court has adequate powers to summon such a non-named person as well, if the trial court finds that the charge sheet and the documents/material placed along with the charge-sheet disclose sufficient prima facie material to proceed against such a person as well. **Kishun Singh v. State of Bihar (1993) 2 SCC 16 and Dharam Pal v. State of Haryana (2014) 3 SCC 306** are the direct decisions on this aspect. However, in the present case, the learned Special Judge has not stated in the order that after examining the relevant documents, including statement of witnesses, he is satisfied that there is sufficient incriminating material on record to proceed against the appellants as well. The learned Special Judge does not mention about any incriminating material against them in the statement of witnesses or documents etc. On the other hand, the reason for summoning these persons and proceeding against them are specifically ascribed in this para which, prima facie, are: i) These persons were/are in the control of affairs of the respective companies. ii) Because of their controlling position, they represent the directing mind and will of each company. iii) State of mind of these persons is the state of mind of the companies. Thus, they are described as "alter ego" of their respective companies. It is on this basis alone that the Special Judge records that "in this fact situation, the acts of companies are to be attributed and imputed to them"

The moot question is whether the aforesaid proposition, to proceed against the appellants is backed by law? In order to find the answer, let us scan through the case law that was cited during the arguments.

A corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on

the principle of "alter ego" of the company.

It is abundantly clear that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company. [**Sunil Bharti Mittal Versus Central Bureau Of Investigation (2015) 2 SCC (Cri) 678 ; (2015) 4 SCC 609 (Criminal Appeal No. 34 Of 2015)]**

Section 232 & 401 – Indian Penal Code, Section 147, 148 149, 341, 342 & 302 –

Accused person were facing trial under Section 147, 148 149, 341, 342 & 302 IPC. The High Court by order dated 10-07-2007 while declining to admit the accused persons to bail, directed that the trial should be concluded as early as possible and in any case within 9 months from date of receipt/production of copy of order. Charges were framed on 10-08-2007. The process against the witnesses were issued on 17-08-2007. Thereafter the Learned Trial Judge issued bailable as well as non-bailable warrants against the informant. The Learned Trial Judge on several occasions recorded that the witnesses were not present and ultimately on 17-05-2008 directed the matter to be posted on 23-05-2008 for order under section 232 CPC on finally as that recorded the judgment of acquittal.

This judgment was challenged in revision before High Court which allowed the revision and the judgment of acquittal was set-aside. The appellant preferred the criminal appeal before the Apex Court.

Hon'ble the Apex Court explaining the meaning of fair trial and corresponding duty of the courts observed in para 18 that-

> "Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a 'mock trial'. It is a serious concern of

the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control.

The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It 1 has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial."

So explaining the whole trial as nothing but comparable to an experimentations conducted by a child in a laboratory, observed that such type of trial is neither permissible nor allowable. So order of the High Court affirmed and the criminal appeal was dismissed. [**Bablu Kumar and others v. State of Bihar and others, 2015(8) SCALE 53]**

Section 300 - Discharged in the complaint - Second complaint would not be barred

The alleged accused had been discharged in furtherance of the complaint, without any trial having been conducted against him. Section 300 of the Criminal Procedure Code, will be an embargo to obstruct the right to file a second complaint, is not justified. Our above determination is based on the fact, that the alleged accused had not been tried, in furtherance of the previous complaint, under Section 376 of the Indian Penal Code. The explanation under Section 300 of the Criminal Procedure Code clearly mandates that the dismissal of a complaint, or the discharge of an accused, would not be construed as an acquittal, for the purposes of this Section. Thus the proceedings

in the second complaint would not be barred, because no trial had been conducted against the respondent, in furtherance of the first complaint. Having so concluded, it emerges that it is open, to press the accusations levelled, through second complaint. [Ravinder Kaur Versus Anil Kumar AIR 2015 SC 2447]

Cross examination – the fact denied in the statement under section 313 CrPC- but not challenged specifically in cross examination of witness - barring a bald suggestion to witness – accused would not get benefit.

When examined under Section 313 CrPC the accused did not state a word that the letters were got written from him by Joginder or the letters were got written by police under pressure. Be that as it may, even assuming that it was a plea in the statement recorded under Section 313 CrPC that he had written the letters being pressurized by the police, the said stand does not deserve to be accepted on two grounds, namely, **i)** he had not made that allegation when the letters were shown to him by the Additional Chief Judicial Magistrate and in fact he had admitted the correctness of the letters and **ii)** that in the cross-examination of the witnesses barring a bald question, nothing has been put with regard to the letters. It is apt to be stated here that the Additional Chief Judicial Magistrate has been examined by the prosecution and has unequivocally proven the fact that the letters were produced before him and the accused-appellant had identified the letters and admitted his signature. Nothing has been elicited in the cross-examination. Similarly, there has been really no cross-examination of any of the witnesses that the letters were written under pressure of police. Relying on *State of U.P. V. Nahar Singh (1998) 3 SCC 561 AND Browne v. Dunn (1893) 6 R 67* it is held that in the absence of cross-examination of the witness, barring a bald suggestion to witness, the accused was the author of the letters and the same were not written under any pressure. [**Vinod Kumar Versus State of Haryana 2015(6) Supreme 108]**

Sections 319 and Section 227 – Whether a person who is summoned under Section 319 Cr.P.C. can be discharge under Section 227 Cr.P.C.? Held – Accused summoned under Section 319 Cr.P.C. ought not to be given an opportunity to avail the remedy of discharge under Section 227 Cr.P.C.

In Sessions Trial No. 4460/2002 under Section 302, read with Section 149, and 323 of the Indian Penal Code and Sections 27 of the Arms Act 1959, the trial court. Additional Sessions Judge on 5.2.2005 issued notices to the

appellants asking them to show cause as to why they should not be added as accused.

After giving an opportunity of hearing to the appellants, to file a reply, the Learned Additional Sessions Judge summoned the appellants as accused for being added to the proceedings.

The appellants challenged the above order by preferring an application under Section 482 Cr.P.C. before the High Court. Meanwhile the appellants were discharged under Section 227 of the Cr.P.C. by the Additional Sessions Judge. So the appellants withdraw the applications moved under Section 482 Cr.P.C.

The respondent, State preferred a Criminal Revision Applications against the order of discharge, in the High Court. The High Court allowed the Criminal Revision and set aside the order of discharge. Against this order of the High Court, the appellants preferred the appeal before the Hon'ble Supreme Court.

It was urged by the Learned Counsel for the appellants that in order to avail of the remedies of discharge under Section 227 of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned Counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 of the Cr.P.C.

The Hon'ble Supreme Court observed in para 9-

> "It is however not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court. It is now settled vide the **Constitution Bench decision in Hardeep Singh v. State of Punjab and Others, (2014) 3 SCC 92,** that the standard of proof employed for summoning a person as an accused under Section 319 of the Cr.P.C., is higher than the standard of proof employed for

framing a charge against an accused. The Court observed for the purpose of Section 319 of the Cr.P.C., that-

> "What is, therefore, necessary for the Court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of a person sought to be added as the accused in the case."

As regards the degree of satisfaction necessary for framing a charge this Court in **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92,** observed that-

> "However, there is a series of cases wherein this court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 of the Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further".
>
> Thus it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

The accused under Section 319 Cr.P.C. is summoned on the basis of a higher standard of proof, while the power under Section 227 Cr.P.C. can be exercised only on the basis of a prima facie view. So the exercise of the power under Section 319 of the Cr.P.C. must be placed on a higher pedestal.

So The accused summoned under are entitled to convoke remedy under law against an illegal a improper exercise of the power under section 319 Cr.P.C., but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C.

So the order of the High Court was confirmed and the appeal filed

against that order was dismissed. [**Jogendra Yadav v. State of Bihar, 2015 (8) SCALE 442]**

Section 375 CrPC- Compensation – to victim – reasonable - the court has to award compensation by the state under section 357a CrPC – when the accused is not in a position to pay fair compensation

It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Award of unreasonable compensation has also not been considered. Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357A when the accused is not in a position to pay fair compensation as laid down by this Court in Suresh vs. State of Haryana (Criminal Appeal No.420 of 2012 decided on 28th November, 2014). **[State of M.P. Versus Mehtaab (2015) 2 SCC (Cri) 764 ; (2015) 5 SCC 197]**

Section 389 Cr. P. C.- Ground to stay the order of conviction - irreversible consequences or injustice to the respondent - foreign country is not granting permission to visit- cannot be a ground

If some foreign country is not granting permission to visit the said country on the ground that the person has been convicted of an offence and has been sentenced for five years of imprisonment under the Indian Law, the said order cannot be a ground to stay the order of conviction. If an order of conviction in any manner is causing irreversible consequences or injustice to the respondent, it was open to the court to consider the same. If the court comes to a definite conclusion that the irreversible consequences/injustice would cause to the accused which could not be restored, it was well within the domain of the court to stay the conviction. [State Of Rajasthan Versus Salman Salim Khan AIR 2015 SC 2443]

Section 468 & 482 – Indian Penal Code Section 307

Incident in question took place on 11.02.1992. Two cross cases under Section 307 IPC were registered. Investigation agency charge sheeted respondent No. 2 and after trial respondent No. 2 along with 3 other was

convicted under Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years vide judgment dated 23-09-2009 by Sessions Judge.

Another case Cri. No. 37/92 was registered on behalf of respondent No. 2. On 11-08-2005 respondent No. 2 filed an application for summoning progress report of Crime No. 37/92. No order was passed on that application but it was only on 01-02-2008 that respondent No. 2 filed another application asking the progress report of the case Crime No. 37/92. Application was disposed of in view of report of police that the appellants were exonerated during investigation.

On 03-05-2008 the respondent No. 2 filed impugned complaint alleging that the appellants on 11-02-92 had committed offence under Section 307 IPC.

On 03-06-2009 the appellants were summoned by the Learned Magistrate. The appellants then filed the petition for quashing the complaint. This petition was dismissed by the Hon'ble High Court. Then appeal was filed before the Apex Court.

Hon'ble the Apex Court observed in para 17 and 18

"17. …… mere delay in completion of proceedings may not be by itself a ground to quash proceedings where offences are serious, but the Court having regard to the conduct of the parties, nature of offence and the extent of delay in the facts and circumstances of a given case, may quash the proceedings in exercise of jurisdiction under Section 482 Cr.P.C. in the interest of justice and to prevent abuse process of the court.

18. In the present case, conduct of the complainant can certainly be taken into account. Admittedly, the complainant stood convicted in a cross case. At least for ten years after commencement of the trial, the complainant did not even bother to seek simultaneous trial of the cross case, the step which was taken for the first time in the year 2005 which could certainly have been taken in the year 1995 itself when the trial against respondent No.2 commenced. Having regard to the nature of allegations and entirety of circumstances, it will be unfair and unjust to permit respondent No. 2 to proceed with a complaint filed 16 years after the incident against the appellants."

According appeal was allowed and the proceedings of the complaint

case quashed. [**Sirajul v. The State of U.P., (2015)(7) SCALE 523]**

Section 482 – Indian Penal Code Section 406, 409 and 420

A society was constituted for charitable work and social service – Appellants No. 1, 2 and 3 were President, Secretary and Treasurer respectively while appellants 4 to 7 were Directors of the Society. A piece of land was purchased by the society vide Registered Sale deed dated 28-01-1978. A criminal complaint was filed by respondent No.1 alleging that appellants 1 to 7 being members of the Executive and Directors of the Society misusing the position held Board meetings facilitating sale of that land in favour of their relatives (appellants 7 to 12). It was further alleged that the appellants 7 to 12 executed sale deeds in the same year in favour of Directors of the Society. Such Sale deeds were executed in the year of 1996. Criminal complaint was registered under Section 406, 409 and 420 IPC. Held that –

(1) Complainant was not a member of the society.
(2) The complainant had raised the issue of mala fide execution of sale deed after a period of 12 years of its execution.
(3) From the contents of the complaint nowhere reflected that the complainant was deceived or he or anyone else was induced to deliver the property by deception.

So complaint was rightly quashed by the High Court. [**Mr. Robert John D. Souza & others v. Mr. Stephen v. Gomes & others, (2015)8 SCALE 95]**

Criminal Trial

Extra Judicial Confession – Evidentiary value – PW-12 had stated that he was a Member of Gram Panchayat, accused/appellant came to his residence and then accused/appellant gave an extra judicial confession of inflicting injuries to the deceased and had requested PW-12 to save him.

Principles in respect of evidentiary value and reliability of extra judicial confession have been summarized in Sahadevan & another v. State of Tamilnadu, (2012)6 SCC 403 as follows-

1. The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution;
2. It should be made voluntarily and should be truthful;
3. It should inspire confidence;
4. An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
5. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities;
6. Such statement essentially has to be proved like any other fact and in accordance with law.

So relying on the principles laid down in the above mentioned case the Supreme Court observed that extra judicial confession is a very weak piece of evidence and the courts are to view it with greater care and caution. For an extra-judicial confession to form the basis of conviction it should not suffer from any material discrepancies and inherent improbabilities.

In this case PW12 was simply a member of Gram Panchayat, not a person of influence with the police, it was doubtful that accused had approached him making extra judicial confession and requested him to same him. So extra judicial confession allegedly made to P-12 does not inspire confidence and cannot term basis for the conviction. [**Vijay Shankar v. State of Haryana, 2015(8) SCALE 517]**

Confessional statement in another FIR - no consequence

The accused given confessional statement in another FIR. The question whether such disclosure/ confessional statement made by accused in another case would be relevant to prove the charge of conspiracy, arises. It would be pertinent to point out that in the case nbefore the Hon'ble Supreme Court the statement was made by the accused after the incident, when, naturally, the

common intention had ceased to exist. On this ground alone it would not be admissible. Discussion Mohd. Khalid v. State of West Bengal[(2002) 7 SCC 334 ; Firozuddin Basheeruddin & Ors. v. State of Kerala (2001) 7 SCC 596 AND State v. Nalini (1999) 5 SCC 253, it is held that the alleged disclosure/confessional statement in another case would be of no consequence. [**Indra Dalal Versus State of Haryana 2015 (5) Supreme 457]**

Civil suit and First Appeal pending – Criminal case also pending relating to the same subject matter – Effect -

A Suit and a First Appeal were pending on the subject matter of the present litigation and the issue with regard to ownership of the land in question is yet to be finalised in the said Suit and in the First Appeal.

The High Court rejected the applications moved under Section 482 Cr.P.C., for quashing the criminal proceeding. Being aggrieved by the order of the High Court the appellants filed appeals in the Supreme Court.

Hon'ble Apex Court held that as the ownership of the land in dispute is yet to be decided in the suit and in the First Appeal. The High Court had considered certain facts regarding ownership. So High Court's order was set-aside. Supreme Court quashed the charge-sheet and the process issued against the appellants. [**Mohd. Khalid Khan Vs. State of Uttar Pradesh & Another, (2015)9 SCALE 16]**

Adjournments - not to defer the cross-examination of a witness at the pleasure of trial court - or at the leisure of the defence counsel – do not make the trial an apology for trial.

Before parting with the case we are constrained to reiterate what we have said in the beginning. We have expressed our agony and anguish the manner in which trials in respect of serious offences relating to corruption are being conducted by the trial courts. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurize the witness and to gain over him by adopting all kinds of tactics. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial to be guided by the mandate of the law, the

conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The Court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons. In fact, it is not all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute. [**Vinod Kumar Versus State Of Punjab 2015 (6) Supreme]**

<u>Recovery</u>

Where all the bullets fired not hit the target and were not recovered from the scene of offence - effect :

In every case of gun firing, it is not required that each and every bullet should hit the target. There may be attempts by the deceased or the victim to save himself from the raining bullets, and in which case, the bullets may not hit the target. Merely because all the bullets fired from the gun did not hit the target and were not recovered from the scene of offence, is no ground to conclude that the incident did not take place.(Para 31). **[Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh & Anr. AIR 2015 SC**

2050 (Mnaju Nath Case]

Contradictions

As regards the allegation of contradictions in the statements of prosecution witnesses, we do not find any major **contradictions** which require our attention and consideration. When a witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. But Courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the Court is justified in jettisoning his evidence. [**Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh & Anr. AIR 2015 SC 2050 (Mnaju Nath Case)]**

Inconsistency with the statement given in the F.I.R and the statement given in the court - testimonies fully corroborated by the medical reports - fully reliable.

The possibility of post incident trauma and shock which might have been caused to the injured eye witness cannot rule out. In such a situation one cannot expect the witness to depose about every detail with accuracy. Further, It is held in a number of cases that the testimony of an injured eye witness has to be given much credence. Relying on Dharmendrasinh alias Mansing Ratansinh Vs. State of Gujarat, (2002) 4 SCC 679, held that where the testimonies of the prosecution witnesses have been fully corroborated by the medical reports of the doctors who examined the deceased and the injured witness, the testimonies of the prosecution witnesses are fully reliable and there has been no improvement made. [**Sanjeev Kumar Gupta Versus State of U.P. (Now State of Uttarakhand) 2015(5) Supreme 369 (Criminal Appeal No. 507 Of 2013)]**

Circumstantial Evidence

This Court has been consistently taking the view that where a case rests squarely on **circumstantial evidence**, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. In the present case, on scrutiny of evidence on record, we are convinced that the prosecution had established beyond reasonable doubt the complete chain of events which points at the guilt of the accused. [**Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh & Anr. AIR 2015 SC 2050 (Mnaju Nath Case) Criminal Appeal No. 2194 OF 2011]**

APPRICIATION OF EVIDENCE IN SESSION TRIAL

Suffice it to state, that the ocular account of the incident presented by the PW 3 has been in graphic details. He did not vacillate in identifying the appellants. He also could relate the weapons of assault used by them. The injuries sustained by the deceased in course of the incident and those detected in the post-mortem examination are compatible with each other.

We have duly considered the evidence on record and also the arguments based thereon. The case witnesses an incident of double murder of which PW 3 has been cited to be the only eye-witness. It is a matter of record, that the deceased persons were the brothers of this witness PW 3, who coincidently is also the informant. The courts below on a correct assessment of his evidence, had concluded that he indeed was present at the place of occurrence at the time of the incident. Though the participation of the three of the accused persons, namely, Devi Lal, Chander Singh and Vidyadhar alias Didaru was not accepted due to absence of any blood mark in the lathis said to have been wielded by them, in our opinion in the face of the overwhelming and impregnable testimony of this witness on the entirety of the events relatable to the incident, it is not possible to extend any benefit of doubt to the appellants on that count. Suffice it to state, that the ocular account of the incident presented by the PW 3 has been in graphic details. He did not vacillate in identifying the appellants. He also could relate the weapons of assault used by them. The injuries sustained by the deceased in course of the incident and those detected in the post-mortem examination are compatible with each other. The seizure of the weapons of assault vis-à-vis the appellants based on their statements of disclosure and the report of the Forensic Science Laboratory, also establish their irrefutable nexus with the crime. The plea of the decomposition of the dead bodies to nihilate the medical opinion also lacks persuasion. Noticeably, as per the testimony of the doctor performing the post-mortem examination, the time of death does tally with the one of the incident.

As the eventual objective of any judicial scrutiny is to unravel the truth by separating the grain from the chaff, we are of the opinion that in the face of clinching evidence on record, establishing the culpability of the appellants, their conviction and sentence as recorded by the courts below does not call for any interference at this end. The participation in the gory brutal attack of the appellants with the lethal weapons resulting in death of two persons Ashok and Rohtash is proved beyond reasonable doubt not only by the testimony of PW 3, the eyewitness, but also by other evidence collected in course of the investigation and adduced at the trial. On an overall appreciation of the materials on record, we find ourselves in complete agreement with the findings recorded

by the courts below. [**Daya Ram & Ors. Versus State Of Haryana AIR 2015 SC 2550 (Criminal Appeal No(S) 1590/2011)]**

Motive - prompts a man to form an intention - can be formed even at the place of incident at the time of commission of crime - examine the circumstances for any direct evidence as to the state of mind of the accused.

It is settled principle of law that, to establish commission of murder by an accused, motive is not required to be proved. Motive is something which prompts a man to form an intention. The intention can be formed even at the place of incident at the time of commission of crime. It is only either intention or knowledge on the part of the accused which is required to be seen in respect of the offence of culpable homicide. In order to read either intention or knowledge, the courts have to examine the circumstances, as there cannot be any direct evidence as to the state of mind of the accused. [**Sanjeev Versus State of Haryana (2015) 2 SCC (Cri) 630 ; (2015) 4 SCC 387 (Criminal Appeal No. 1149 Of 2013)]**

CONDUCT OF WITNESS AT PLACE OF OCCURANCE

Conduct at the place of the occurrence - witness kept himself aloof - quite likely - individuals would react differently - when confronted with an unforeseen and sudden situation

We are not inclined to reject the testimony of PW 3 on the ground that **his conduct had been unusual at the place of the occurrence**, he having **kept himself aloof therefrom instead of attempting to save his brothers** who were under murderous attack by a group of assailants. As rightly observed by the courts below that, on being **confronted with such an unforeseen and sudden situation, it is quite likely that individuals would react differently** and if the PW 3, being petrified by such unexpected turn of events, being in the grip of fear and alarm, as a matter of reflex hid himself from the assailants, his version of the episode, in our estimate, is not liable to be discarded as a whole as the same is otherwise cogent, coherent and compact. [**Daya Ram & Ors. Versus State Of Haryana AIR 2015 SC 2550 (Criminal Appeal No(S) 1590/2011)]**

<u>Related Witness</u>

Related witness - must have some direct interest in having conviction reiterated.

Relying on **Anwar Ali v. State of U.P., (2011) 15 SCC 360, Kartik Malhar v. State of Bihar, (1996) 1 SCC 614 AND Ashok Rai v. State of U.P., (2014) 5 SCC 713** It is observed that once the prosecution has been able to prove its case by leading admissible and cogent evidence with reference to statements of the witnesses, the same cannot be brushed aside merely on the ground that the witnesses are relatives of the deceased. It is further reaffirmed that even a close relative who is a natural witness cannot be regarded as an interested witness. The term "interested" postulates that the witness must have some direct interest in having the accused somehow or the other convicted for some animus or for some other reason. The evidenceof interested witnesses is not infirm. The High Court has also disagreed with the Trial Court that the fight took place at the spur of the moment and the accused had not conspired with each other to commit the crime, since there was no evidence to that effect. [**Gurjit Singh Alias Gora And Anr. Versus State Of Haryana (2015) 2 SCC (Cri) 624 ; (2015) 4 SCC 380 (Criminal Appeal No. 519 Of 2010)]**

Interested Witness - Trap/ decoy witness– Burden on the defence - To rattle the credibility and trustworthiness

It would be a derogation and perversion of the purpose and object of anti-corruption law to invariably presuppose that a trap/ decoy witness is an "interested witness", with an ulterior or other than ordinary motive for ensuring the inculpation and punishment of the accused. The burden unquestionably is on the defence to rattle the credibility and trustworthiness of the trap witness' testimony, thereby bringing him under the doubtful glare of the Court as an interested witness. The defence cannot be ballasted with the premise that Courts will, from the outset, be guarded against and suspicious of the testimony of trap witnesses. [**D. Velayutham Vs. State Rep. By Inspector Of Police, Salem Town, Chennai AIR 2015 SC 2506 (Criminal appeal no.787 of 2011)]**

PLACE OF OCCURRENCE

Place Of Occurrence Of The Incident - improvement - incident originally took place near the cycle stand - deceased receiving the injuries - ran away from - fell down after 10-20 steps - he was chased by accused - no bearing on the prosecution case

The defense was raised that there has been an improvement by the prosecution witnesses with respect to the place of occurrence of the incident. However, from a perusal of the site map it becomes clear that the incident originally took place near the cycle stand and on receiving the injuries deceased ran away from the place and fell down after 10-20 steps. He was chased by four accused and injuries were caused to him by them near I.G.N.O.U building,

which was hardly 10-20 steps from the place where he fell down after getting trapped with the wire. The veracity of the above-mentioned distance has come forth in the cross-examination of the witnesses. We believe a person may presume them to be one place or two separate places. Therefore the discrepancy with respect to the place of occurrence has no bearing on the prosecution case. [**Sanjeev Kumar Gupta Versus State of U.P. (Now State of Uttarakhand) 2015(5) Supreme 369 (Criminal Appeal No. 507 Of 2013)]**

DEFECTIVE INVESTIGATION

Defective Investigation – non recoveries of weapon used - not always fatal to prosecution

The investigation suffers from certain flaws such as non-recovery of the weapon used by the accused appellants and recovery of the blood stained shirt after six days of the date of the incident. However, merely on the basis of these circumstances the entire case of the prosecution cannot be brushed aside when it has been proved by medical evidence corroborated by testimonies of the prosecution witnesses that the deceased died a homicidal death. Reaffirmed the law as laid down in Manjit Singh and Anr. Vs. State of Punjab and Anr., (2013) 12 SCC 746, that when there is ample unimpeachable ocular evidence and the same has received corroboration from medical evidence, non-recovery of blood stained clothes or even the murder weapon does not affect the prosecution case. [**Sanjeev Kumar Gupta Versus State of U.P. (Now State of Uttarakhand) 2015(5) Supreme 369 (Criminal Appeal No. 507 Of 2013)]**

Faulty Investigation - Withholding of Best Evidence – Different.

The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non- production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made. **[Tomaso Bruno & Anr Versus State Of U.P. (2015) 3 SCC (Cri) 54 ; (2015) 7 SCC 178 (Criminal Appeal No. 142 Of 2015)]**

EXPERT EVIDENCE

Expert evidence - not a conclusive one - assist the court in arriving at a final conclusion

The courts, normally would look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory and unsustainable. We agree that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion but such report is not a conclusive one. This Court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. As discussed earlier, serious doubts arise about the cause of death stated in the post-mortem reports. **[Tomaso Bruno & Anr Versus State Of U.P. (2015) 3 SCC (Cri) 54 ; (2015) 7 SCC 178 (Criminal Appeal No. 142 Of 2015)]**

MEDICAL EVIDENCE

Medical evidence - only corroborative - proves that the injuries could have been OR could not possibly have been, caused - in the manner as alleged and nothing more - opinion given by a medical witness - need not be the last word on the subject - each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory.

There is no dispute that the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner as alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. It is also true that the post-mortem report by itself is not a substantive piece of evidence, but the evidence of the doctor conducting the post-mortem can by no means be ascribed to be insignificant. The significance of the evidence of the doctor lies vis--vis the injuries appearing on the body of the deceased person and likely use of the weapon and it would then be the prosecutor's duty and obligation to have the corroborative evidence available on record from the other prosecution witnesses. It is also an accepted principle that sufficient weightage should be

given to the evidence of the doctor who has conducted the post- mortem, as compared to the statements found in the textbooks, but giving weightage does not ipso facto mean that each and every statement made by a medical witness should be accepted on its face value even when it is self-contradictory. It is also a settled principle that the opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. That apart, it would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eyewitnesses' account which are to be tested independently and not treated as the 'variable' keeping the medical evidence as the 'constant'. Where the eyewitnesses' account is found credible and trustworthy, a medical opinion pointing to the alternative possibilities cannot be accepted as conclusive. [See: Solanki Chimanbhai Ukabhai v. State of Gujrat[(1983) 2 SCC 174], State of Haryana v. Ram Singh[(2002) 2 SCC 426], Mohd. Zahid v. State of T.N.[(1999) 6 SCC 120], State of Haryna v. Bhagirath[(1999) 5 SCC 96] and Abdul Sayeed v. State of M.P.[(2010) 10 SCC 259] . [**Vijay Pal Versus State (GNCT) Of Delhi (2015) 2 SCC (Cri) 733 ; (2015) 4 SCC 749 (Criminal Appeal No. 2153 Of 2011)]**

PLEA OF ALIBI

Criminal Trial- Plea of alibi - establish by positive evidence

When a plea of alibi is taken by an accused, burden is upon him to establish the same by positive evidence, after onus as regards presence on the spot is established by the prosecution. Relied on Binay Kumar Singh V. State of Bihar[(1997) 1 SCC 283], Gurpreet Singh v. State of Haryana[(2002) 8 SCC 18], S.K. Sattar v. State of Maharashtra[2010) 8 SCC 430] and Jitender Kumar v. State of Haryana[(2012) 6 SCC 204]. [**Vijay Pal Versus State (GNCT) Of Delhi (2015) 2 SCC (Cri) 733 ; (2015) 4 SCC 749 (Criminal Appeal No. 2153 Of 2011)]**

Sentencing

Consider the balance sheet of aggravating and mitigating circumstances - offences shock the collective conscience of the court and community - offence would attract no lesser sentence than the death penalty.

It would now be necessary for the Court to consider the balance sheet of aggravating and mitigating circumstances. In the instant case, the learned counsel for the accused-appellants has laid stress upon the age of the accused persons, their family background and lack of criminal antecedents. Further, the learned counsel has fervently contended that the accused-appellants are capable of reformation and therefore should be awarded the lighter punishment of life imprisonment.

Age alone cannot be a paramount consideration as a mitigating circumstance. Similarly, family background of the accused also could not be said to be a mitigating circumstance. The manner in which the commission of the offence was so meticulously and carefully planned coupled with the sheer brutality and apathy for humanity in the execution of the offence, in every probability they have potency to commit similar offence in future. It is clear that both the accused persons have been proved to be a menace to society which strongly negates the probability that they can be reformed or rehabilitated. In our considered opinion, the mitigating circumstances are wholly absent in the present factual matrix. This appeal is not a case where the offence was committed by the accused persons under influence of extreme mental or emotional disorder, nor is it a case where the offence may be argued to be a crime of passion or one committed at the spur of the moment. There is no question of accused persons believing that they were morally justified in committing the offence on helpless and defenceless young woman.

Therefore, in view of the above and keeping the aforesaid principle of proportionality of sentence in mind,the extreme depravity with which the deceased was done to death coupled with the other factors including the position of trust held by the Accused, would tilt the balance between the aggravating and mitigating circumstances greatly against the accused-appellants. The gruesome act of raping a victim who had reposed her trust in the accused followed by a cold-blooded and brutal murder of the said victim coupled with the calculated and remorseless conduct of the accused persons after the commission of the offence, we cannot resist from concluding that the depravity of the appellants' offence would attract no lesser sentence than the death penalty.

In addition to the above, it would be necessary for this Court to notice the impact of the crime on the community and particularly women working in the night shifts at Pune, which is considered as a hub of Information Technology Centre. In recent years, the rising crime rate, particularly violent crimes against women has made the criminal sentencing by the Courts a subject of concern. The sentencing policy adopted by the Courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent. There are a shockingly large number of cases where the sentence of punishment awarded to the accused is not in proportion to the gravity and magnitude of the offence thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. The object of sentencing policy should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it.

The extreme punishment of death would be justified and necessary in cases where the collective conscience of society is so shocked that it will expect the holders of judicial power to inflict death penalty irrespective of their personal opinion.

It is true that any case of rape and murder would cause a shock to the society but all such offences may not cause revulsion in society. Certain offences shock the collective conscience of the court and community. The heinous offence of gang-rape of an innocent and helpless young woman by those in whom she had reposed trust, followed by a cold-blooded murder and calculated attempt of cover-up is one such instance of a crime which shocks and repulses the collective conscience of the community and the court. Therefore, in light of the aforesaid settled principle, this Court has no hesitation in holding that this case falls within the category of "rarest of rare", which merits death penalty and none else. The collective conscience of the community is so shocked by this crime that imposing alternate sentence, i.e. a sentence of life imprisonment on the accused persons would not meet the ends of justice. Rather, it would tempt other potential offenders to commit such crime and get away with the lesser/lighter punishment of life imprisonment. [**Purushottam Dashrath Borate & Anr. Versus State of Maharashtra AIR 2015 SC 2170 (Criminal Appeal No. 1439 Of 2013)]**

Evidence Act

Section 27 Evidence Act - Information given by the accused would be admissible

In the light of Section 27 of the Evidence Act, whatever information given by the accused in consequence of which a fact is discovered only would be admissible in the evidence, whether such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information

The "fact discovered" as envisaged under Section 27 of the Evidence Act embraces the place from which the object was produced, the knowledge of

the accused as to it, but the information given must relate distinctly to that effect.

In the present case, Accused Nos. 4 & 7 disclosed the names of their co-accused at whose instance various incriminating materials including pistols, cartridges, bullets, blood stained articles were recovered. Simply denying their role without proper explanation as to the knowledge about those incriminating material would justify the presumption drawn by the Courts below to the involvement of the accused in the crime. The confession given by the accused is not the basis for the courts below to convict the accused, but it is only a source of information to put the criminal law into motion. Hence, the accused cannot take shelter under Section 25 of the Evidence Act. [**Pawan Kumar @ Monu Mittal Vs. State of Uttar Pradesh & Anr. AIR 2015 SC 2050 (Mnaju Nath Case)]**

The words employed in Section 27 does not restrict that the accused must be arrested in connection with the same offence. In fact, the emphasis is on receipt of information from a person accused of any offence.

In connection with other case, the accused was arrested and while he was interrogated, he led to discovery in connection with the stolen contraband articles from the malkhana which was the matter of investigation in FIR no. 96 of 1985. There is no shadow of doubt that the accused-appellant was in police custody. Section 27 of the Indian Evidence Act, 1872 provides that when any fact is deposed to as discovery in consequence of the information received from a person accused of any offence in custody of a police officer, so much of such information whether it amounts to confession or not as relates distinctly to the fact thereby discovered may be proved. It is well settled in law that the components or portion which was the immediate cause of the discovery could be acceptable legal evidence. The words employed in Section 27 does not restrict that the accused must be arrested in connection with the same offence. In fact, the emphasis is on receipt of information from a person accused of any offence. Therefore, when the accused-appellant was already in custody in connection with other case and he led to the discovery of the contraband articles, the plea that it was not done in connection with that case in which he was arrested, is absolutely unsustainable. (Para 30) [**Mohan Lal Versus State of Rajasthan AIR 2015 SC 2098 (Criminal Appeal No. 1393 Of 2010)]**

Section 27 Evidence Act – recovery on the disclouser / Information given by the accused would be admissible – recovery not in pursuance to the disclosure statement – not admissible under section 27.

The Section 27 is in the form of proviso to Sections 25 and 26 of the Evidence Act. It makes it clear that so much of such information which is received from a person accused of any offence, in the custody of a police officer, which has led to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered. In the present case, the information provided by all the accused/ appellants in the form of confessional statements, has not led to any discovery. More starkly put, the recovery of scooter is not related to the confessional statements allegedly made by the appellants. This recovery was pursuant to the statement made by Harish Chander Godara. It was not on the basis of any disclosure statements made by these appellants. Therefore, the situation contemplated under Section 27 of the Evidence Act also does not get attracted. Even if the scooter was recovered pursuant to the disclosure statement, it would have made the fact of recovery of scooter only, as admissible under Section 27 of the Evidence Act, and it would not make the so-called confessional statements of the appellants admissible which cannot be held as proved against them. [**Indra Dalal Versus State Of Haryana 2015 (5) Supreme**

457]

Section 32 Evidence Act - Oral Dying Declaration – permissible and admissible – examine it is voluntary, truthful and made in a conscious state of mind - without any influence.

The aforesaid judgment makes it absolutely clear that the dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice, provided the communication is positive and definite. There cannot be any cavil over the proposition that a dying declaration cannot be mechanically relied upon. In fact, it is the duty of the Court to examine a dying declaration with studied scrutiny to find out whether the same is voluntary, truthful and made in a conscious state of mind and further it is without any influence. [**Vijay Pal Versus State (GNCT) Of Delhi (2015) 2 SCC (Cri) 733 ; (2015) 4 SCC 749 (Criminal Appeal No. 2153 Of 2011)]**

Section 106 and 114(g) of Evidence Act - to invoke - prosecution to establish presence of accused – but party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him

To invoke Section 106 of the Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. Hotel Manager stated that CCTV cameras are installed in the boundaries, near the reception, in the kitchen, in the restaurant and all three floors. Since CCTV cameras were installed in the prominent places, CCTV footage would have been best evidence to prove whether the accused remained inside the room and whether or not they have gone out. CCTV footage is a strong piece of evidence which would have indicated whether the accused remained inside the hotel and whether they were responsible for the commission of a crime. It would have also shown whether or not the accused had gone out of the hotel. CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents strictu sensu are admitted as material evidence. With the amendment to the Indian Evidence Act in 2000, Sections

65A and 65B were introduced into Chapter V relating to documentary evidence. Section 65A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of Negotiable Instruments Act, where the court has no option but to draw statutory presumption, under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 (g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party. [**Tomaso Bruno & Anr Versus State Of U.P. (2015) 3 SCC (Cri) 54 ; (2015) 7 SCC 178 (Criminal Appeal No. 142 Of 2015)]**

Family and Personal Laws

Hindu Minority and Guardianship Act, 1956- Ss. 6(a), proviso thereto and 13. Custody of a Hindu Child aged below 5 yrs. Entitlement of father vis-à-vis mother in respect of. Determination. Approach to be adopted.

Section 26 is of special significance in that it casts an omnibus embargo even on a guardian of a person appointed or declared by the Court from

removing the ward from the limits of its jurisdiction. This is because when a dispute arises between the parents of a minor, the court steps in as parens patriae and accordingly appropriates or confiscates to itself the discretion earlier reposed in the natural parents of the minor. This provision appears to have been violated by the Father. These provisions continue to apply in view of the explicit explanation contained in Section 2 of the HMG Act. Section 3 of the HMG Act clarifies that it applies to any person who is a Hindu by religion and to any person domiciled in India who is not a Muslim, Christian, Parsi or Jew unless it is proved that any such person would not have been governed by Hindu Law. In the present case, the Mother is a Christian but inasmuch as she has not raised any objection to the applicability of the HMG Act, we shall presume that Thalbir is governed by Hindu Law. Even in the proceedings before us it has not been contested by the learned Senior Advocate that the HMG Act does not operate between the parties.

Section 6 of the HMG Act is of seminal importance. It reiterates Section 4(b) and again clarifies that guardianship covers both the person as well as the property of the minor; and then controversially states that the father and after him the mother shall be the natural guardian of a Hindu. Having said so, it immediately provides that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. The significance and amplitude of the proviso has been fully clarified by decisions of this Court and very briefly stated, a proviso is in the nature of an exception to what has earlier been generally prescribed. The use of the word "ordinarily" cannot be over-emphasized. It ordains a presumption, albeit a rebuttable one, in favour of the mother. The learned Single Judge appears to have lost sight of the significance of the use of word "ordinarily" inasmuch as he has observed in paragraph 13 of the Impugned Order that the Mother has not established her suitability to be granted interim custody of Thalbir who at that point in time was an infant. The proviso places the onus on the father to prove that it is not in the welfare of the infant child to be placed in the custody of his/her mother. The wisdom of the Parliament or the Legislature should not be trifled away by a curial interpretation which virtually nullifies the spirit of the enactment. [**Rozann Sharma vs. Arun Sharma, (2015) 8 SCC 318]**

Guardians and Wards Act

Sections 11 and 19 – Registration of Birth and Deaths Act of 1969, Section 13. Unwed single mother may file application for guardianship of her child without impleading or even naming the biological father of the child. Word ‘parent’ not

defined under Guardian and Wands Act. Parent can be interpreted to be unwed mother alone. Similar law of other countries discussed. Convention on the rights of child which India has acceded to 11.11.1992 quoted to be issued to single parent/ unwed mother case of a guardian leady.
Para 16 and 19 are quoted below:-

"16. *Section 11 is purely procedural; we see no harm or mischief in relaxing its requirements to attain the intendment of the Act. Given that the term "parent" is not defined in the Act, we interpret it in the case of illegitimate children whose sole caregiver is one of his/her parents, to principally mean that parent alone. Guardianship or custody orders never attain permanence or finality and can be questioned at any time, by any person genuinely concerned for the minor child, if the child's welfare is in peril. The uninvolved parent is therefore not precluded from approaching the Guardian Court to quash, vary or modify its orders if the best interests of the child so indicate. There is thus no mandatory and inflexible procedural requirement of notice to be served to the putative father in connection with a guardianship or custody petition preferred by the natural mother of the child of whom she is the sole caregiver.*

19. *We are greatly perturbed by the fact that the Appellant has not obtained a Birth Certificate for her son who is nearly five years old. This is bound to create problems for the child in the future. In this regard, the Appellant has not sought any relief either before us or before any of the Courts below. It is a misplaced assumption in the law as it is presently perceived that the issuance of a Birth Certificate would be a logical corollary to the Appellant succeeding in her guardianship petition. It may be recalled that owing to curial fiat, it is no longer necessary to state the name of the father in applications seeking admission of children to school, as well as for obtaining a passport for a minor child. However, in both these cases, it may still remain necessary to furnish a Birth Certificate. The law is dynamic and is expected to diligently keep pace with time and the legal conundrums and enigmas it presents. There is no gainsaying that the identity of the mother is never in doubt. Accordingly, we direct that if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary. Trite though it is, yet we emphasize that it is the responsibility of the State to ensure that no citizen suffers any inconvenience or disadvantage merely*

because the parents fail or neglect to register the birth. Nay, it is the duty of the State to take requisite steps for recording every birth of every citizen. To remove any possible doubt, the direction pertaining to issuance of the Birth Certificate is instantly not restricted to the circumstances or the parties before us."**[ABC v. State (NCT of Delhi) AIR 2015 SC 2569]**

Hindu Marriage Act

Section 13 – Cruelty – the following instances are cruelty and not wear and tear of family life.

i. Spouse abusing other as being born from prostitute
ii. Summoning police by wife on false and flimsy grounds when husband was normally residing in a foreign country and did not know law and procedure of India.
iii. Making it impossible for any close relation to visit or reside in the matrimonial home.

[Vinod Kumar Subbiah v. Saraswathi Palaniappan, AIR 2015 SC 2504]

Hindu Minority and Guardianship Act

Guardians and Wards Act 1890- NRI child brought to India temporarily – dispute of custody – order of foreign court already there – effect.

It has been held that in such situation if an interim order regarding custody of the child has already been passed by foreign court having jurisdiction, the same must be respected by the Indian Court on the principle of first strike except for special reasons. Similarly Indian court should not hold enquiry for deciding the question of repatriation except for special reasons. The special reasons have been enumerated in the judgment.

Five comparatively recent and significant judgments of the Supreme Court on the issue of child custody which is also subjudice before a court of a foreign country have been considered in para 22 onward. Paragraphs 55 and 56 are quoted below:-

> *"55. If an interim or an interlocutory order passed by a foreign court has to be disregarded, there must be some special reason for doing so. No doubt we expect foreign courts to respect the orders passed by courts in India and so there is no justifiable reason why domestic courts should not reciprocate and respect orders passed by foreign courts. This issue may be looked at from another perspective. If the reluctance to grant respect to an interim or an interlocutory order is extrapolated into the domestic sphere, there may well be situations where a Family Court in one State declines to respect an interim or an interlocutory order of a Family Court in another State on the ground of best interests and welfare of the child. This may well happen in a case where a person ordinarily resident in one State gets married to*

another (b) where it has not been given on the merits of the case; (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable; (d) where the proceedings in which the judgment was obtained are opposed to natural justice; (e) where it has been obtained by fraud; (f) where it sustains a claim founded on a breach of any law in force in India.

56. What are the situations in which an interim or an interlocutory order of a foreign court may be ignored? There are very few such situations. It is of primary importance to determine, prima facie, that the foreign court has jurisdiction over the child whose custody is in dispute, based on the fact of the child being ordinarily resident in the territory over which the foreign court exercises jurisdiction. If the foreign court does have jurisdiction, the interim or interlocutory order of the foreign court should be given due weight and respect. If the jurisdiction of the foreign court is not in doubt, the "first strike" principle would be applicable. That is to say that due respect and weight must be given to a substantive order prior in point of time to a substantive order passed by another court (foreign or domestic)." ***[Surya Vadanan v. State of Tamil Nadu, AIR 2015 SC 2243]***

Hindu Succession Act

Section 8, Schedule -1 – Transfer of Property Act, Section 52 – Civil Procedure Code, Order 22 Rule 10 –

The plaintiff/appellant was the widow of the son of defendant No. 1. The plaintiff/appellant had filed a suit for partition of properties, claiming the share of her late husband, contending that all the properties were jointly owned by the family. The property mentioned in Schedule B – was the property bearing No. 45 Sant Nagar, East of Kailash, New Delhi.

During the proceedings, the gift deed was alleged to be executed by deceased first defendant in favour of defendant No. 2, but defendant No. 2 never informed the Court nor sought the leave of the Court as provided under Order 22 Rule 10 of the CPC. So the gift deed was hit by Section 52 of the T.P. Act.

The deceased first defendant had died during the pendency of the suit and therefore Section 8 of the Hindu Succession Act 1956 will come into operation in

respect of the Schedule B property, even if it is considered that said property is a self acquired property of the deceased first defendant.

Furthermore, the plaintiff/appellant was in possession of the second floor of the property mentioned in Schedule-B. No possession was delivered to the defendant No. 2. So the gift was never acted upon. Therefore Section 8 of the Hindu Succession Act would come into operation.

Hence the theory of gift was rejected and plaintiff was held entitled to the 1/4th share in Schedule B. Property. [**Kirpal Kaur v. Jitender Pal Singh & others, 2015(8) SCALE 38]**

Section 15 – value of entries in revenue records.

After the death of a female her property devolves upon her son and husband. If only the name of the son is mutated in the revenue records and even if the said mutation is accepted by the husband of the deceased / father of one of the heirs, it does not mean that he loses his right to the property of wife. Mutation entries neither create nor convey any title nor extinguish the title. Such entries are relevant only for collection of land revenue. [**H.L. Reddy v. L.V. Reddy, AIR 2015 SC 2499]**

Indian Penal Code

Sections 148, 149, 302– Unlawful assembly – According to the prosecution, the deceased after finishing his duty was returning home along with his brother (PW-13). He was stopped by catching his bicycle. Accused "D" then poured petrol over him, and "J" burnt him by igniting a match-stick. He was surrounded by respondents and two others, all of them exhorted to beat him, and that he should not be allowed to run from the spot. Respondent – 'V' threw a burning tyre upon him, and when deceased was running helter-skelter "H" threw a sword at him. Deceased disclosed to PW-4 and 15 that he was set-afire by the persons mentioned above. Deceased than was taken to hospital where inspector (PW-16) took his statement. On the same night PW-5 Executive Magistrate recorded his statement. On next day, deceased succumbed to his injuries.

Trial Court convicted accused D and J for offence under section 302/148 IPC, while respondents were found guilty u/s 302/149 IPC. On appeal, High Court gave benefit of doubt to respondents, holding that they had reached the spot after the incident, and that charge of formation of unlawful assembly

by them was not established.

In appeal Supreme Court held that in the light of eye witness account and two consistent dying declerations of the deceased the presence of respondents was established beyond doubt, they were waiting in ambush. It may be that two of them set deceased afire, but the others definitely ensured by surrounding deceased that he would not be allowed to escape. Further, throwing of burning tyre and the sword would also indicate the active role played by them. It was a crime which was committed by all of them guided by same purpose, acting in concert achieving the result that was desired.

So, conclusion of the High Court held unsustainable, accordingly appeal was allowed, and the judgment and order of the High Court was set aside the judgment of conviction and sentence as recorded by the Trial Court was restored. [**State of M.P. v. Ashok & others, 2015(7) SCALE 324]**

Sec. 292 Indian Penal Code

The court has to take an overall view of the matter; that there has to be an objective assessment and the Judge must in the first place put himself in the position of the author and, thereafter, in the position of reader of every class and must eliminate the subjective element or personal preference; a novel cannot be called obscene usually because of slang and unconventional words in it; the court has to see that the writing is of such that it cannot bring home to the adolescences any suggestion which is depraving or lascivious and that the concept of obscenity usually differs from country to country depending on the standards of morality of contemporary society in different countries.

The Court has laid down various guidelines from time to time and accepted the contemporary community standards test as the parameter and also observed that the contemporary community standards test would vary from time to time, for the perception, views, ideas and ideals can never remain static. They have to move with time and development of culture. Be it noted, it has become more liberal with the passage of time. The Court has emphatically laid down that the test as contemporary community standards test, and it would, of course, depend upon the cultural, attitudinal and civilisational change. There has also been stress on the modernity of approach and, the artistic freedom, the progression of global ideas and the synchronisation of the same into the thinking of the writers of the age. We respectfully concur with the said view and hold that contemporary community standards test is the main criterion and it has to be appreciated on the foundation of modern perception, regard being had to the criterion that

develops the literature. There can neither be stagnation of ideas nor there can be staticity of ideals. The innovative minds can conceive of many a thing and project them in different ways. As far as comparables test is concerned, the Court may sometimes have referred to various books on literature of the foreign authors and expressed the view that certain writings are not obscene, but that is not the applicable test. It may at best reflect what the community accepts.

At this juncture, it is seemly to state that Section 292 IPC uses the term 'obscene'. While dealing with the facet of obscenity, this Court has evolved the test. The test evolved by this Court, which holds the field today is the 'contemporary community standards test'. That does not really create an offence or add an ingredient to the offence as conceived by the legislature under Section 292 IPC. It is a test thought of by this Court to judge obscenity. The said test has been evolved by conceptual hermeneutics.

When the name of Mahatma Gandhi is alluded or used as a symbol, speaking or using obscene words, the concept of "degree" comes in. To elaborate, the "contemporary community standards test" becomes applicable with more vigour, in a greater degree and in an accentuated manner. What can otherwise pass of the contemporary community standards test for use of the same language, it would not be so, if the name of Mahatma Gandhi is used as a symbol or allusion or surrealistic voice to put words or to show him doing such acts which are obscene. While so concluding, we leave it to the poet to put his defense at the trial explaining the manner he has used the words and in what context. We only opine that view of the High Court pertaining to the framing of charge under Section 292 IPC cannot be flawed.

In the case put forth by the publisher, it is noticeable that he had published the poem in question, which had already been recited during the Akhil Bhartiya Sahithya Sammelan at Amba Jogai in 1980, and was earlier published on 2.10.1986 by others. The appellant has published the poem only in 1994. But immediately after coming to know about the reactions of certain employees, he tendered unconditional apology in the next issue of the 'Bulletin'. Once he has tendered the unconditional apology even before the inception of the proceedings and almost more than two decades have passed. The Court disposed to quash the charge against the printer, as it is submitted that he had printed as desired by the publisher. Hence, they stand discharged. However, the Court did not express any opinion as to the act on the part of the author of the poem, who is co-accused in the case, and facing trial before the Magistrate in respect of the offence punishable under Section 292 IPC. It shall be open for him to raise all the pleas in defence, as available to him under the law. [**Devidas Ramachandra Tuljapurkar Versus**

State Of Maharashtra & Ors. AIR 2015 SC 2612 (Criminal Appeal No.1179 Of 2010)]

Section 302 – Murder case – Last Seen Theory - Itself is not a conclusive proof- But other circumstances surrounding the incident must be in consonance.

The rule can be summarized as that the initial burden of proof is on the prosecution to bring sufficient evidence pointing towards guilt of accused. However, in case of last seen together, the prosecution is exempted to prove exact happening of the incident as the accused himself would have special knowledge of the incident and thus, would have burden of proof as per Section 106 of Indian Evidence Act. Therefore, last seen together itself is not a conclusive proof but along with other circumstances surrounding the incident, like relations between the accused and the deceased, enmity between them, previous history of hostility, recovery of weapon from the accused etc., non-explanation of death of the deceased, may lead to a presumption of guilt. [**Ashok Versus State Of Maharashtra (2015) 2 SCC (Cri) 636 ; (2015) 4 SCC 393 (Criminal Appeal No. 2224 Of 2011)]**

Section 302 & 449 – <u>Circumstantial Evidence</u> – Absence of Proof of Motive-

PW 10 was the brother of the deceased. The deceased and his brother PW 10 were staying in poultry Farm. They continued talking up to 2.00 a.m., after then PW 10 returned to his house in the village leaving deceased in the poultry farm. Following morning PW 19 saw deceased lying injured on the floor, and informed the same to PW 10. PW 10 look deceased to the hospital where he died.

According to PW 10, appellant had come to their farm the previous night at about 10-11 p.m., under the influence of liquor and abused his brother (deceased) raising objection for not allowing him to park his cycle and the accused threatened them saying that he would not let them celebrate Holi.

Hon'ble the Apex Court in para 11 observed-

> "In each and every case, it is not incumbent on the prosecution to prove the motive for the crime. Often, motive is indicated to heighten the probability of the offence that the accused was impelled by that motive to commit the offence. Proof of motive only adds to the weight and value of evidence adduced by the prosecution. If the prosecution is able

to prove its case on motive, it will be a corroborative piece of evidence. But even if the prosecution has not been able to prove its case on motive that will not be a ground to throw the prosecution case nor does it corrode the credibility of prosecution case. Absence of proof of motive only demands careful scrutiny of evidence adduced by the prosecution."

In the present case motive about parking of cycle was very weak. That too was not corroborated by any independent witness. Three servants were sleeping in the poultry farm but none of them was examined. So absence of convincing evidence as to motive made the court to be circumspect in the matter of assessment of evidence, and this aspect was not considered by the High Court and the Trial Court. [**Vijay Shankar v. State of Haryana, 2015 (8) SCALE 517]**

Section 302 – Murder case – Proof of <u>Last Seen Theory</u> – In Bodhraj v. State of J & K, (2002)8 SCC 45, Hon'ble the Apex Court has held that-

"The last seen theory comes into play where the gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

Here in this case the deceased had disappeared on 16-01-2001, his dead body was found in a well on 20-01-2001 after four days, which is not a small gap. Post mortem report also failed to specify any approximate time of death. There is no positive material on record to show that the deceased was last seen together with the accused and in the intervening period of 4 days, there was no other person in contract with the deceased. So conviction was held not proper. [**State of Karnataka v. Chand Basha, 2015(9) SCALE 809]**

Section 302 IPC – Evidentiary Value of the statement made, during <u>cross examination</u> while answering suggestion put forward by the counsel for the defence –

PW-4 was the wife of the deceased. In her statement she had supported the prosecution story, but in cross-examination there were certain variations. One of the variations in the cross-examination was that the deceased was unconscious after he sustained gunshot injuries in the incident. So it was argued that the deceased could not have been in a position to make a dying declaration. Therefore it was further argued by the counsel for the accused/appellant, that

the evidence of PW-4 and the prosecution version should not be believed.

Rejecting the above arguments Hon'ble the Apex Court observed in para 7 and 8 that-

Para 7 "……. In fact, in respect of PW-4, we must also point out that at the end of the cross-examination she stated that "it is wrong to state that, I did not see the incident and I am making false statement on the advice of the policeman." Thereby in effect PW-4, virtually confirmed her version in examination-in-chief by not sticking to her varied version in the cross-examination,"

Para 8 "……. As noted earlier the denial of the suggestion by PW-4 at the end of her cross-examination virtually wiped out whatever contra stated by her in cross-examination and thereby re-affirmed her version in examination-in-chief,"

Hon'ble the Apex Court further observed that the Doctor P.K. Tiwari PW-11, had conducted the Post-mortem of the deceased had stated that "in spite of the serious injuries sustained by the deceased he would have been survived at least for two to three hours." In addition to this Doctor Mahendra Singh Chauhan, who attended on the deceased made it clear that the deceased was brought to the Hospital at 6.00 pm and the deceased was conscious to make the statement.

So, Hon'ble the Apex Court relying on the statement of PW-4 made during cross-examination while answering the suggestion rejected all objection, raised by the Learned Counsel for the appellant. [**Mohan Lal v. State of Rajasthan, (2015)8 SCALE 627]**

Section 302 – Murder case – Proof of Last Seen Theory – In Bodhraj v. State of J & K, (2002)8 SCC 45, Hon'ble the Apex Court has held that-

> "The last seen theory comes into play where the gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the author of the crime becomes impossible."

Here in this case the deceased had disappeared on 16-01-2001, his dead body was found in a well on 20-01-2001 after four days, which is not a small gap. Post mortem report also failed to specify any approximate time of death. There is no positive material on record to show that the deceased was last seen together with the accused and in the intervening period of 4 days, there was no

other person in contract with the deceased. So conviction was held not proper. [**State of Karnataka v. Chand Basha, 2015(9) SCALE 809]**

Section 302/34 and 120-B– Criminal Conspiracy – Criminal conspiracy ordinarily is hatched in secrecy. The Court for the purpose of arriving at a finding as to whether the said offence has been committed or not may take into consideration the circumstantial evidence. However while doing so, it must be born in mind that meeting of mind is essential mere knowledge or discussion would not be enough.

According to prosecution case, in the morning when deceased was returning to his house from the temple, was shot dead by two unknown persons. The complaint Ex P-15/A1 is alleged to have been filed by the deceased Lalit Suneja in his own handwriting in Hindi and signed in English. It was alleged that there was hostility between the deceased and accused N.S. in respect of some payment relating to business being carried on by them. When matter could not be solved 'NS', requested his friend B to eliminate deceased. Thereupon B hired M to execute the task. On the day of incident the accused V took accused M on motorcycle to the spot, where by accused M shot dead deceased and filed away co-accused. Accused V and M died during trial. Trial Court convicted accused M and 'NS' for offence u/s 302 r/w 120-B IPC. High Court set aside their conviction.

In appeal the Supreme Court observed that-

1. The complaint Ex P-15/A1 was not proved to be in the handwriting of the deceased. The prosecution out slightly failed to get it proved by expert.
2. The wife of the deceased stated that she never saw her husband writing.
3. The wife of the deceased also denied the signature of the deceased on the complaint Ex P15/A1.
4. The wife of deceased also denied the business relationship between her husband and accused 'NS' and also expressed unawakness of any hostility between deceased and 'NS'.
5. The prosecution proved that the motorcycle and car belonged to accused Om Prakash Srivastava @ Babloo but the involvement of those vehicles in the incident could not be proved.

Therefore Supreme Court held that neither any prior meeting of mind of the accused was proved nor any action individually or in concert, was proved against any of the accused. Thus entire prosecution story was never established. Hence judgment and order of acquittal High Court was confirmed and appeal filed against it was dismissed. [**State (Govt of NCT of Delhi) v. Nitin**

Gunwant Shah, 2015(9) SCALE 761]

Section 302 IPC – Ground for evidentiary value of the statement made, during cross examination while answering suggestion put forward by the counsel for the defence – Explained

In this case, PW-4 was the wife of the deceased. In her statement she had supported the prosecution story, but in cross-examination there were certain variations. One of the variations in the cross-examination was that the deceased was unconscious after he sustained gunshot injuries in the incident. So it was argued that the deceased could not have been in a position to make a dying declaration. Therefore it was further argued by the counsel for the accused/appellant, that the evidence of PW-4 and the prosecution version should not be believed.

Rejecting the above arguments Hon'ble the Apex Court observed in para 7 and 8 that-

Para 7 "We must point out that there are some variations in the statement of PW 4 and PW-5 made in the examination-in-chief and what they have stated in the cross-examination. In fact, in respect of PW-4, we must also point out that at the end of the cross-examination she stated that "it is wrong to state that, I did not see the incident and I am making false statement on the advice of the policeman." Thereby in effect PW-4, virtually confirmed her version in examination-in-chief by not sticking to her varied version in the cross-examination,"

Para 8 "……. It was quite apparent that some variation in the statement in cross-examination than what was stated in the examination-in-chief must have been made half heartedly. As noted earlier the denial of the suggestion by PW-4 at the end of her cross-examination virtually wiped out whatever contra stated by her in cross-examination and thereby re-affirmed her version in examination-in-chief,"

Hon'ble the Apex Court further observed that the Doctor P.K. Tiwari PW-11, had conducted the Post-mortem of the deceased had stated that "in spite of the serious injuries sustained by the deceased he would have been survived at least for two to three hours." In addition to this Doctor Mahendra Singh Chauhan, who attended on the deceased made it clear that the deceased was brought to the Hospital at 6.00 pm and the deceased was conscious to make the statement.

So, Hon'ble the Apex Court relying on the statement of PW-4 made during cross-examination while answering the suggestion rejected all objection, raised by the Learned Counsel for the appellant. [**Mohan Lal v. State of Rajasthan, (2015)8 SCALE 627]**

Section 302/449 - Circumstantial Evidence – Last Seen Theory

The Trial Court as well as the High Court based the conviction of the appellant mainly on the last seen theory relying on the evidence of PW 11, who allegedly saw the appellant on the intervening night of 16-03-1995/17-03-1995 coming out of the room of Satish Kumar.

In his evidence PW 11 had stated that on the intervening night of 16/17-03-1995 his buffalo was missing from his farm house, so he went towards village Budha in search of his buffalo. He also said that when he reached Dujana bus stop, he saw the appellant Vijay Shankar coming out of the room of Satish Kumar.

He further said that he had identified the appellant from a distance of 25 feet in the moon light and also in the light of a electric bulbs fixed in the court-yard and the room.

But Hon'ble the Apex Court did not believe the last seen theory based on the sole evidence of PW 1 on following grounds-

(1) PW-1 was the owner of a petrol pump and 60 acres of land, so it was quite improbable to believe that he would go alone from village Dujana to Dieghal which is at a distance of 10 Kilometers in the midnight in search of his buffalo.

(2) Although PW 1 had stated that he had recognized appellant from a distance of 25 feet, but PW 10 the co-owner and the brother of the deceased himself had stated that the distance of the room where the deceased was sleeping and the road leading to village Dujana was three kilos i.e. three acres and on the northern side and the southern and western side of the room, their fields were situated.

In Modi's Medical Jurisprudence and Toxicology 19th Edn. Para 2 at page No. 61 it is stated that according to Tidy –

> "The best known person cannot be recognized in the clearest moon light beyond a distance of 17 yards……."

So it was quite improbable that in the night from such a long distance PW 11 was able to identify the accused.

(3) PW 10 is the brother of the deceased, who had stated in his evidence that on the night of incident two servants were sleeping in the adjoining room, where the deceased was sleeping and the third servant was sleeping in the truck parked at some distance from the farm. From the postmortem report it was revealed that

the deceased had sustained several injuries on the neck chest and arm, he was well built and nourished. Probably deceased might have resisted and raised alarm, it is quite impossible that the farm servants never heard the noise and that none of the servants came to the rescue of the deceased, which again raises doubt about the prosecution case.

Therefore last seen theory and evidence of PW 11 was disbelieved. **[Vijay Shankar v. State of Haryana, 2015 (8) SCALE 517]**

304-A Indian Penal Code

Brief facts which led to the filing of this appeal are as under:- The deceased was working as a maid for more than five years in the house of the accused. She died on 15.4.2005 due to electric shock allegedly sustained by her while working on washing machine in the house of the accused. Initially, the case was registered as "unnatural death" u/s 174 Cr.P.C, but after investigation 'refer report' was filed, stating that it was "accidental death". The Electric Inspector reported that although body of the washing machine was eleven years old but when the insulation value was taken, it was found that there is no possibility of current leakage in the washing machine. It was also reported that by mistake deceased might have tried to turn on and off the switch with wet hands and at that time she might have come into contact with the live portion behind the plug and died due to electric shock. As per the certificate issued from thr Hospital, the accused immediately rushed to the hospital to save the life of the deceased and the maid was declared dead by the Doctor. Considering the materials on record, no offence under Section 304A IPC is made out. **[Rajan Versus Joseph & Ors. AIR 2015 SC 2359 (Criminal Appeal No. 582 Of 2015)]**

S. 304-B-Dowry Death Case – Appreciation of Evidence – Two documents and a letter were produced along with the bail application – Such document and letter were not recovered during investigation. The father of the deceased (PW-1) had denied those letter and documents to be in the handwriting of the deceased.

The accused did not take any steps to send the documents to hand writing expert for obtaining the opinion of the hand writing expert by summoning the admitted writings of deceased. If the investigating officer had omitted to do the investigation regarding the documents produced by the accused in the court, the accused could have taken steps to prove the documents to substantiate their defence. Having not done so, the accused cannot turn round and contend that there were lapses on the part of the investigation which vitally affect the prosecution case. [**V.K. Mishra v. State of Uttarakhand, 2015(8)**

SCALE 270]

Section 304-B– Dowery Death – Death Due to Burn injuries inside her matrimonial home within two years of her marriage – Physical assault on her before she died – She was also tied-up with iron wire so as to make her immobile and thereafter she was set on fire. Prosecution case was that Within 6 months of marriage, the in-laws of the deceased started torturing her and making dowry demands. The deceased was also threatened to be assaulted and killed and she was told that her husband would marry somebody else. The deceased also filed a complaint against accused persons under Sections 498-A, 494 of IPC and under Sections 3 and 4 of Dowry Prohibition Act. On receiving the news of his sister's death, the brother went to her matrimonial home, where he found her sister's body with burn injuries. House was deserted except that where dead body of the deceased was lying.

The brother of the deceased lodged FIR against 10 persons i.e., the husband of the deceased, mother-in-law of the deceased, father-in-law, two sisters of the husband and their husbands, Sarita Kumari alleged second wife of the husband of the deceased, Father of Sarita Kumari and Binda Rai close relation of Sarita Kumari.

The prosecution did not examine following witnesses-

1. The parents of the deceased.
2. The doctor, who conducted the post mortem and
3. The investigating officer was also not examined.

During trial, the mother-in-law of the deceased died, so case was abated against her. The trial court convicted all remaining 9 accused, but in appeal High Court acquitted all the 9 accused.

In appeal Supreme Court held that-

1. The deceased died due to burn injuries, within two years of marriage.
2. Demand of dowry was proved by the brother of the deceased (PW-5), further the complaint under Sections 498A, 494 of IPC and under Sections 3 and 4 of Dowry Prohibition Act, goes on to further indicate that dowry related cruelty was committed against the deceased.
3. A letter written by the deceased to PW-5 was also produced and proved which once again proved demands of dowry and cruelty committed in relation to those demands.
4. When PW-5 reached at the house on the day of the incident, the house was deserted except that where his sister's dead body was lying, This was extremely incriminating circumstance, as in normal course the dead body would not have been abandoned like this.

5. Further, there were ante mortem injuries found on the body of the deceased which show that there was some physical assault on her before she died.
6. The hands and legs of the deceased were tied with an iron wire even after death. These facts show that the deceased was not only assaulted which caused her three ribs to fracture, but she was also tied up with iron wire so as to make her immobile and thereafter she was set on fire.
7. Post mortem report has revealed the physical assault on her just before her death.

Hon'ble the Apex Court in these circumstances held that burden of proof must shift on the accused persons to explain the death of the deceased.

The defence had made a cursory statement that the deceased caught fire from stove while cooking food. There is no explanation as to why the deceased was not taken to hospital or why was the dead body left unattended to in the house. The conduct of the accused persons was highly un-natural and suspicious and non-explanation of same means they have not discharged their burden of proof.

Therefore husband and father-in-law of the deceased were convicted. Remaining 7 accused either were not members of family or at the time of incident were not living in the house with the deceased so they were acquitted of the charge. [**Basisth Narayan Yadav v. Kailash Rai and others, 2015(7)SCALE 454]**

Section 306

Prosecution case was that the deceased aged 19 years had teased daughter of one of the accused/respondent and he was assaulted at the spot and thereafter accused brought him to his house and subsequently he was found hanging.

The Trial Court convicted the accused/appellants to undergo R.I. for a period of 3 years each with a fine of Rs. 3000/- each. On appeal High Court affirmed the conviction, but reduced the sentence of imprisonment to the period already undergone, a period of 4 months and 20 days.

Against the order of the High Court, appeal was preferred. The Supreme Court relied on the following cases-

1. Gopal Singh v. State of Uttrakhand, (2013)7 SCC 545.
2. Shailesh Jaswant Bhai v. State of Gujarat, (2006)2 SCC 359.
3. State of M.P. v. Baboo Lal, (2014)9 SCC 281.
4. State of M.P. v. Surendra Singh, (2015)1 SCC 222 and

5. State of Punjab v. Baba Singh (2015) 3 SCC 441.

Relying on above mentioned cases Supreme Court observed that-

> "A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective."

The Supreme Court allowed the appeal and set aside the order of the High Court of conviction and order of sentence by the trial judge was restored. [**Raj Bala v. State of Haryana and others, 2015(9) SCALE 25]**

Section 306, 498-A, and 114 – Abetment of suicide – Matrimonial cruelty – Relying on Ramesh Kumar v. State of Chattisgarh, (1998)9 SCC 15 it was held that section 498A and 306 I.P.C. are independent and constitute different offences. Merely because on accused has been held liable to be punished under Section 498-A I.P.C., it does not mean that on the same evidence, he must also and necessarily be held guilty of having of having abetted the commission of suicide by the woman concerned under 306 I.P.C.

Here in this case, the deceased was regularly taunted mentally and physically harassed. Neighbours of accused deposed before the trial court that

they had witnessed heated exchanges between the deceased and accused. However, deceased in her dying declaration had clearly stated that she had consumed the poisonous tablets by mistake. The in laws of the deceased had taken the deceased to the hospital for treatment, but she could not be saved.

In these circumstances the conviction of the accused under Section 498-A was held proper but connection and sentence under Section 306 read with Section 114 I.P.C. set aside. **[Bhanuben & other v. State of Gujrat, 2015(9) SCALE 716]**

Section 363, 366 & 376 – Juvenile Justice (Care and Protection of Children) – Age of prosecutrix – Determination of – According to prosecution, prosecutrix was going to school when the respondent/accused pulled her inside the car and forced her to smell something, and then she was taken to some unknown place. Trial Court convicted accused/respondent u/s 363, 366 and 376 I.P.C. On appeal High Court set aside judgment of conviction solely on the ground that the prosecution had failed to prove the fact that the prosecutrix was less than 16 years of age at the time of incident.

So, in the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident. The prosecution in support of their case adduced two certificates, which were the birth certificate (Ext- P-5) in which the date of birth of the prosecutrix was shown as 27.08.1987, another Certificate was the middle school certificate the date of birth of the prosecutrix was shown as 29.08.1987.

Hon'ble the Apex Court relying on **Mahadeo v. State of Maharashtra and Anr, (2013)14 SCC 637** held that-

> "In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the Trial Court was correct in relying on the documents."

Therefore the order of the High Court relying on ossification test setaside and the judgment and conviction of the Trial Court restored. [**State of M.P. v. Anoop Singh, 2015(7)SCALE 445]**

Section 363, 366A and 376/34 – Gang Rape after Kidnapping – Age of prosecutrix – Ossification Test – Evidentiary value of radiological examination.

The prosecution story was that the prosecutrix was below 16 years of age. The accused/appellant No. 1, who was the first cousin of father of prosecutrix, in the absence of her parents at home had asked her to go with him for harvesting wheat crop, and accordingly she accompanied him to the residence of accused appellant No.2 who was maternal uncle of the appellant No. 1. Where she was sexually assaulted first by appellant No. 1 and thereafter by appellant No. 2. Then both the appellants were sent for trial for the offences punishable under Section 363, 366A, 376/34 IPC.

The radiologist who had conducted the ossification test, had opined that the age of the prosecutrix might be 16-17 years. The appellant in their defence had taken the plea of consent.

The Trial Judge convicted the accused/appellants for the offences under Section 376(2)(g) and under Section 363 IPC. In appeal the High Court confirmed the judgment of conviction and order of sentence passed by the Trial Court.

In appeal before the Hon'ble Supreme Court the appellants challenged the judgment of the Trial Court as well as of High Court alleging that the prosecutrix was the consenting party, in ossification test report her age was shown between 16-17 years, but the evidence in that regard was not considered properly.

On the perusal of the record it was found-

(1) That the prosecutrix had deposed that at the time of the incident she was about 14 years of age.
(2) That the father of the prosecutrix had also supported the statement of the prosecutrix.
(3) That the father of the prosecutrix had produced the school certificate which was proved by the Head Master of the concerned school.
(4) That there was no contradiction in the testimony of the prosecutrix, her father and in the testimony of the Head Master of the concerned School, despite the roving cross-examination.

In regard to evidentiary value of the ossification test, the Hon'ble Apex

Court in **Raj Nath v. State of Assam, (2001)5 SCC 714** observed as follows-

> "The statement of the doctor is no more than an opinion, the court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform."

In para 7 it was observed-

> In this regard, we may, with profit, refer to the decision in **Vishnu alias Undrya vs. State of Maharashtra, (2006)1 SCC 283,** wherein a contention was raised that the age of a prosecutrix by conducting ossification test was scientifically proved, and that it deserved acceptance. The court rejected the said submission by stating that:-
>
> > "We are unable to accept this contention for the reasons that the expert medical evidence is not binding on the ocular evidence. The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact."

Similar view has been expressed in Arjun Singh v. State of Himachal Pradesh, (2009) 4 SCC 18.

Therefore in the light of the law laid down in above cases, and the unblemished oral evidence. Hon'ble Apex Court confirmed the findings of the court below holding that prosecutrix was below 16 years of age, so the defence of consent is absolutely irrelevant and totally meaningless.

So in the light of above discussion the findings recorded by the Trial Court as well as by the High Court were confirmed. Accordingly the appeal was dismissed. [**Parhlad v. State of Haryana, 2015(8) SCALE 436]**

Section 363, 366 & 376 – Juvenile Justice (Care and Protection of Children) – Age of prosecutrix – Determination of – According to prosecution, prosecutrix was going to school when the respondent/accused pulled her inside the car and forced her to smell something, and then she was taken to some unknown place. Trial Court convicted accused/respondent u/s 363, 366 and 376 I.P.C. On appeal High Court set aside judgment of conviction solely on the ground that the prosecution had failed to prove the fact that the prosecutrix was less than 16 years of age at the time of incident.

So, in the present case, the central question is whether the prosecutrix was below 16 years of age at the time of the incident. The prosecution in support of their case adduced two certificates, which were the birth certificate (Ext- P-5) in which the date of birth of the prosecutrix was shown as 27.08.1987, another Certificate was the middle school certificate the date of birth of the prosecutrix was shown as 29.08.1987.

Hon'ble the Apex Court relying on Mahadeo v. State of Maharashtra and Anr, (2013)14 SCC 637 held that-

"In the present case, we have before us two documents which support the case of the prosecutrix that she was below 16 years of age at the time the incident took place. These documents can be used for ascertaining the age of the prosecutrix as per Rule 12(3)(b). The difference of two days in the dates, in our considered view, is immaterial and just on this minor discrepancy, the evidence in the form of Exts. P-5 and P-6 cannot be discarded. Therefore, the Trial Court was correct in relying on the documents."

Therefore the order of the High Court relying on ossification test setaside and the judgment and conviction of the Trial Court restored. [**State of M.P. v. Anoop Singh, 2015(7)SCALE 445]**

Section 364-A – Constitutional validity of Section 364-A prescribing sentence of death a life imprisonment-

Held – Given the background, in which the law was enacted and the concern shown by the parliament for safety and security of citizens, and the unity, sovereignty and integrity of the country punishment prescribed for offence under Section 364-A cannot be described as so outrageously disproportionate as to be declared unconstitutional. Just because the sentence of death is a possible punishment it cannot make it per-se inhuman or barbaric. So, Section 364-A prescribing sentence of death cannot be stuck down as unconstitutional. [**Vikram Singh @Vicky & another v. Union of India,**

2015(9) SCALE 183]

Section 375 and 376 of Indian Penal Code – Consensual Intercourse – Age of Prosecutrix – The prosecution case was that the prosecutrix was sleeping in the night with her in other in the corridor of her house. At about 4.30 a.m. the accused entered the house took the prosecutrix to the adjoining room at the point of knife, bolted the door and committed rape on her. After committing the offence accused and prosecutrix remained in the room. In the morning when mother and sister of the prosecutrix came to that room in search of prosecutrix, and when the door wasa opened, accused respondent fled away.

The Trial Court convicted the accused under Section 376 I.P.C. while holding that the prosecutrix was less than 16 years of age. In appeal High Court set aside the judgment of the Trial Court. Hence state preferred appeal before the Supreme Court.

The prove date of birth, school certificate was produced but that could not be proved. PW-8 was the doctor who had medically examined the prosecutrix opined that the prosecutrix could not have attained the age of 14 years. That was simply an opinion. X-ray was done but X-ray report was not proved as the Doctor who conducted X-ray and prepared X-ray report was not examined.

Mother of the prosecutrix failed to tell exact date of birth of the prosecutrix.

The Suprme Court is Birad Mal Singhavi v. Anand Purohit (1998) Supp. SCC 604 has held-

> "The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid candidates were mentioned in the school record was examined."

Further in the case of Sunil v. State of Haryana, (2010) 1 SCC 742 it was held that –

> "In a criminal case, the conviction of the appellant cannot be based on an approximate date which is not supported by any record. It would be quite unsafe to base conviction on an approximate date."

In the light of law laid down in above mentioned case and the facts and circumstances of the case Supreme Court held that the prosecution has bitterly failed to prove beyond reasonable doubt that the girl was less than 16 years of age at the time of the incident.

Therefore it was held that the prosecutrix was more than 16 years of age and thus was able to give their consent. Hence question of rape does not arise. Hence High Court judgment was confined. [**State of M.P. v. Munna @ Shambhoo Nath, 2015(9) SCALE 815]**

Compromise or Settlement between parties – Indian Penal Code – Section 376(2)(f) read with 511 and Section 354 - Effect -

In a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman, which is her own temple. There cannot be a compromise or settlement as it would be against her honour which matters the most. [**State of M.P v. Madanlal, 2015(7) SCALE 261]**

Section 376(2)(f) read with 511 and Section 354 – Compromise or Settlement between parties – Effect -

In Baldev Singh v. State of Punjab, (2011) 13 SCC 705 - The Courts below awarded a sentence of 10 years, but taking note of the facts that the occurrence was 14 years old, the appellants therein had undergone about 3½ years of imprisonment, the prosecutrix and appellants married (not to each other) and entered into a compromise, the Supreme Court, reduced the sentence to the period already undergone, but enhanced the fine from Rs. 1000 to Rs. 50,000.

In Ravindra v. State of Madhya Pradesh, (2015) 4 SCC 491 - as the incident is 20 years old and the fact that the parties are married and have entered into a compromise, are the adequate and special reasons. Therefore, although the conviction of the appellant was upheld but the sentence was reduced for a period already undergone.

Placing reliance on three Judge-Bench decision in Shimbhu and another v. State of Haryana, (2014)13 SCC 318 – it was held that the judgments in Baldev Singh v. State of Punjab and Ravindra v. State of M.P, have to be confined to the facts of the said cases and are not to be regarded as binding precedents.

Relying on the law laid down in Shimbhu & another v. State of

Haryana, (2014)13SCC 318, Supreme Court further held that - in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman, which is her own temple. There cannot be a compromise or settlement as it would be against her honour which matters the most. [**State of M.P v. Madanlal, 2015(7) SCALE 261]**

Sections 391 & 396 – Essential ingredients.

Section 391,IPC defines dacoity to be an offence, if five or more persons conjointly commit or attempt to commit a robbery or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission of attempt, amount to five or more. In terms of section 391,IPC in such an eventuality every person so committing, attempting or aiding is said to commit dacoity. Section 396 which comprehends dacoity with murder is a contingency where one of the five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity. In such a case, every one of those persons shall be punished with death or imprisonment for life or rigorous imprisonment for a term which may extend to 10 years and would also be liable to pay fine.

A combined reading of section 391 and 396, IPC would bring to the fore, the essential pre-requisite of joint participation of five or more persons in the commission of the offence of dacoity and if in the course thereof any one of them commits murder, all members of the assembly, would be guilty of dacoity with murder and would be liable to be punished as enjoined thereby.

Axiomatically, thus, the indispensable pre condition to perceive an offence of dacoity with murder is a participating assembly of five or more persons for the commission of the offence. In absence of such an assembly, no such offence is made out rendering the conviction therefor of any person in isolation for murder, even if proved, impermissible in law. To convict such a person of the offence only of murder, if proved otherwise, there ought to be specific charge to that effect. [**Manmeet Singh Alias Goldie Vs. State of Punjab (2015) 3 SCC (Cri) 44 ; (2015) 7 SCC 167 (Criminal Appeal No 505 of 2015)]**

Sec. 493

Setting aside of the ex-parte decree of divorce - no any break in the matrimonial relationship - as if the matrimonial relationship had never ceased

- charge against “h” under section 493 of the indian penal - not made out.

The wife “W” and the husband “H” got married on 14.08.1991. Soon thereafter, “H” preferred a petition seeking divorce from “W”. Having received summons in the above-mentioned case, “W” entered appearance before the Court, at Ropar, on 08.10.1992. On the following day, i.e., on 09.10.1992, “H” withdrew the petition filed by him under Section 13 of the Hindu Marriage Act, 1955.

The “H” filed a second divorce petition on 30.04.1993, under Section 13 of the Hindu Marriage Act, 1955, on the same factual premise and grounds (as the earlier petition), before the Court, at Chandigarh. Proceedings were conducted in the second divorce petition, in the absence of “W”, and an ex-parte decree of divorce was granted to “H”, on 08.01.1994. It was the case of “W” before this Court, that “H” did not inform her, that the matrimonial ties between the parties had come to an end, by the decree of divorce dated 08.01.1994. And under the impression, that the marriage was subsisting, he continued his conjugal relationship with “W”, as her husband, by deception.

It was also the case of “W”, that on 23.06.1994 “H” married another lady “L”. It was, thereupon, that W became aware (on 23.06.1994 i.e., on the occasion of his marriage with “L”) about the fact, that”H” had been granted an ex-parte decree of divorce on 08.01.1994. Within six days, of her coming to know, about the above ex-parte decree of divorce, the “W” preferred an application, for setting aside the said ex-parte decree, on 29.06.1994. The same was allowed on 19.02.1996. In sum and substance, therefore, the matrimonial ties between the “W” and “H” came to be restored, as if the marital relationship had never ceased.

Based on the fact, that “H” had continued the sexual relationship with “W”, for the period from 08.01.1994 (when the ex-parte decree of divorce was passed) till he married “L” on 23.06.1994, “W” preferred a complaint before the Judicial

A perusal of Section 493 of the Indian Penal Code reveals, that to satisfy the ingredients thereof, the man concerned should have deceived the woman, to believe the existence of matrimonial ties with her. And based on the aforesaid belief, the man should have cohabited with her. The question to be determined on the basis of the factual position, as has been noticed hereinabove, is whether in the facts and circumstances of this case, it is possible to accept such deceit, at the hands of “H”, even if it is accepted for

the sake of arguments, that cohabitation continued between the parties between 08.01.1994 till 23.06.1994, i.e., from the date when “H” was granted an ex-parte decree of divorce, till the date when “H” married “L”. It is held, that with the setting aside of the ex-parte decree of divorce dated 08.01.1994 (on 19.02.1996), it cannot be accepted, that there was any break in the matrimonial relationship between the parties. The matrimonial ties between “W” and “H” were restored, with the setting aside of the ex-parte decree of divorce, as if the matrimonial relationship had never ceased. Therefore the charge against “H” is not made out, under Section 493 of the Indian Penal, because “H” could not have deceived the appellant of the existence of a "lawful marriage", when a lawful marriage indeed existed between the parties, during the period under reference.[Ravinder Kaur Versus Anil Kumar AIR 2015 SC 2447 (Criminal Appeal No.457 Of 2008)]

Section 498-A and 304-B Indian Penal Code

It is imperative to note that both these sections (Section 304B IPC and Section 113B of the Evidence Act)set out a common point of reference for establishing guilt of the accused person under Section 304B, which is "the woman must have been 'soon before her death' subjected to cruelty or harassment 'for or in connection with the demand of dowry'".

Ordinarily, offences against married woman are being committed within the four corners of a house and normally direct evidence regarding cruelty or harassment on the woman by her husband or relatives of the husband is not available. But when Prosecution witness has specifically stated that the demand of dowry by the accused was informed to the Panchayatdars and that Panchayat was taken to the village Badiala, the alleged ill-treatment or cruelty of victim by her husband or relatives could have been proved by examination of the Panchayatdars. The fact that deceased was subjected to harassment or cruelty in connection with demand of dowry is not proved by the prosecution. It is also pertinent to note that both the courts below have acquitted all the accused for the offence punishable under Section 498A IPC.

Insofar as the occurrence on 14.08.1996, PW1-Sukhdev Singh, father of the deceased, and PW3-Manga Singh, brother of the deceased,have stated that they saw the accused dragging victim Karamjit Kaur towards a room inside the house and that Karamjit Kaur was trembling and on seeing PWs 1 and 3, all the four accused persons ran away and after taking last breath Karamjit Kaur expired. Subsequent conduct of PWs 1 and 3 raises serious doubts about their presence in the house of the accused at the time of occurrence and witnessing accused dragging deceased-Karamjit Kaur. That

PWs 1 and 3 have not raised any alarm nor tried to chase the accused and that PW1 did not inform anyone in the village of the accused looks quite unnatural. [**Major Singh & Anr. Versus State Of Punjab AIR 2015 SC 2081(Criminal Appeal No. 1145/2012)]**

Section 498-A, Indian Penal Code- Illicit relationship - even if proven - difficult to hold that the mental cruelty – unless prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide

Where the factum of divorce has not been believed but the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. There is some evidence about the illicit relationship and even if the same is proven, The Hon'ble Supreme Court is of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. Where the accused may have been involved in an illicit relationship, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498A which includes cruelty to drive a woman to commit suicide, would not be attracted. [**Ghusabhai Raisangbhai Chorasiya & Ors. Versus State of Gujarat AIR 2015 SC 2670]**

Indian Succession Act

Section 63 – Will's execution, attestation and its proof. Signature of testator on the will found to be genuine by two handwriting experts. Attesting witness also prove he will. The fact that wife and daughter of the testator had all relevant time supported the legatee in his initiative to obtain the succession certificate is also formidable factor in his favour and it also proves the genuineness of the will. Will stands proved. Para 14 is quoted below:

"14. *On a perusal of the evidence of A W 3, Mohan Lal and A W 4, Mangi Lal, it is apparent that these two witnesses have been able to satisfactorily prove the execution of the Will dated 15.11.1978 and the attestation thereof by two witnesses, as required in law. As adverted to hereinabove, the*

*signature of the testator Kanhaiya Lal, on these documents has been endorsed by both the handwriting experts. The report of the Forensic Science Laboratory also corroborates this finding. The view expressed by Shri Achyut Narayan, NAW 1 that though the signatures are genuine, those had been obtained on blank papers, which later on were converted into the Will, in the face of the overwhelming testimony of AW 3, Mohan Lal and A W 4, Mangi Lal, had been rightly rejected by the High Court. The recitals of the Will, Exh. 2, also provide sufficient justification for the bequest in favour of Respondent No.1, Mahaveer Prasad. The fact that wife and daughter of the testator had, at all relevant time, supported the Respondent No.1 in his initiatives to obtain the succession certificate is also a formidable factor in his favour as well as in endorsement of the genuineness of the Will, 15.11.1978. Noticeably though, the Will dated 23.12.1974 had been registered, no steps had been taken by the non-applicants to obtain the probate thereof. It is not unlikely, that the testator, out of, some disappointment and reservations qua the adopted son, Respondent No. I had in the rush of moment and as advised by the persons interested, as recited in the Will dated 15.11.1978, did momentarily decide to disinherit the only son of the family. However, on an equanimous re-consideration and following in-depth and dispassionate cogitation, he eventually decided again to bequeath all his properties to him. The approval of the mother and the sister to this bequest is a strong indicator to this effect. We are thus of the view, that in the above factual background, the dispensation made by the testator in favour of the Respondent No. 1 cannot be repudiated to be in defiance of logic or unfair vis-a-vis the other members of the family. We do not find as well, any vitiating or suspicious circumstance invalidating the bequest." [***Shakuntala Bai v. Mahavir Prasad, AIR 2015 SC 2769***]**

Juvenile Justice (Care and Protection of Children) Act

Section 7-A, Section 15 of the Juvenile Justice Act, and Rule 98 of Juvenile Justice Rules 2007

The petitioner/applicant was charged under Section 302 of the Indian Penal Code 1860 for committing murder of Nathi Lal on 21-12-76. The petitioner/applicant pleaded juvenility before the Trial Court in his statement recorded under Section 313 of the Code of Criminal Procedure 1973, along with other grounds in his defence, but could not produce the transfer or School Certificate during prosecution. Thereafter he was sentenced to life imprisonment for murder. Special leave petition filed by the

petitioner/applicant before Supreme Court was also dismissed on 20-08-2004. The review petition was also dismissed on 13-10-2004.

The petitioner/applicant had served the sentence for more than 10 years and was still in Jail.

Subsequently the petitioner/applicant moved an application No. 259 of 2013 before the Juvenile Justice Board for declaring him Juvenile on the date of incident. The Juvenile Justice Board vide its order dated 16-11-2013 held that the age of the applicant/petitioner at the date of incident was 15 years 11 months, and 26 days only, and thereby he was below 18 years at the time of incident, accordingly the Juvenile Justice Board declared him as a juvenile offender.

The Trial Court and the High Court rejected the applicant/petitioner's prayer for release. Then petitioner went to the Supreme Court.

The Hon'ble the Apex Court relying on the Law laid down in Upendra Pradhan v. State of Orissa, (2015)5 SCALE 634, held that the plea of Juvenility under Section 7(A) of the Juvenile Justice (Care and Protection) Act 2000, can be raised before any Court and at any point of time.

Relying on the law laid down in Ajay Kumar v. State of M.P. (2010)15 SCC 83, Hon'ble the Apex Court held that, the petitioner has undergone more than 10 years detention in Jail. Since the petitioner was a Juvenile on the date of incident, and has already undergone more that the maximum period of three years detention as provided for under Section 15 of the Juvenile Justice Act, by following the provisions of Rule 98 of Juvenile Justice Rules 2007 read with Section 15 of the Juvenile Justice Act, the petitioner was directed to be released forthwith.

Accordingly the appeal was allowed, and the judgment and order passed by the Trial Court and High Court were set aside. [**Ram Narain v. State of U.P., 2015 (8) SCALE 562]**

Section 31 & 33 – Right of missing children

When a complaint with regard to any missing children was made in a police station, the same should be reduced into an FIR and appropriate steps should be taken to see that follow up investigation was taken up immediately. [**Bachpan Bachao Andolan v. Union of India & others, 2015(9) SCALE 669]**

Land Acquisition Act

Land Acquisition – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013, Section 24 - Neither compensation of the land taken nor compensation paid for more than 5 years after passing of the award. Section 24 (2) is attracted and acquisition lapses. [**Govt. of SCT of Delhi v. Jagjeet Singh, AIR 2015 SC 2683]**

Land Acquisition right to fair compensation and transparency in land acquisition RR Act 2013, Section 24 (2) – lapse of acquisition.

If award is passed more than 5 years before enforcement of 2013 Act and neither possession is taken nor compensation paid, acquisition proceedings lapse. Mere fact that possession could not be taken as there was stay order of Court will not make any difference. [**Karnail Kaur v. State of Punjab, AIR 2015 SC 2041]**

Motor Vehicles Act

Motor Vehicles Act - If a motor vehicle which is purchased with loan, is involved in an accident and at the time of accident it is not insured, the liability to pay compensation falls only on the owner of the vehicle and not the financer / creditor bank as it is not the liability of the financer to get the insurance policy renewed on behalf of the owner of the vehicle. The financer / creditor bank will not be liable to pay compensation. [**Central Bank of India v. Jasbir Singh AIR 2015 SC 2070]**

Ss. 166 and 168- Determination of multiplier-

Victim aged 30 years. Multiplier to be with regard to age of deceased or age of dependants. Reiterated, has to be with regard to age of deceased. Thus, High Court erred in following **Santosh Devi, (2002) 6 SCC 421**, in taking 13 as multiplier. Following three- Judge Bench decision in **Reshma Kumari, (2013) 9 SCC 65**, reiterated that multiplier is to be used with reference to age of deceased and in present case age of deceased between 26 to 30 yrs, appropriate multiplier is 17.

Held-

In the absence of any statutory and a straight jacket formula, there are bound to be grey areas despite several attempts made by this Court to lay down the

guidelines. Compensation would basically depend on the evidence available in a case and the formulas shown by the courts are only guidelines for the computation of the compensation. That precisely is the reason the courts lodge a caveat stating "ordinarily", "normally", "exceptional circumstances", etc., while suggesting the formula.

The deduction ordinarily in the case of a bachelor at 50% was approved recently by a three-Judge Bench decision in **Reshma Kumari, (2013) 9 SCC 65**, holding that the standard fixed in **Sarla Verma, (2009) 6 SCC 121** on the aspect of deduction for personal and living expenses "must ordinarily be followed unless a case for departure in the circumstances noted in the preceding paragraph is made out". In the present case, there are no such exceptional circumstances or compelling reasons for deviation on the basis of evidence and therefore deduction of 50% towards the personal and living expenses is not to be disturbed. As for as future prospects are concerned, in **Rajesh, (2013) 9 SCC 54**, a three-Judge Bench of this Court held that in case of self-employed persons also, if the deceased victim is below 40 years, there must be addition of 50% to the actual income of the deceased while computing future prospects. The High Court following **Santosh Devi, (2012) 6 SCC 421,** has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for sometime; but that has been given a quietus by the three-judge Bench decision in **Reshma Kumari, (2013) 9 SCC 65.** The multiplier is to be used with reference to the age of the deceased. [**Munna Lal Jain vs. Vipan Kumar Sharma, (2015) 6 SCC 347]**

Sections 168, 149 – composite negligence – claimant can sue either both or any one of them as liability is joint and several. Even when ultimate order is passed directing both the joint tortfeasors to pay compensation, claimant can recover entire compensation from one, who will be entitled to recover the proportionate amount from the other in same execution proceedings.

However, if only one joint tortfeasor is impleaded as opposite party, it would not be appropriate for the court / tribunal to determine the extent of composite negligence of the drivers of the two vehicles involved in the accident. In such situation afterwards the impleaded driver / owner of one of the two offending vehicles may sue the driver / owner of the other vehicle involved in the accident in independent proceedings (para 18) [**Khenyei v. New India Assurance Co. Ltd., AIR 2015 SC 2261 (3 judges)]**

Narcotic Drugs and Psychotropic Substances Act

(i) Section 35 of the NDPS Act. - conscious possession - mental state of possession is necessary – it gives statutory recognition to culpable mental state - Once possession is established - presume that the accused had culpable mental state.

Coming to the context of Section 18 of the NDPS Act, it would have a reference to the concept of conscious possession. The legislature while enacting the said law was absolutely aware of the said element and that the word "possession" refers to a mental state as is noticeable from the language employed in Section 35 of the NDPS Act.

On a perusal of the Section 35, it is plain as day that it includes knowledge of a fact. That apart, Section 35 raises a presumption as to knowledge and culpable mental state from the possession of illicit articles. The expression "possess or possessed" is often used in connection with statutory offences of being in possession of prohibited drugs and contraband substances. Conscious or mental state of possession is necessary and that is the reason for enacting Section 35 of the NDPS Act.

It creates a legal fiction and presumes the person in possession of illicit articles to have committed the offence in case he fails to account for the possession satisfactorily. Possession is a mental state and Section 35 of the Act gives statutory recognition to culpable mental state. It includes knowledge of fact. The possession, therefore, has to be understood in the context thereof and when tested on this anvil, we find that the appellants have not been able to satisfactorily account for the possession of opium. Once possession is established the court can presume that the accused had culpable mental state and have committed the offence. [**Mohan Lal Versus State of Rajasthan AIR 2015 SC 2098 (Criminal Appeal No. 1393 Of 2010)]**

(ii) Offence under NDPS Act is a continuing offence

It is a continuing offence. We have already opined that on the date the NDPS Act came into force, the accused-appellant was still in possession of the contraband article. Thus, it was possession in continuum and hence, the principle with regard to continuing offence gets attracted. [**Mohan Lal Versus State of Rajasthan AIR 2015 SC 2098 (Criminal Appeal No. 1393 Of 2010)]**

Negotiable Instruments Act

Section 138 of the Negotiable Instruments Act, 1881 – Scope – only drawer would be liable – even if he issued cheque from personal account for the liability of company.

Emphasising the law as laid down in P.J. Agro Tech Limited and Ors. Vs. Water Base Limited,[(2010) 12 SCC 146 ; AIR 2010 SC 2596], where the scope of Section 138 was dealt, it is held that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque. About the liability under Section 138 of the NI Act, where the cheque drawn by the employee of the appellant company on his personal account, even if it be for discharging dues of the appellant-company and its Directors, the appellant-company and its Directors cannot be made liable under Section 138. Thus, we observe that in the abovementioned case, the personal liability was upheld and the Company and its Directors were absolved of the liability.

In the present case, it is an admitted fact that the drawer of the cheque was the respondent, who had drawn the cheque, bearing No.075073 for Rs.74,200/- on a bank account maintained by him towards the refund of the booking amount. Therefore, he was the drawer of the cheque. Going by the strict interpretation of the provision the drawer which in the present case is the respondent is liable under Section 138 of the N.I. Act. [**Mainuddin Abdul Sattar Shaikh Versus Vijay D. Salvi AIR 2015 SC 2579 (Criminal Appeal No. 1472 Of 2009)]**

Section 139 of the Negotiable Instruments Act, 1881 – complainant discharge its burden - then burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability

The cheque as well as the signature has been accepted by the accused respondent, the presumption under Section 139 would operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. The accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is

unworthy of credit, apart from being unsupported by any evidence.

Further, the High Court relied heavily on the printed date on the cheque. However, we are of the view that by itself, in absence of any other evidence, cannot be conclusive of the fact that the cheque was issued in 1999. The date of the cheque was as such 20/05/2006. The accused in her evidence brought out nothing to prove the debt of 1999 nor disprove the loan taken in 2006. [**T. Vasanthakumar Versus Vijayakumari AIR 2015 SC 5540 (Criminal Appeal No.728 Of 2015)]**

Section 141 of the Negotiable Instruments Act, 1881 - does not lay down any requirement - the directors must individually be issued separate notices - if offence under Section 138 is commited by a Company

Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such Company who was in charge of and responsible to that Company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a Company would be run by living persons who are in charge of its affairs and who guide the actions of that Company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the Company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such Company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the 'drawer' Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate stage in the trial and certainly not at the stage of notice under Section 138. [**Kirshna Texport & Capital Markets Ltd. Versus Ila A. Agrawal & Ors. Criminal AIR 2015 SC 2091 (Appeal No.1220 Of 2009)]**

Section 145(2) – Jurisdiction

On a perusal of the conclusions drawn in paragraph 22, in Dashrath Rupsingh Rathod vs. State of Maharashtra and another, (2014) 9 SCC 129, on 01.08.2014, The complaint will be preserved at the place they were filed, only when "post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the

Negotiable Instruments Act, 1881". In order to further explain its intent, the judgment clarifies, that merely leading of evidence at the pre-summoning stage, either by way of affidavit or by oral statement will not exclude applicability of the judgment in Dashrath Rupsingh Rathod's case (supra). The above judgment, thereby seeks to confirm the position, that only when recording of evidence at the post-summoning stage had commenced, before 01.08.2014 (the date on which the judgment in Dashrath Rupsingh Rathod's case was pronounced), such proceedings would not be dislodged, the declaration of law, on the subject of jurisdiction, in Dashrath Rupsingh Rathod's case (supra). [**Ultra Tech Cement Ltd Versus Rakesh Kumar Singh & Anr AIR 2015 SC 2512 9Criminal Appeal No.717 Of 2015)]**

Panchayat Laws

Panchayats – Tamil Nadu Panchayat Act 1994 – election.

If a candidate at the time of his nomination does not disclose his criminal antecedents (pendency or decision of criminal cases against him) especially pertaining to heinous and serious offences or offences relating to corruption or moral turpitude it amounts to corrupt practice. [**Krishna Moorthy v. Sivakumar, AIR 2015 SC 1921]**

Prevention of Corruption Act

Section 7 - Trap witness is an interested witness - requires corroboration

Relying on Bihar V. Basawan Singh (CB) (1959) SCR 195 that a trap witness is an interested witness and his testimony, to be accepted and relied upon requires corroboration and the corroboration would depend upon the facts and circumstances, nature of the crime and the character of the trap witness. [**Vinod Kumar Versus State Of Punjab 2015 (6) Supreme 1]**

Section 7 - mere recovery of the tainted money - not sufficient to record a conviction - unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe.

Relying on T. Subramanian v. The State of Tamil Nadu AIR 2006 SC 836], Madhukar Bhaskarrao Joshi v. State of Maharashtra[(2000) 8 SCC 571], Raj Rajendra Singh Seth v. State of Jharkhand and Anr.[AIR 2008 SC 3217], State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede[(2009)

15 SCC 200], C.M. Girish Babu v. C.B.I., Cochin[AIR 2009 SC 2011], K. S. Panduranga v. State of Karnataka[(2012) 3 SCC 721] and Satvir Singh v. State of Delhi[(2014) 13 SCC 143] held that It is the settled principle of law that mere recovery of the tainted money is not sufficient to record a conviction unless there is evidence that bribe had been demanded or money was paid voluntarily as bribe. In the absence of any evidence of demand and acceptance of the amount as illegal gratification, recovery would not alone be a ground to convict the accused.It further held that shadow witnes giving details of demand, trap, acceptance and recovery could be relied upon. [**Vinod Kumar Versus State Of Punjab 2015 (6) Supreme 1]**

Section 7– essential - demand and voluntary acceptance of illegal gratification - sine qua non.

The settled principle in law reiterated again as laid down in C.M. Sharma vs. State of Andhra Pradesh [(2010) 15 SCC 1 that once the demand and voluntary acceptance of illegal gratification knowing it to be the bribe are proved by evidence then conviction must follow under Section 7 ibid against the accused. Indeed, these twin requirements are sine qua non for proving the offence under Section 7. **[L. Laxmikanta VS State by Superintendent of Police, Lokayukta (2015) 2 SCC (Cri) 575 ; (2015) 4 SCC 222]**

Section 7 & 13 r/w 13(2) & 19(3) – Invalidity of order of sanction - Effect

When the order of sanction is not valid or legal, the Court should have discharged the accused rather than recording an order of acquittal on the merit of the case. The Trial Court is not competent to take cognizance of the offence in the absence of legal sanction.

Effect of sub-section(3) of Section 19 of the Act - Sub-section(3) has no application to proceedings before the Special Judge, who is free to pass an order discharging the accused, if he is of the opinion that a valid order sanctioning prosecution of the accused had not been produced as required under Section 19(1) of the Act. Sub-section (3), postulates a prohibition against a higher court reversing an order passed by the Special Judge on the ground of any defect, omission or irregularity in the order of sanction.

The trial Court in the absence of legal sanction had acquitted the accused on merits. In appeal the High Court held that since the validity of the sanction order was not questioned at the appropriate stage, the appellant was

not entitled to raise such plea at the conclusion of the trial.

High Court further held that the charges framed against the accused have been proved. Therefore appellant was convicted of the charge framed under Sections 7 and 13(1)(d) read with Section 13(2) of the Act.

In appeal Supreme Court set aside the order of the High Court and held that when the order of sanction is not legal or valid, the Court should discharge the accused, rather than recording an order of acquittal on merits of the case. The trial court is not competent to take cognizance of the offence in the absence of sanction. [**Nanjappa v. State of Karnataka, (2015)8 SCALE 171]**

Prevention of Corruption Act, 1988 – appriciation of evidence – accused not present at the time of trap – not necessarily innocent

Recapitulating the facts leading up to these Appeals, Accused 1 and Accused 2 were, at the time of the perpetrations, employed as officers with Central Excise IX 'E' Range. Accused 1 held the rank of Superintendent, and Accused 2, his subordinate, Inspector of Excise in the same office. The Complainant (PW2 before the Trial Court), a manufacturer of 'camel back rubber slab', received a show cause notice for payment of Excise duty amounting to Rs. 1,01,333/-. PW2 attended an enquiry held before the Assistant Commissioner (PW4) of Central Excise, on 07.20.1996; the notice was recalled following this Enquiry. Thereafter, PW2 received yet another show cause notice, dated 24.05.1996, issued by Accused 1 as its signatory, demanding 'difference amounts' (as recorded by the Trial Court) of Rs. 1,23,193/-. PW2 visited the office of both Accused on 04.06.1996 at 11:30 am, where he met both Accused 1 and Accused 2. Upon questioning the Accused persons about the second notice, PW2 was confronted with a bribe demand from Accused 1 of Rs.1000/- for each Accused whereto Accused 2 concurred. The bribe demanded was to be paid by PW2 to both Accused on the same day, at 4:30 pm. PW2 immediately thereafter went to the office of the Superintendent of Police and reported this illegality, whereupon PW6, the Inspector, prepared a trap. As was planned, PW2 handed over to PW6 currency notes totalling Rs. 2000, in presence of two independent witnesses, PW3 and another. PW6 explained to PW2 the working of the Sodium Carbonate test characteristic of trap cases, and proceeded to smear the notes (M.O.1 currency series) with phenolphthalein powder, before returning them to PW2, who placed them in his shirt pocket. An entrustment mahazar was prepared. PW2 was instructed to signal the trap team upon handing over the notes to the Accused, and PW3 was instructed to accompany him and witness this receipt of the illegal gratification. PW2

went to the office cabin of Accused 1, who was not to be found present there, but on encountering Accused 2, PW2 was told by him that Accused 1 had shortly earlier left the office, to visit his indisposed wife. Accused 2 told PW2 that he had been instructed by Accused 1 to collect the moneys on behalf of them both. PW2 handed over the currency notes to Accused 2, who then handled these with both hands, and placed them in his shirt pocket. PW3 witnessed the transaction, having stood alongside PW2. PW2 walked out of the office and signalled to the trap team, whereupon PW6 entered the office and subjected Accused 2 to the sodium carbonate solution test, which tested affirmative, both hands of Accused 2 having been dipped in the solution, turning it pink. Accused 2 was then directed by PW6 to return the notes, which he did, by first going into Accused 1's office, and, thereafter back to his own desk, where the currency notes had been kept inside his right drawer. The currency notes were then surrendered to PW6. A mahazar was prepared, the incriminating property seized, and two witnesses signed the mahazar. Accused 1 was subsequently arrested.

Analogously applying the facts of this case to the present fact set, we find the conviction of Accused 1 perfectly sustainable. It is an argument a fortiori supportive of Accused 1's conviction herein, since in Shamsudhin, A-2's receipt in A-1's office on behalf of A-1 could conceivably have been repudiated by A-1 on the ground that he himself could have taken receipt of the bribe amount in his own office, being physically present there at the time of payment, and need not have relied on his junior officer to take receipt thereof on his behalf. Contrarily, in the case before us, Accused 1's absence from the office at the time of the trap strengthens, rather than weakens, the claim that his junior officer, Accused 2, was receiving part of the bribe amount as a custodian on his behalf. [**D. Velayutham Vs. State Rep. By Inspector Of Police, Salem Town, Chennai AIR 2015 SC 2506 (Criminal appeal no.787 of 2011)]**

Rent Laws

Landlord – Tenant Matter

West Bengal Premises Tenancy Act of 1997, Sections 6 and 7. The protection granted to the tenant under the Rent Control Act can be availed of by him only if he strictly complies with the statutory provisions.

However, in view of amendment which came into effect on 1.6.2006 the amount of rent was required to be deposited with the Civil Judge and not rent controller. Tenant had deposited the amount before the Rent Controller. The High Court held and Supreme Court agreed that the mistake was bonafide and

not deliberate, hence, it was not proper to strike off the defence. [**Monoj Lal Seal v. Octavious Tea & Industries, AIR 2015 SC 2855]**

Service Law

Service Law- department Enquiry- Criminal proceedings pending- Direction by CVC the pending criminal investigation, departmental enquiry could not commence- Held, stands superseded by law laid down herein.

> The quintessence of the proviso to Section 167(2) of the Cr.P.C. 1973 may be extrapolated to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

Hence, it is directed that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. This will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. Even though previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration the imposition of a limit on the period of suspension (as directed herein) has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a

criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the directions issued above. [**Ajay Kumar Choudhary vs. Union of India, (2015) 7 SCC 291]**

Service matter:

Pay scale of staff of subordinate court, recommendation of Shetty Commission.

For implementation of 6th Pay Commission, pay as revised by Shetty Commission recommendations should be taken as basis and after implementation of 6th Pay Commission the revised pay for the pay scale which staff of subordination court was getting under Shetty Commission Recommendations should be taken as basis. [**All India Judges Association v. Union of India, AIR 2015 SC 2731]**

Constitution of India – Articles 309, 311 – Dismissal order passed by Principal and Secretary of National Institute of Technology against its Registrar. The appointing authority of the Registrar is Board of Governors (BOG). However, action was taken by the Principal and Secretary which was approved / ratified subsequently by BOG, hence, dismissal order will be deemed to be passed by the competent authority i.e. BOG. [**National Institute of Technology v. Panna Lal Chaudhary, AIR 2015 SC 2846]**

Removal from service of Field Supervisor of a Regional Rural Bank- If the document on the basis of which inquiry officer framed charges, were not supplied to the charged officer and he was also not supplied list of documents and witnesses and this is a serious infirmity and it amounts to denial of reasonable opportunity to him. Accordingly order of punishment cannot be sustained. [**Bilaspur Raipu Kshetriya Gramin Bank v. Madan Lal Tandon, *AIR 2015 SC 2876*]**

Services – Annual Confidential Entries – Communication-

Communication of entries in the ACR of a public servant whether he is in Civil, Judicial , Police or any other service, (other than armed forces) has civil consequences, because it may affect his chances for promotion or get other benefits. Hence such non-communication would be arbitrary and as such violative of Article 14 of the Constitution.

So, un-communicated adverse entry should not be taken into account while considering promotion to the higher grade. [**Abhijit Ghos Dastidar v.**

Union of India and others 2015(9) SCALE 39]

Service Promotion – Denial of Promotion based on un-communicated entries of Annual confidential reports (ACRs)-

Appellant was selected through Civil Service Examination 1985 and was allotted Indian Defence Accounts Service. He was promoted as Junior Administrative Officer and was given selection Grade on 14-06-2004 he was posted as Joint Controller of Defence Accounts. On 10-05-2006 a D.P.C. was convened for promotion in the Senior Administrative Grade. The appellant was denied the promotion on the ground of un-communicated annual confidential reports. The appellant filed the application before the Administrative Tribunal challenging the denial of promotion to him. The Tribunal remitted the matter back to respondent authorities for communication of annual confidential reports and to consider case of appellant afresh.

Appellant was communicated the ACRs he submitted his representation (on 29-07-2009) before the respondent authorities. The respondent authorities rejected the representation against downgrading of remarks by Reviewing Authority and upheld the ACRs for the period of 1999-2000, 21-06-2000 to 31-03-2001 and 01-04-2001 to 31-03-2002. Appellant challenged the order rejecting the representation. The tribunal allowed the representation. Writ was filed against this order of the Tribunal. The High Court set aside the order passed by the Tribunal holding that once the entries had been communicated and representation rejected the Tribunal should not have treated the ACRs un-communicated.

Supreme Court (dismissed the appeal and) confirmed the Judgment/order of the High Court. [**Saroj Kumar v. Union of India and others, 2015(9) SCALE 35]**

Specific Relief Act

Specific Relief Act 1963, Section 16 – Urban Land Ceiling Act, Section 22 and 27

Contingent agreement of sale of property was executed. Sale was subjected to permission being obtained under Section 22 and 27 of the ULC Act, the property being converted from industrial zone to residential use and to give vacant possession of the land after setting with the labour. Mill Mazdoor Sabha categorically refused to give their consent to the sale of Mill premises. If any of the condition was not fulfilled the respondents were not bound to

complete the sale and the appellant was only entitled to return of the money with interest @18% per annum from the date of refusal of any of the permission or consent or agreement mentioned above. In the present case Mill Mazdoor Sabha had not given its consent to the proposed sale.

So agreement for sale could not have been performed and had ceased. The appellant held entitled for the refund of amount along with interest @ 18% per annum stipulated therein. **[Nand Kishor Lal Bhai Mehta v. New Era Fabrics Pvt. Ltd., (2015) 7 SCALE 665]**

Will - execution, suspicious circumstances. Defendant filed written statement and did not make any mention of the will which was set up after her death. It's a very strong suspicious circumstance. Para 20 quoted below:-

> ***"20.*** *In the instant case, the suspicious circumstance appears to be that when the Will was being executed, the thumb impression over the alleged Will was also taken by the beneficiaries and the document-writer was shown to be scribe of the document, whereas the document was not scribed by him. However, late Phoolbasa Bai although filed written statement before her death, but she did not whisper anything about the Will in the written statement. Admittedly, the Will was allegedly executed in 1977 whereas the written statement was find some time in 1987. Taking into consideration all these facts, we do not filed any error in the conclusion arrived at by the High Court. The said finding, therefore, needs no interference by this Court."[***Dhannu Lal v. Ganesh Ram, AIR 2015 SC 2382]**

Succession Act – will – proof of execution and attestation – Sections 63, 68 and 71 of Evidence Act

Section 71 of the Evidence Act has to be interpreted in a strict manner. It comes into picture only when an alleged attesting witness of the will either denies or fails to recollect the execution. However if a witness is produced who is alleged and claims to be attesting witness and he fails to prove the execution resort cannot be had to Section 71 of the Act permitting the party concerned to adduce other evidence to prove the will.

Testator alleged to have bequeathed property to his rent collector denying benefit to his wife, children and grand-children with whom he was quite affectionate. The will on the face of it appears to be unnatural, unfair and improbable. [**Jagdish Chandra Sharma v. N.S. Sani, AIR 2015 SC 2149]**

Section 34 – Order 6 Rule 17 CPC.

Amendment application filed before the High Court in second appeal was wrongly rejected on the ground that it only sought to add names in the category of plaintiffs, as through the said amendment more necessary facts and pleas had been sought to be added in the plaint by the plaintiff / respondent before the High Court.
[Mahila Ram Kali Devi v. Nand Ram, AIR 2015 SC 2270]

Suit for specific performance of agreement for sale – limitation, Order 7 Rule 11(d) C.P.C.

Even if plaintiffs were put in possession of the property agreed to be sold on the date of agreement, it would not make any difference to the limitation for filing suit for specific performance. It will have to be decided as per Section 54 of Limitation Act.

If under the agreement before execution of sale-deed permission of Land And Development Office is to be obtained, it cannot be said that cause of action to file suit for specific performance does not arise unless defendant obtains such permission.

Sons of the owner who had executed the agreement for sale instituted suit for cancellation of the on the ground that the property being ancestral joint family property, it could not be sold / agreed to be sold by their father. The suit was dismissed. If within three year of dismissal of suit, suit for specific performance was not filed it became barred by time.

Under Section 54 Limitation Act limitation for instituting suit for specific performance starts from the date which is fixed for performance of contract. Mere pleading that on the request of the defendant time was orally extended is not sufficient to keep the limitation suspended unless particulars as to when and for how much period the request was made and granted, are overred. Plaint rejected under order 7 rule 11 (d) C.P.C. as barred by time on the face of it. [**Fatehji and Co. v. S.L.M. Nag Pal, AIR 2015 SC 2301]**

Terrorist and Disruptive Activities (Prevention) Act

Terrorist and Disruptive Activities (Prevention) Act 1987- TADA Rules - Section 15(1) of the Act- confession - admissible against the maker, his co-accused, abettor or conspirator in a trial for an offence under the Act – manner and language.

It is settled position in law that a confession recorded under Section 15(1) of the Act in accordance with statutory requirements and in keeping with the guidelines is admissible against the maker, his co-accused, abettor or conspirator in a trial for an offence under the Act, subject to the condition

stipulated in the proviso to Section 15(1). Such confession is taken as substantive piece of evidence and can form the foundation or basis for conviction of the maker, co-accused, abettor or conspirator. However, the note of caution is, insofar as use of confession of an accused against a co-accused is concerned, rule of prudence would require he Court not to rely thereon unless corroborated generally by other evidence on record.

With these principles in mind, we now turn to the requirements of Rule 15(1) of TADA Rules and the facts in the matter. Rule 15(1) stipulates that the confession "shall invariably be recorded in the language in which such confession is made and if that is not practicable, in the language used by such police officer for official purposes or in the language of the Designated Court ……". The expression "invariably" itself suggests that the requirement under the Rule is discretionary and not mandatory. The record in the present matter is very clear that the confessing accused Ghulam Nabi was produced before PW1 S.K. Bhatnagar on 16.12.1995, was given statutory warning and time to reflect. Everything was explained to him and only thereafter his thumb impression was taken. On the next occasion when the confessing accused was again produced before the witness, soon after the recording of the confession it was again explained to him, read over and only thereafter the thumb impression was taken. At no stage during the recording on these two occasions, nor at the stage when the witness was in the box, there is anything on record, or even a suggestion that the confessing accused did not understand or was not made to understand the contents of the confession. The contents of the confession also disclose that many of the assertions are personal to the confessing accused which could only be gathered after due conversation with the Recording Officer.

The language used as a means of communication between the confessing accused and the recording officer being Hindi or Hindustani, such recording of confession in Hindi language is completely in conformity with the requirement of the Rule. The conclusion drawn by the trial court that Ghulam Nabi being Pakistani national his language must be Urdu and therefore the recording of the confession in a language other than Urdu, must be held to be not in conformity, is wrong. Nothing has been placed on record that the confessing accused did not understand the line of questioning or that he was not made to understand the contents of the confession after the recording was complete. In our view the assessment made by the trial court in this behalf is completely incorrect and against the record. [**State of J&K Versus Wasim Ahmed Malik @ Hamid and another2015 (5) Supreme 176 (Criminal Appeal No.1743/2009)]**

Transfer of Property Act

Section 109 – If landlord transfers his right then the tenant becomes tenant of the transferee and attornment by tenant is not necessary to validate the transfer. After paying electricity charges to the transferee landlord, the tenant deposited the rent in court in the name of the transferor, original landlord. This amounts to default in payment of rent. [**Dr. Ambika Prasad v. Mohd. Alam AIR 2015 SC 2459]**

Section 116. Tenancy by holding over after expiry of period of lease. Such holding over does not change the purpose for which the property had originally been let out. [**N.K. Rajender Mohan v. T. Rubber Co. AIR 2015 SC 2556]**

*** * * * * * * * ***

PART – 2 (HIGH COURTS)

Arbitration and Conciliation Act

S. 34- Limitation Act, Ss. 29(2),5- Application for setting aside award-period of limitation is governed by Section 34 of above Act, Limitation Act is not applicable

The question which arises for consideration is whether the provisions of Section 5 of the Limitation Act, 1963 are attracted in case of an application challenging an award under Section 34 of the Act, 1996 filed beyond the prescribed period of limitation.

The issue is no longer res-integra and directly came up for consideration before the Hon'ble Apex Court in the case of Union of India v. M/s. Popular Construction Co., AIR 2001 SC 4010 where also the application under Section 34 of the Act, 1996 to set aside the arbitral award was made much after the prescribed period of limitation. The Hon'ble Apex Court answered the issued as under :

" The issue will have to be resolved with reference to the language used in Sections 29(2) of the Limitation Act, 1963 and Section 34 of the 1996 Act.

Section 29(2) provides that :

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

On an analysis of the section, it is clear that the provisions of Section 4 to 24 will apply when:
(i) there is a special or local law which prescribes a different period of limitation for any suit, appeal or application; and
(ii) the special or local law does not expressly exclude those Sections.
There is no dispute that the 1996 Act is a 'Special law' and that Section 34 provides for a period of limitation different from the prescribed under the Limitation Act. The question then is - is such exclusion expressed in Section 34 of the 1996 Act? The relevant extract of Section 34 reads :
Application for setting aside arbitral award - (1) xxx xxx xxx xxx xxx
(2)XXX XXX XXX XXXX XXX
(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral Award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal :
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."
Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5". **[State of U.P. v. M/s. Harnam Singh AIR 2015 All. 133]**

Civil Procedure Code

S. 24- Transfer Application of execution case pending ACJ (JD) Bulandshahr to Gautam Budh Nagar –Rejection- Legality of- The only ground for transfer is creation of new district and location of property which is subject matter of suit fall in the new district

This is an application under Section 24 Code of Civil Procedure seeking transfer of Execution Case No. 12 of 2007 filed in O.S. No. 357 of 1965 (Rakesh and others Vs. Kale and others) pending in the Court of II Addl.Civil Judge(J.D.), Bulandshahr along with Civil Revision No. 54 of 2010 (Suraj Singh Vs. Rakesh Singh & others) pending in the Court of Special Judge (Gangster Act), Bulandshahr arising out of the order dated 30.3.2010 in Execution Case No. 12 of 2007 on an application under Section 47 C.P.C. to Gautam Budh Nagar on the ground that Gautam Budh Nagar has been separately carved out and other pending cases relating to newly created district has already been transferred. In this respect application for transfer has already been considered by the Court below and it has found that such transfer is not permissible having been filed in wrong Court and even otherwise by a person not entitled to move such an application and therefore, it has been rejected by Addl. District Judge , Court No.5/ Spl. Judge, Bulandshahr.

The plaintiff, as obiter litis or dominus litis, has a right to choose any forum, the law allows him. It is a substantive right but of course subject to control by statute like Sections 22 to 23 of C.P.C.

The only ground set up in this application for transfer is that creation of new district and location of property which is the subject matter of suit falls in the new district. In such matters, Code of Civil Procedure has already taken care as has been discussed and referred by learned Court below in its order dated 27.5.2011. In view of discussion made herein above and keeping in view the facts and circumstances of the case, I do not find any justification to take another view in the matter. **[Suraj Singh And Another v. Rakesh and Another 2015 (2) ARC 845]**

S. 24 Transfer of case- Matrimonial Disputes- Applicaton U/s 125 Cr. PC and the application u/s 9 of the Hindu Marriage Act pending before Principal Judge, Family court Lakhimpur Kheri –Application allowed

In this matter submitted that since there is no male member in the family of applicant who may accompany her on every date to Lucknow leaving behind her six year old daughter studying at Lakhimpur Kheri, Misc. case filed under Order IX Rule 13 CPC may be transferred to the court of Principal Judge, Family Court Lakhimpur Kheri from Lucknow which could not be disposed of for last three years.

Applicant is a lady and resides at Lakhimpur Kheri. Her daughter is studying

there. Further, there is no other male member in her family except old father. She has been receiving threats from the family of opposite-party as stated in para 17 of the application that opposite-party no.2 always comes in the court campus with 7-8 anti-social elements who make threatening gestures towards the petitioner on the dates fixed in the court, as such it is difficult for her to go and attend the court proceedings at Lucknow.

Consequently, this application is allowed. In view of law laid down by Apex Court in the case of Sumita Singh v. Kumar Sanjay & another reported in AIR 2002 SC 396, Misc. Case No. 55 of 2012 arising out of Regular Suit No. 158 of 2011 filed by opposite-party no.2 under Section 13 of Indian Marriage Act, pending in the Family Court, Lucknow is transferred from the court of Principal Judge, Lucknow to Principal Judge, Family Court, Lakhimpur Kheri.

Principal Judges of the Family Court are directed to ensure that all the matrimonial cases pending there be clubbed and heard by same Presiding Officer unless there is some special reason for separate hearing. In view of the computerization of the cases, there should not be any difficulty in clubbing the cases pending in the same court. **[Smt. Damanjeet Kaur v. State of U.P. and another 2015 (33) LCD 2208]**

S. 25- CPC, Order XX, Rule 4- Points for determination –Non-framing of- A judgment which does not specify the points for determination and the decision thereon is a decision which is not legal and the High Court may justly remand it in revision for a fresh trial

The minimum requirement of law for a judgment in a Small Cause Court case as stated in Order XX, Rule 4 (1) of the Code of Civil Procedure, are imperative. The Judge is required to state the points for determination and the decision thereon, to make it clear that the Judge has understood the case and what his decision is. When Small Cause Judge has clubbed the suits all together and made a statement merely to the effect that he finds all the issues in favour of the plaintiffs, it cannot be regarded as a compliance even with the provisions of Order XX, Rule 4. A judgment which does not specify the points for determination and the decision thereon is a decision which is not legal, and the High Court may justly remand it in revision for a fresh trial.

The perusal of judgment dated 12.12.2006 reveals that the learned court below has not framed any point for determination. Although the Court of Small Causes is not required to give reasons for its findings on the issues involved in the case, but as a matter of practice it is usually done. It is settled position of

law that in absence of compliance with the provisions of Order XX, Rule 4 C.P.C., it will lead to the conclusion that it is no judgment in the eyes of law. Accordingly, the judgment and order dated 12.12.2006 passed by the Additional District & Sessions Judge, Lucknow cannot be treated as a judgment because the points for determination have not been framed as required under Order XX, Rule 4 C.P.C. and accordingly the judgment is illegal as well as perverse and cannot be sustained. **[Kamla Varma (Smt.) v. Union of India 2015(2) ARC 514]**

S. 100- Title suit –Second appeal suit for possession of disputed land and for decree of declaration – Suit for possession would be governed by Art. 64 of 65 of limitation

It clearly shows that plaintiffs got information regarding sale deed in 1974-75 when aforesaid original suit was filed and decided as also the appeal was decided. The period of limitation if commenced in 1974-75, admittedly in August, 1979 the three years period had already expired long back and suit for cancellation of aforesaid document is also clearly barred by limitation. If this Court proceed on the basis of pleadings in para 9 of the plaint, it is evident therefrom that construction was started by Sri Kashi as per the own showing of plaintiffs in January, 1976 and at that time itself the plaintiffs obstructed the same. From reading of paras 8 and 9 it is evident that first information of sale deed in question came to plaintiffs sometime between 1974 to January, 1976. It is not the completion of knowledge but for the purpose of commencement of limitation under Article 59, it is the first date when the document comes to the knowledge of plaintiffs. In the present case the plaintiffs have tried to explain that though the first information came to him sometime between 1974 to January, 1976 but it was completed in September, 1976. This completion part is wholly irrelevant and the first knowledge of document having come on or before January, 1976 in respect of relief for cancellation of sale deed apparently the suit was barred by limitation.

Then comes the question of limitation with respect to relief for delivery of possession.

Under Article 64 the period of limitation of 12 years commences from the date of dispossession. The defendants have specifically pleaded that they got possession of property in dispute at the time of execution of sale deed dated 18.03.1963, i.e., in 1963 itself. In the entire plaint there is no averment whatsoever as to when plaintiffs were dispossessed. In absence of any statement of fact regarding dispossession, there is no subsequent period from which limitation would commence. There is no reason to doubt the veracity of statement of defendants that they got possession of disputed property in 1963

on execution of sale deed in absence of any pleading and evidence otherwise. Any subsequent date of dispossession, also has neither been pleaded by plaintiffs nor any evidence has been given. Further the fact is admitted that in 1974-75 and onwards, the period of which the facts have been pleaded, plaintiffs were not in possession since defendants were raising construction to which plaintiffs allegedly raised objection. The plaintiffs, therefore, were already dispossessed. In absence of any otherwise evidence pleaded, the evidence of defendants that they were in possession of disputed property on the date of execution of sale deed dated 18.03.1963, remained uncontroverted. The Trial Court in ignoring this aspect has clearly not only misread and misconstrued the evidence on record but has recorded an otherwise perverse finding. The Lower Appellate Court, therefore, has rightly reversed the finding of Trial Court. court have no hesitation in holding that even the relief of possession was apparently barred by limitation. **[Raj Kishore and others v. Hira and others, 2015 (111) ALR 874]**

S. 100- Substantial question of law- Necessity of Formulation

As far as the question of formulation of substantial questions of law in a second appeal is concerned, we agree that before admitting a Second Appeal, it is the duty of the High Court to formulate substantial questions of law as required under Section 100 of C.P.C. But, in the present case, from the impugned order it nowhere reflects that the second appeal was admitted, rather it shows that after hearing the parties the High Court came to the conclusion that there was no substantial question of law involved in the appeal. The High Court has rightly taken note of the fact that the defendant neither chose to file written statement nor led any evidence before the trial court. **(Gujarat Maritime Board v. G.C. Pandya 2015 (2) ARC 802)**

S. 114- Review – Scope- A party filing a review application on the ground of any other "Sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of CPC

In view of the above said facts, review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

A party filing a review application on the ground of any other sufficient reason must satisfy that the said reason is analogous to the conditions mentioned in

Order 47, Rule 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for possible for the court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. [**Raeesula Hasan v. State of U.P. Throu. Secy. Secondary Edu. Lko. And Ors., 2015 (3) ARC 300]**

Ss. 152 and 153-A- Clerical, mathematical mistakes or error by slip can be corrected anytime by Court

It would be relevant to refer to the provisions of Section 152 and 153-A- , CPC, which are as under:

> "152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decree or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.
>
> 153 –A. Power to amend decreed or order where appeal is summarily dismissed.- Where an appellate Court dismisses an appeal under Rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance."

Code of Civil Procedure permits clerical or arithmetical mistakes in the judgments, decrees, orders or errors arising therein from accidental slip or omission to be corrected at any time, by the Court either of its own motion or on the application of any of the parties. **[Rakesh Kumar and others v. Ashok Kumar and another 2015 (111) ALR 541]**

Order 1, Rule 10 and XXII, Rule 10 –Scope of

In the present case, the plaintiff-respondent, admittedly, has transferred his rights during the pendency of appeal. Therefore, it was always open to subsequent transferee to seek leave of the Court to prosecute the matter by moving an application under Order XXII Rule 10 C.P.C.

The petitioner has not only filed application under Order 1 Rule 10, but contested it and it is not the case where he ever took the stand that provision was wrongly mentioned by petitioner or his counsel. No such case was pleaded either before the Court below or even before this Court. Under Order 22 Rule 10 CPC, if the petitioner would have filed application, the same was liable to be

considered by Court in order to grant leave in its discretion to petitioner, being subsequent transferee lis pendens, to continue proceedings from the stage he has joined, in place of original party who has transferred property to him. In that view of the matter, the petitioner would have been bound by stand taken by transferor/original party. Therefore, the proposition as above in court's view has no application.

The discussion made above makes it very clear that petitioner is not without any remedy but what he has been pursuing uptill now, was not in accordance with law. It is always open to petitioner to seek leave of the Court for prosecuting the case by submitting an application under Order 22 Rule 10 CPC which would then be considered by Court concerned in the light of observations made above and in accordance with law, but it cannot be doubted that his application under Order 1 Rule 10 CPC was clearly impermissible and has rightly been rejected by the Court below. **[Mehboob v. Zahira and others 2015 (128) RD 305]**

Order VI, Rule 17- Application under –Important factors are to be kept in mind while dealing with –Explained

Supreme Court in Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84, after reviewing earlier cases held as follows:-

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

(1)whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive. [**Duryodhan and others v. Collector, D.D.C., Basti and others, 2015 (112) ALR 87]**

Order VIII, Rule 5- Written Statement- Specific Denial- Allegation of fact in plaint not denied specifically or by necessary implication amounts to admission of the same

Order VIII, Rule 5 CPC provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. This Rule further provides that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

It is not disputed that the alleged deed has been executed on 29.10.1969 and the suit has been filed in the year 1975. The averments of the plaintiff that the defendant came in the month of June to his house and told him that he should leave the agricultural field because he has executed the fit deed in his favour, has not been denied specifically by the defendant. The plaintiff came to the knowledge of the said document on 2.7.1975 as mentioned in para 13 of the plaint. In view of provisions of Order VIII Rule 5, specific denial to these facts was required, which has not been done by the defendant, therefore, in view of provisions of Order VIII Rule 5 CPC, these facts shall be taken to be admitted. **[Smt. Prabha Devi and Others v. Ram Asrey, 2015 (33) LCD 1835]**

Order IX, Rule 8 and Order XVII, Rules 2 and 3 -Effect of conjoint reading- explained- suit can be dismissed in default both for the absence of the plaintiff and for want of production of evidence on his behalf

Under Rule 3 aforesaid where, any party to the suit fails to adduce evidence or to perform any other act for which time has been allowed by the Court, the Court may proceed with and decide the suit, if the parties are present, or if any one of them is absent, proceed under Rule 2 of Order XVII, C.P.C. Thus, this rule provides for two options to the Court. The first option to proceed with the suit and decide it if the parties are present. The second option to proceed under Rule 2 if any one of the parties is absent.

Rule 2 of Order XVII, C.P.C. provides that where on the date of hearing any party fails to appear, the Court may dispose of the suit in one of the modes directed in that behalf by Order IX, C.P.C. or make such order as it thinks fit.

In other words, the above rule permits the Court to proceed under Order IX, C.P.C. if the party fails to appear in suit on the adjorned date of hearing.

Order IX, Rule 8, C.P.C. in turn provides that where on the date of hearing of the suit defendant appears and the plaintiff fails to appear, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof.

A conjoint reading of all the above three provisions would reveal that where the

party fails to produce the evidence and is not present, the Court can proceed under rule 2 of Order XVII, C.P.C. which permits the Court to dispose of the suit in one of the modes prescribed under Order IX, C.P.C. One of the modes prescribed under Order IX, C.P.C. is contained under Rule 8 of Order IX, modes prescribed under Order IX, C.P.C. is contained under Rule 8 of Order IX, C.P.C. which empowers the Court to dismiss the suit in default for absence of the plaintiff if the defendant is present.

Thus, a suit can be dismissed in default both for the absence of the plaintiff and for want of production of evidence on his behalf. **[Transport Corporation of India, Varanasi through its Regional Manager v. Vijayanand Singh @ Vijaymal Singh and another 2015 (112) ALR 57]**

Order IX, Rule 13- Provincial Small Causes Courts Act "PSCC Act" – S. 17 Nature of – Provisions of S. 17 of PSCC Act in mandatory – Noncompliance of would entail dismissal of application

The Division Bench considered the judgment rendered in Kedarnath and held that the provisions of section 17 of the Act is mandatory and non compliance cannot be condoned or over looked by the Court. There is no provision in the statute that would provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so. **[Dr. Gorakhnath v. Judge, Small Causes Court, Gorakhpur and others, 2015 (128) RD 724]**

Order 9, Rule 13- Ex-parte decree, setting aside of –Imposition of conditions for setting aside the ex parte decree- Discretionary jurisdiction how to be exercised, explained

While exercising the discretion for setting aside the ex-parte decrees or condoning the delay in filing the application to set aside the ex-parte decrees, the court is competent to direct the defendants to pay a portion of the decreetal amount or the cost. In Tea Auction Limited vs. Grace Hill Tea Industry And Anr., (2006) 12 SCC 104: (2006) 9 SCALE 223, this Court has held as under:

"15. ….A discretionary jurisdiction has been conferred upon the court passing an order for setting aside an ex parte decree not only on the basis that the defendant had been able to prove sufficient cause for his non-appearance even on the date when the decree was passed, but also on other attending facts and circumstances. It may also consider the question as to whether the defendant should be put on terms. The court, indisputably, however, is not denuded of its power to put the defendants to terms. It is, however, trite that such terms should not be unreasonable or harshly

excessive. Once unreasonable or harsh conditions are imposed, the appellate court would have power to interfere therewith….."
The same view was reiterated in V.K. Industries case (supra). 11. In the present case, while the trial court has exercised the discretion to condone the delay in filing the applications to set aside the ex-parte decrees, in our view, the trial court should not have imposed such an unreasonable and onerous condition of depositing the entire suit claim of Rs.1,50,00,000/- and Rs.10,00,000/- respectively in the suits when the issues are yet to be decided on merits. While considering the revision, the High Court should have kept in view that the parties are yet to go for trial and the appellants ought to have been afforded the opportunity to contest the suits on merits. When the S.L.Ps came up for admission on 1.08.2013, this Court passed the conditional order that subject to deposit a sum of Rs.50,00,000/- before the trial court, notice shall be issued to the respondents. In compliance with the order dated 1.08.2013, the appellants have deposited Rs.50,00,000/- before the trial court. Since the appellants have satisfactorily explained the reasons for the delay and with a view to provide an opportunity to the appellants to contest the suit, the impugned order is liable to be set aside.
The order dated 16.04.2013 of the High Court passed in C.R.P. (NPD) (MD) No.4/2013 and C.R.P. (NPD) (MD) No.5/2013, is set aside and these appeals are allowed. Delay in filing the applications to set aside the ex- parte decrees is condoned and the ex-parte decrees passed in O.S. No.3 of 2011 and O.S. No.6 of 2011 are set aside and the suits are ordered to be restored to file. **[M/s GMG Engineering Industries and Others v. M/s ISSA Green Power Solution and others 2015 (33) LCD 1713]**

Order XV, Rule 5- Striking off defence –Benefit of deposits made in proceeding u/s 30 of Act 13/1972- Consideration of

In Ram Kumar Singh Vs. IIIrd Additional District Judge, Ghaziabad4, after placing reliance on the decisions rendered in Basant Kumar Chauhan and Sayeed Hasan Jafar alias Shakil Ahmad Vs. Rurabal Haq and others, 1995 (2) ARC 341 this Court observed as follows:-

"In view of the aforesaid decisions of this Court, it is evident that the deposit of the monthly rent/compensation by the petitioner (defendant) under Section 30 of the U.P. Act No. XIII of 1972 during the continuance of the said S.C.C. Suit No.26 of 1977 were illegal, and the same could not be said to be made in compliance with the provisions of Order XV Rule 5 of the Code of Civil Procedure. Once the "first hearing" in the said S.C.C. Suit No.26 of 1977

arrived, it was no longer open to the petitioner to continue to deposit the monthly rent/compensation under Section 30 of the U.P. Act No. XIII of 1972 in the Court of Munsif, Ghaziabad. The said monthly deposits should have been made in the said S.C.C. Suit No.26 of 1977 before the respondent No.2. Thus, the petitioner failed to comply with the requirements of the second part of Order XV Rule 5(1) of the Code of Civil Procedure namely, head (B) above."

It thus follows that while deposits made under Section 30, before the date of first hearing are to be adjusted but any rent deposited thereafter in proceeding under Section 30 would not enure to the benefit of the tenant for adjudging compliance of the provisions of Order XV, Rule 5 CPC. **[More Singh v. Chandrika Prasad 2015 (2) ARC 850]**

Order XXXII, Rule 15- Right to sue by next friend or guardian- plaintiff suffering from blindness- suit for eviction through father of plaintiff- Maintainability of

It is noteworthy that the Order 32 Rule 15 of CPC uses two different phrases (1) "unsound mind" and (2) "incapable by reason of mental infirmity." According to the said provision, a suit can be permitted to be instituted through next friend, in case the plaintiff is adjudged before or during pendency of the suit, to be a person of unsound mind. The second circumstance or exigency which has been envisaged in the provision of Order 32 Rule 15 of CPC is that the plaintiff can be permitted to institute the suit through his next friend in case, on inquiry by the court, the person concerned is found to be incapable by reason of any mental infirmity. Thus, a person of "unsound mind" has to be distinguished from a person who is "incapable by reason of any mental infirmity". The "incapacity" or "incapability" by reason of mental infirmity may, in certain circumstances, arise on account of the fact that the person who is seeking to institute the suit suffers from invisibility or blindness. The invisibility itself, may lead to a kind of mental infirmity making a person incapable of protecting his interest. Thus, in view of above, I am of considered opinion that the judgement and order passed by the learned court below does not suffer from any illegality.

So far as the submission made by learned counsel for the revision-applicant based on the aforesaid judgement of Kasturibai and others (supra) is concerned, I may only indicate that the inquiry as contemplated in Order 32 Rule 15 of CPC does not mean full-fledged inquiry. This view is supported by the judgement of this Court in the case of Manoj Kumar Shukla vs Usman Naqvi (dead) and another, reported in 2011 (29) LCD 1495 wherein it has been held

that it is settled law that elaborate and full-fledged inquiry is not required as it is a matter between the court and the plaintiff to decide as to whether he should be allowed to sue by a competent person as his next friend. The issue relating to incapacity or incapability of the plaintiff to protect his interest was enquired into by the learned trial court by means of the order dated 25.09.2013 passed in the application filed by the defendant, namely, application no. 73C2 (73x2) dated 30.04.2012. The aforesaid order, in my considered opinion, sufficiently enquires the incapacity or incapability of the plaintiff to institute the suit and thus, the suit has rightly been entertained and decided by the trial court filed through his natural guardian and next friend. **[Gyan Prakash Gupta v. Sri Ahmad Magsood Naquvi, 2015 (33) LCD 1908]**

Criminal Procedure Code

S. 125- Endeavour of Court – In all matters civil or criminal and specially in matrimonial matters including proceedings u/s 125 Cr.PC should be to finally resolve the lis

The Endeavour of the Court in all matters civil or criminal and specially in matrimonial matters including proceedings under section 125 Cr.PC which is an outcome of a benevolent legislation should be to finally resolve the lis in between the parties on merit or on the basis of proved compromise deed **[Smt. Suman Devi v. State of U.P. and another 2015 (90) ACC 839]**

S. 154- FIR –Significance of- Not, material evidence but vital material evidence

It is well settled that the First Information Report is not an encyclopedia of the prosecution and there might be some discrepancy or some facts might have not been mentioned in details. The First Information Report is not material evidence but vital material fact, hence if there is major discrepancy and material improvement, only then that might be fatal to the prosecution case. **[Bhim Sen and others v. State of U.P., 2015 (90) ACC 454]**

S. 156(3)- Constitution of India, Article 226- Registration of FIR and Investigation – order for mere registration of FIR will not caste any onerous duty upon petitioner for being held guilty of offences –Since no proceedings have taken place against petitioner, hence they cannot raise any grievance that order passed by Magistrate is violative of their fundamental rights enshrined in constitution of India

Instant writ petition has been filed by the proposed accused petitioners impugning the order dated 9.1.2015 passed on the application moved under section 156 (3) Cr.P.C. which is a pre-cognizance order. The learned Magistrate

has not made up his mind against anybody . The learned Magistrate has only sifted the accusations made in the application under section 156 (3) Cr.P.C. so as to cull out as to whether cognizable offence is being disclosed and after hearing the learned counsel for the opposite party no.2 ,he was satisfied that cognizable offence is made out against the petitioners thus he directed the Station House Officer ,Police Station concerned to follow the mandate of law. Since no proceeding has taken against the petitioners, they cannot raise any grievance that the order passed by the learned Magistrate is violative of their fundamental rights enshrined in the Constitution of India.

On receiving the application under section 156 (3) Cr.P.C. the learned Magistrate has applied his judicious mind on the allegation upon which he has ordered the Station House Officer concerned to register and investigate the matter. Mere registration of the first information report will not caste onerous upon the petitioners for being held guilty of the offence. The petitioners will have ample opportunity to put forth their defence which would be considered in the right perspective. The petitioners have got no locus to interfere in the investigation which is a pre-cognizance stage.

Having considered the rival submissions advanced by the learned counsel for the parties this Court culled out that the petitioners are the proposed accused who can appear and say their grievance at the appropriate forum. The petitioners are not deterred from raising their grievance before the appropriate forum. The registration of the first information report and investigation are the integral and inseparable part of pre-cognizance stage. The investigating officer will swing into investigation and after recording the statement of the complainant and the witnesses will submit either charge sheet or final report. At this stage no proceeding has taken place against the petitioner thus they cannot raise their grievance.

In these circumstances, the present writ petition is dismissed . As observed above, the conduct of the petitioners, besides being an abuse of the process of the court, is a fraud played upon the Court, therefore exemplary cost must` be imposed as the petitioners have made a tacit attempt to inveigle the Court to obtain favourable order in his favour and it being a serious abuse of the process of the Court, this Court quantify the cost of Rs. 20,000/- payable by the petitioners which is to be deposited at the head of Registrar General of this Court within one month. **[Smt. Munni and others v. State of U.P. and others, 2015 (9) ACC 528]**

S. 216- Charge can be altered or added at any time before judgment is pronounced

Under the provisions of section 216 Cr.PC the charges can be altered or added

at any time before judgment is pronounced. Such alteration or addition shall be read and explained to the accused. Considering the language of section 216 Cr.PC this court is of the view that revisionist can raise this point before the Trial Court to amend or add the charge. The Trial Court if find that added charges are not substantiated with the evidence the same may be modified. **[Vinod Kumar Agarwal and others v. C.B.I., 2015 (9) ACC 360]**

S. 317- D.N.A. Test –Application for- Rejection –Legality of

This revision has been filed seeking quashing of the order dated 1.4.2015 whereby the application of the revisionist for conducting D.N.A. test of Ankur, on the ground that Ankur is not his son rather he is the son of someone else board through the opposite party No. 2 has been rejected.

It has also not been stated anywhere that at the time when Ankur was conceived the opposite party No. 2 was not living in the house of the revisionist and that he had no access to her.

The Supreme Court in the case of Goutam Kundu v. State of W.B. and another (1993) (3) SCC 418 has held in paragraphs 24

"24. This section requires the party disputing the paternity to prove non-acces in order to dispel the presumption. "Access" an "Non –access" mean the existence or non- existence of opportunities for sexual intercourse; it does not mean actual cohabitation.

Thus on the facts of the case and the law laid down court did not find any merit in the revision. The impugned order dated 1-4-2015 does not suffer from any illegality or infirmity. The revision is accordingly dismissed. **[Mushafir Yadav v. State of Uttar Pradesh and another, 2015 (9) ACC 911]**

S. 451- Application for release of Vehicle -Rejection of –Legality

A FIR was lodged against Sanjay the son of revisionist along with others in Crime No. 14/2006 under Section 364A IPC, P.S. Sadar Bazar, District Agra with the allegation that Dipendra @ Dipu aged about 17 years was kidnapped. On 10.1.2006 the complainant received telephonic message by Visheshwar Dayal that they are reaching with Dipendra @ Dipu at Rohata Nahar and instructed the complainant to reach at Rohta Nahar with five lacs rupees. On this information, the police party along with complainant reached at Rohta Nahar where accused Gaurav Sharma and Kishan Sharma who were on two motorcycles were arrested and kidnappee Dipendra @ Dipu also recovered. Two accused who were on third motorcycle succeeded to escape from the recovery place. The accused persons, who were arrested on the spot, are said to have disclosed the name of escaped accused. The son of revisionist namely Sanjay was named as an accused in the FIR and Maruti Car No. U.P. 83B 6273 was alleged to be used in the said kidnapping. It is stated by the revisionist in

the application that his driver namely Raja took the said vehicle on 18.12.2005 for the purpose of attending a function and came back on 22.12.2005 in the morning and stated that his cousin was seriously ill and died, hence he could not return within time. It is also stated that he had no concern or knowledge with the alleged incident. Since the vehicle is lying in open place of police station and day by day the condition of the said vehicle is being ruined. The son of the applicant namely Sanjay had been granted bail. Therefore, the applicant approached for release of vehicle but the said application was rejected by the learned Special Judge (D.A.A.) Agra by saying that the car being case property was alleged to be used in kidnapping.

Aggrieved from the said order, present revision has been filed.

In this case, revisionist is the registered owner of the vehicle in question and he is not the accused. Kidnappee was recovered from the accused who were on motorcycle. As per co-accused's statement, the vehicle in question was said to be used in crime but nothing was recovered from the vehicle. No useful purpose would be served by keeping the vehicle in police station and there is likelihood of the condition of the said vehicle being deteriorated and ultimately the vehicle may become junk.

Hence the revision is allowed and the impugned order dated 29.4.2006 is hereby set aside. The Special Judge (D.A.A.) Agra is directed to release the vehicle, i.e., Maruti 800 bearing No. U.P. 83-B 6273 in favour of the revisionist on his executing a personal bond with one surety in the like amount to the satisfaction of the Judge concerned subject to the condition that during the pendency of the case the revisionist will not make any internal or external change in the said vehicle, he will not transfer the same to any person and will produce the same at his expenses before the Court concerned or any other authority as and when he is directed to produce the same. **[Mahavir v. State of U.P., 2015 (90) ACC 810]**

Constitution of India

Art. 141- Precedent – Binding nature

In may be pointed out that the law declared by Hon'ble Supreme Court is binding on all Courts, including High Courts and High Courts cannot ignore it on the ground that relevant provisions were not brought to the notice of the Apex Court or that the Apex Court laid down the legal position without considering all the points, and therefore its decision is not binding. **[Lt. Col. (Military Nursing Services) Madhu Lata Gaur v. Armed Forces Tribunal Regional Bench thru its V.C. Lko. and others 2015 (4) ALJ 748]**

Articles 225, 226- Allahabad High Court Rules, Chapter 5, Rule 1- Adjudicatory powers –Scope – Issues not arising for consideration before court, cannot be adjudicated upon

When a Court hears a petition, the scope of the adjudicatory power is confined to issues which arise directly or incidentally in the context of the lis or controversy before the court. An issue which does not arise for consideration before the Court cannot be adjudicated upon. Any such exercise would also be in violation of principles of natural justice since the parties would be on notice of the case which they have to meet while deciding the issues which arise on the basis of the controversy on facts and law. **[High Court Bar Association, Allahabad v. Hon'ble High Court of Judicature at Allahabad & another AIR 2015 (All) 151**]

Article 226- Alternate remedy- Bar of writ jurisdiction

By series of decisions it has been settled that the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power, if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

It may be noted that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the extra ordinary jurisdiction of the High Court to issue a prerogative writ as the writ jurisdiction is meant for doing justice between the parties where it cannot be done in any other forum.

In the instant case, the petitioner has rushed directly to this court and has by-passed the statutory alternative remedy, which is not permissible in view of the aforesaid settled position. **[Umang Gyanchandani v. Debts Recovery Tribunal, Lucknow, 2015 (33) LCD 1986**]

Article 227- Scope- Case in which High Court can interfere, Summed

the exercise of powers under Article 227 by the High Court was gingerly scrutinized by the Apex Court in the case of Jacky v. Tiny alias Antony and others AIR 2014 SC 1615 has held as under :-

Court has anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, court may notice certain well-recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate

courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognized constraints. It cannot be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

It would not be out of place to refer here that recently, while deciding a Reference with regard to the correctness of the law laid down by the Apex Court in Surya Dev Rai vs. Ram Chander Rai and others that an order of civil court was amenable to writ jurisdiction under Article 226 of the Constitution in Radhey Shyam and another Vs. Chhabi Nath and others 2015 (3) SCALE 88, the three Judges Bench held that against judicial orders passed by Civil Court, writ petition under Article 226 would not lie. It has also held that Article 227 is distinct from Article 226 and within the limitation and permissibility of Article 227, the judicial orders passed by Civil Court can be assailed before the High Court.

Thus from the aforesaid pronouncements, it can be summed that the High Court can interfere under Article 227 in the following cases :

> "(a) Erroneous assumption or excess of jurisdiction.
> (b) Refusal to exercise jurisdiction.
> (c) Error of law apparent on the face of the record, but not in concurrent finding of the fact as distinguished from a mere mistake of law or error of law relating to jurisdiction.
> (d) Violation of the principles of natural justice.
> (e) Arbitrary or capricious exercise of authority, or discretion.
> (f) Arriving at a finding which is perverse or based on no material
> (g) A patent of flagrant error in procedure.
> (h) Order resulting in manifest injustice.
> (i) Error both on facts and in law or even otherwise. [**Suresh Chandra Mishra v. State of U.P. and others, 2015 (33) LCD 2251]**

Consumer Protection Act

Ss. 12(3), 13 (4)- Power to review or call ex-pate orders- District forums and the state commissions have not been given any power to set aside ex-parte orders and power of review

On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised.

The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal or any case by the Commission, the Consumer had to rush to this Court. The amendment in Section 22 and introduction of Section 22-A were done for the convenience of the Consumers. We have carefully ascertained the legislative intention and interpreted the law accordingly. **[Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another 2015 (33) LCD 1762]**

Contract Act

S. 128 –Liability of the guarantor –co-expensive with that of the principal debtor unless it is authorize provided by the contract

The questions that need to be decided by us are regarding the liability of the guarantor under section 128 of the Indian Contract Act, 1872. The legislature has succinctly stated that the liability of the guarantor is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. This court has decided on this question, time and again, in line with the intent of the legislature. In Ram Kishun and others v. State of U.P. and others, (2012) 11 SCC 511 this Court has held that "in view of the provisions of section 128 of the Contract Act, the liability of the guarantor/surely is co-extensive with that of the debtor." The only exception to be otherwise in the contract. **[Central Bank of India v. C.L. Vimala and others 2015 (128) RD 632]**

Court Fee Act

Court Fee – Plaintiff is required to pay Court fee in terms of the relief sought in the plaint

In case of reported in 1998 (1) AWC 573:1998 (1) ARC 360 Anwarul Haq vs. 1st Additional District Judge. Where a suit is filed for cancellation of sale deed on the ground of fraud, the court held that the court fee is payable under

Section 7 (iv-A) and not under Article 17, Schedule 2 of the Act. In the case reported in 1992 (1) ARC 392:1992 (2) AWC 1000 Smt. Shefali Roy vs. Hero Jaswant Das, it was held that in a declaratory decree claimed by the plaintiff, the court fee payable shall be under Article 17 of Schedule 2.

In the present case, plaintiff-petitioner is in possession of property. Declaration of title and injunction is based on entry in revenue records and possession. Hence court fees does not seem to be payable ad valorem.

Learned trial court has been failed to appreciate the law and full bench judgment has not been considered in its letter and spirit in right perspective.

Accordingly, the appeal deserves to be allowed. The appeal is allowed. The order dated 20.5.2009 passed by the Civil Judge (Senior Division) Bahraich is set aside. Appeal allowed. Cost easy. **[Mahrab and another v. Hullan Khan and others 2015 (112) ALR 126]**

S. 6-A r/w S. 104 of C.P.C. –Valuation and payment of Court fee - Computation of valuation for court fee required to be made in accordance with sec. 7 (v) of Court Fee Act

From the averments contained in the plaint, it is evident that though only declaratory decree has been prayed for but read as whole the plaint reveals that the true substantial and main relief in the present case amounts to adjudging the registered gift deed as null and void. Without doing so, declaratory decree sought for cannot be granted, therefore, in the present matter, section 7 sub-section (iv) would not be applicable but section (7), sub-section (iv A) would be applicable. This view is fortified by the observation of the Full Bench of this Court made in the case of Bibbi vs.Shugan Chand, A.I.R. 1968 Alld, 216 (Full Bench). Therefore, court fees has to be paid according to the value of the subject matter.

Explanation to sub-section (iv A) of section 7 prescribes a method for computing the market value of the immovable property, in respect of which relief is claimed to wit, it shall be computed in accordance with sub-sections v, v-A or v-B of Section 7, as the case may be. Here admittedly, computation of valuation is required to be made in accordance with the provisions contained in sub-section (v). [**Badri Prasad and another v. Gyan Prakash and others, 2015 (128) RD 740]**

S. 6A- Ad valoren Court fee- Payment of

The present appeal, filed under Section 6 A of the Court Fees Act, 1870, is directed against the judgment and order dated 24th February, 2015, passed by the Additional Civil Judge (Senior Division), Court no.2, Aligarh in Original Suit No.1775 of 2013 (Mehrab and another Vs. Hullan Khan and others),

whereby the appellants/plaintiffs (hereinafter referred as the 'appellants'), have been directed to pay ad- valorem court fees.

On behalf of the appellants, validity of the impugned judgment and order have been challenged on the ground inter-alia that the court below has misread the plaint illegally and relied on the case law not applicable to the facts of the present case. The suit has been properly valued and court fees have been paid accordingly. Thus, the impugned judgment and order are illegal and without jurisdiction.

After hearing the parties, the court below has observed that the present suit is for declaration and permanent injunction, suit has been valued on the basis of the value of the property in suit, as mentioned in the said sale deed. The learned civil judge has held that suit has been correctly valued and in reference to the relief of prohibitory injunction, proper court fees have been paid. However, in reference to first relief regarding cancellation of sale deed, the appellants have to pay ad valorem court fees thereafter the appellants have been directed to pay ad valorem court fees.

Now the only question remains whether it is necessary for the appellants to seek the relief of declaration for adjudging the said sale deed to be void. The first indication we find that in the plaint in para 5 ('ra') the sale deed has been alleged to be voidable.

While these two points taking into consideration court has no hesitation to hold that in the present case, it is necessary for the appellants to seek declaration for adjudging the said sale deed to be void otherwise no effective relief could be granted to the appellants to protect their rights.

In view of above, the grounds on which the validity of the impugned judgment and order have been challenged appear to be without substance and devoid of any merit. The arguments advanced on behalf of the appellants are rejected. **[Mahrab and another v. Hullan Khan and others, 2015 (4) AWC 3732]**

S. 7 (v) Ad-valorem Court Fees- When attracted –A licensee, challenged the mandatory injunction suit of transferee of the grantor of the licensee- The case would be governed by sec 7 (v) of the Act and an ad-valorem court fee would be payable on the suit

In view of the law settled by the Hon'ble Apex Court, there can be no dispute about the fact that after termination of a license, the licensor can bring a suit for mandatory injunction for possession within a reasonable time and if not brought within a reasonable time and has filed with unnecessary delay, a suit for possession will have to be filed and the Court fees payable, would be under Section 7 (v) of the Act. It is only where the suit is filed diligently within

reasonable time after termination of license and an injunction suit for possession would be maintainable.
The defendant-respondent since was not the licensee of the plaintiff appellants, who acquired rights of the property by transfer from the erstwhile **[Sudhir Bansal and another v. Girish Bansal 2015 (111) ALR 403]**

Criminal Trial

Costodial Death- Proceeding –Quashing of -Consideration of- Mere delay is no ground to quash the proceedings –No fixed period for conclusion of the trial

The criminal Courts should exercise their available powers, such as those under sections 309, 311 and 258 of the Code of Criminal Procedure of effectuate the right to speedy trial. A watchful and diligent trail Judge can prove to be a better protector of such right than any guidelines. In appropriate cases, jurisdiction of the High Court under section 482 Cr.PC and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.
In the case of Ranjan Diwivedi v. CBI, 2013(81)ACC 402 (SC) the Apex Court while refusing to quash the proceedings of a murder trial, which remained pending at the stage of arguments for 37 years, observed:
"21. The reasons for the delay is one of the factors which the Courts would normally assess in detrmining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which is occasioned by action or inaction of the prosecution is one of the main factors which will be taken not of by the Courts while interjecting a criminal trail, a deliberate attempt to delay the trial. A deliberate attempt to delay the trail, in order to hamper the accused, is weight heavily against the prosecution, However, unintentional and unavaidable delay or administrative factors over which the prosecution has no control, such as, overcrowded Court dockets, absence of the Presinging Officers, strike by the lawyers, delay be the superior forum in notifying the designated Judge (in the present case only), the matter pending before the other forums , including the High Courts and the Supreme Court and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trail within a reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be violtive of the accused's right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trail requirement focuses on only one factor i.e. the reason for the delay and the attending

circumstances bear on the inquiry only to the extent to the sufficiency of the reason itself. Keeping this settled position in view, court have perused the note prepared by Shri Raval, learned ASG. Though, the note produced is not certified with copies of the order sheet maintained by the Trial Court, since tey are not disputed by the other side, court have taken the information furnished therein as authentic. The not reveals that the prosecution, apart from seeking 4-5 adjournments, right form 1991 till 2012, is not responsible for delay in any manner whatsoever. Therefore, in our opinion the delay in the trial of the petitioners form 1991 of 2012 is solely attributable to the petitioners and the other accused persons"

In the case of Niranjan Hemchandra Sashittal v. State of Maharashtra, 2013 (81) ACC 983 (SC), while delaing with the question of while dealing with the question of quashment of proceeding on ground of delay, the Apex Court observed as follows:

"24. It is to be kept in mind that on the one land, the right of the accused is to have a speedy trila and on the other, the qushment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weight, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in may authority of this court, it is clear as crystal that no time-limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighted on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective."

From the law noticed herein above what is clear is that mere delay is no ground to quash the proceedings. There is also no fixed period for conclusion of the trial. What is to be seen is as to whom the delay is attributable to as also whether by the delay any serious prejudice has been caused to the accused. There is no hard and fast rule that mere delay would prejudice the defence of the accused. In some cases it may come to his advantage. The Court while considering the question of quashment of proceeding the question of quashment of proceeding has to examine the facts of each case on the touchstone of the principles laid down by the Apex Court in various pronouncements in the regard and has also to consider the impact of the crime as also whether quashment in a given case on mere ground of delay would shake the confidence of people in the judicial system. **[Hari Dutt Tiwari, Constable v. State of U.P. and another 2015 (90) ACC 365**]

Evidence Act

Sections 17 to 31- Admission made by a party a decisive factor unless it is

proved to be erroneous

On the other hand, case of the petitioner was Hulas was son of Jodhan of village Tulapur, pargana Kiriyat, district Mirzapur. After death of Jodhan, his mother remarried to Mahadeo. Hulas, being of tender age at that time, came with his mother on remarriage (tarail) to the house of Mahadeo. The petitioner could not adduce any evidence to prove that Hulas was son of Jodhan. He has failed to prove his case.

Only arguments remained about the alleged admissions of Hulas in plaint of Suit No. 430 of 1989 and compromise filed in restoration application in Case No. 692 of 1988. The respondent denied filing of the Suit No. 430 of 1988 and compromise in Case No. 692 of 1988. The petitioner could not adduce any evidence to prove that plaint of Suit No. 430 of 1989 and compromise in Case No. 692 of 1988 were signed by Hulas. Consolidation authorities found that plaint of Suit No. 692 of 1988 was filed on 17.03.1989 and was withdrawn on 15.07.1989. The compromise was filed on 20.06.1989. Filing of these document by Hulas was not proved. There was no occasion for Hulas to file the suit as his name was already mutated over the land purchased by him through sale deed and the land inherited by him from Mahadeo. This was fraud on Court by the petitioner himself. Thus it was found that alleged plaint and compromise was not filed by Hulas.

Supreme Court in Union of IndiaVs. Ibrahim Uddin, (2012) 8 SCC 148, held that admissions are governed under Sections 17 to 31 of the Evidence Act, 1872 and such admissions can be tendered and accepted as substantive evidence. "Admissions" made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. In this case, it was not proved that the alleged plaint and compromise were filed by Hulas. An admission is not a conclusive proof. The respondents on the basis of documentary as oral evidence proved that Hulas was son of Mahadeo. The petitioner has absolutely no explanation of two sale deeds dated 23.03.1967 and 24.04.1967 jointly obtained by Ram Nath and Hulas in which names of their father was mentioned as Mahadeo. After 1967, the petitioner for the first time in 1997 began to say that Hulas was not son of Mahadeo. Joint living in same house and joint acquisition of sale deeds in 1956 in the names of their wife and in 1967 in their names was proved. Consolidation Officer found that in village Ramna, khata 443 was recorded in the names of Hulas and Ram Nath sons of Mahadeo. In village Sir Goberdhanpur plots 690, 806 and 821 were recorded jointly in the names of Sharda son of Hulas and Ram Nath son of Mahadeo. From these documents also it was proved that Hulas was son of Mahadeo. Thus the findings of facts recorded by the consolidation authorities do not suffer from any illegality. **[Bal**

Kishun v. Dy. Director of Consolidation, Varanasi and others 2015 (112) ALR 83]

Family Law

Joint family- A member of joint family- His share in joint family cannot be denied

In this case, a list of documents filed before Settlement Officer Consolidation has been filed by the petitioner as Annexure- 13 to the writ petition, which is in respect of separate holdings of respondents- 3rd Set. On the basis of self acquired property, share in joint family property could not be denied. Thus these documents are not material evidence to disprove the case of respondents- 3rd Set. By the impugned orders, co-sharers have been given their share in joint family property. There is no ground for interfering with the orders of consolidation authorities on technicalities as the petitioner himself had admitted joint possession of the respondents. **[Moti v. Dy. Director of Consolidation, Varanasi and other, 2015 (128) RD 346]**

Will- A part from proving due execution on of the will, if will is surrounded with suspicious circumstances the propounder is required to remove suspicious circumstance

Apart from proving due execution of the will, if a will is surrounded with suspicious circumstances, the propounder is required to remove suspicious circumstance. Supreme Court in H. Venkatachala Vs. B.N. Thimbajamma, AIR 1959 SC 443 held that there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be

justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. There may, however, be cases in which the execution of the will may be surrounded by suspicions circumstances. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last will of the testator.

Supreme Court in Sridevi Vs. Jayaraja Shetty, AIR 2005 SC 780 in which death of testator occurred within 15 days of execution of the will and in Niranjan Umesh Chandra Joshi Vs. Mrudula Jyoti Rao, AIR 2007 SC 614, in which death occurred within a week, held that it was a suspicions circumstance. In Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, (2006) 13 SCC 433, held that there are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit. **[Chaitu and others v. Dy. Director of Consolidation, Maharajganj and others 2015 (111) ALR 803]**

(i) Will –Suspiaus circumstances –enumerated

Supreme Court in Sridevi Vs. Jayaraja Shetty, AIR 2005 SC 780 in which death of testator occurred within 15 days of execution of the will and in Niranjan Umesh Chandra Joshi Vs. Mrudula Jyoti Rao, AIR 2007 SC 614, in which death occurred within a week, held that it was a suspicions circumstance. In Niranjan Umeshchandra Joshi v. Mrudula Jyoti Rao, (2006) 13 SCC 433, held that there are several circumstances which would have been held to be described by this Court as suspicious circumstances:

(i) when a doubt is created in regard to the condition of mind of the testator despite his signature on the will;

(ii) when the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;

(iii) where propounder himself takes prominent part in the execution of will which confers on him substantial benefit.

In the light of aforementioned proposition of law, the case of the petitioners has to be examined. [**Chaitu and others v. Dy. Director of Consolidation, Maharajgang and others 2015 (128) RD 323]**

(ii) Will –execution of –To be proved by atleast one attested witness

Execution of the will is required to be proved by at least by one attesting witness under Section 68 of the Evidence Act, 1872, which is quoted below:-

Proof of execution of document required by law to be attested.--If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied. **[Chaitu and others v. Dy. Director of Consolidation, Maharajgang and ohers 2015 (128) RD 323]**

Hindu Marriage Act

S. 13 B – Divorce by Mutual consent – Curtailment of Statutory period (Six Month) – On ground of irretrievable breakdown of marriage -

The ratio of the judgments in Anil Kumar Jain v. Maya Jain, AIR 2010 SC 229 and Manish Goel v. Rohini Goel, 2010 SC 1099 is that the order of waiving the statutory requirements can only be passed by the Supreme Court in exercise of its power under Article 142 of the Constitution of India and that such power is not vested in any other Court.

It is clear from the judgments of the Supreme Court reproduced herein above that in curtailing the statutory period of six months and granting a decree of divorce by mutual consent, the Supreme Court has exercised power under Article 142 of the Constitution of India. This power is not available to any other Court in the land, including this Court. In Anil Kumar Jain v. Maya Jain AIR 2010 SC 229 the Supreme Court has clearly held, in no uncertain terms, that the doctrine of irretrievable breakdown of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution of India. Neither can the High Court, nor the Civil Court, can pass orders before the period prescribed under the relevant provisions of the Act, or on grounds not provided for in

Section 13 and 13-B of the statute. This principle of law has been reiterated by the Supreme Court in Manish Goel v. Rohini Goel (supra).
For the reasons aforesaid, I am of the considered view that the grievance of the petitioners for truncating the statutory waiting period of six months envisaged under Section 13-B(2) of the Act, for the reason that their marriage has broken down irretrievably, is, therefore, not within the scope of adjudication of this Court, considering that such power can be exercised only by the Apex Court under Article 142 of the Constitution of India. **[Swapnil Verma & another v. Principal Judge, Family Court, Lucknow AIR 2015 All 153]**

Indian Penal Code

S. 149- Common object- Determination of

In the present case all the appellants went in the mid-night at the house of the deceased knocked the door, hence it cannot be said that they went without any common object and there was no opportunity for unlawful assembly.
In view of the fact it is clear that they went with common object to commit murder of the informant Babu Ram after murder of his father and nephew, hence this case also is not applicable in the present case. **[Bhim Sen and others v. State of U.P., 2015 (90) ACC 454]**

Indian Stamp Act

(i) S. 47 (1), (2) and (3) –Determination of market value- Consideration

Sub-section (1) of Section 47-A enables the registering officer who is appointed under the Indian Registration Act, 1908 to refer an instrument to the Collector for determining the market value of the property and the duty payable thereon. The registering officer was empowered to do so, if the market value of any property which was the subject of the instrument, as set forth in the instrument, was less than even the minimum value determined in accordance with the rules made under the Indian Stamp Act, 1899. Sub-section (2) of Section 47-A was without prejudice to the provisions of sub-section (1), and enabled the registering officer while registering any instrument to refer the instrument to the Collector for determination of the market value of the property and the duty payable thereon.
Under sub-section (4), the power was exercisable by the Collector within a stipulated period from the date of the registration of the instrument. The expression "reason to believe" conditions the exercise of power under sub-

sections (2) and (4). On the other hand, under sub-section (1), the registering officer could refer the instrument to the Collector, if the market value of the property as reflected therein, was less than the minimum which was prescribed in the rules. Hence, a situation where the market value of the property was less than even the minimum prescribed in the rules, was a condition which applied to exercise of the power under sub-section (1). However, sub-sections (2) and (4) did not condition the exercise of power on a finding that the market value as reflected in the instrument is below the market value prescribed in the rules. Under both sub-sections (2) and (4), the registering officer or, as the case may be, the Collector had to form a reason to believe; the reason to believe being that the market value, as reflected in the instrument, was not a correct reflection of the true market value of the property. **[Smt. Pushpa Sarin v. State of U.P. 2015 (111) ALR 264]**

(ii) Substantive Review- A statutory power- has to be conferred upon authority by an enabling provision of Law- power of substantive review cannot be implied, Chief Controlling Authority does not possess a substantive power to review its own decision

The question is what should be the norms for fixing the valuation of free hold land vis-a-vis lease hold land. In the present case, it is not in dispute that the land was not lease hold property. Hence, properly construed the question would not arise for determination in this reference.

In a decision of the Supreme Court in Patel Narshi Thakershi and others vs. Pradyumansinghji Arjunsinghji12, the principle of law was enunciated in the following terms:

"...It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to Court's notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order..."

In this view of the matter, Court hold that the Chief Controlling Authority does not possess a substantive power to review its own decision. However, a limited procedural review in terms of the judgments of the Supreme Court referred to above would be maintainable. **[Smt. Pushpa Sarin v. State of U.P. 2015 (111) ALR 264]**

Juvenile Justice (Care and Protection of Children) Rules

R 12- Juvenility – Determinations of –Most relevant portion of Rule 12 is contained in sub-sections 3(a) (i) (ii) (iii) and (b) – This gives hierarchy to be followed by the Court/Board –Provisions there under mandatory

Importantly, a reasonable inquiry will be conducted for determination of juvenility and prescribed procedure is to be followed, though summary in nature, but the guidelines are very much detailed under Rule-12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is extracted herein below;

12. Procedure to be followed in determination of AGE-

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board, as the case may be, the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
(2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearance or documents if available, and send him to the observation home or in jail.
(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining:
(a) (i) The matriculation or equivalent certificates, if available, and in the absence whereof;
(ii) The date of birth certificate from the school (other than a play school) first attended, and in the absence whereof;
(iii) The birth certificate given by a corporation or a municipal authority or a panchayat;
(b) And only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.
The most relevant portion of the aforesaid Rule-12 is contained under sub-Rule-3 (a) (i) (ii) (iii) and (b). This sub Section virtually predicates the

hierarchy to be followed by the court/Board, as the case may be, and to be adhered to in determination of the age of juvenile.
Obviously, the language contained under aforesaid Rule (Rule-12) is not directory but mandatory, meaning thereby that in the presence of the higher option the lower option loses significance and the same will be discarded and will never form part of consideration while deciding the matter of juvenility. The aforesaid principle has been settled in a catena of cases pronounced by the Hon'ble Apex Court as well as by this Court. **[Jai Kumar v. State of U.P. and another 2015 (90) ACC 506]**

Land Acquisition Act

S. 18 –U.P. Land Acquisition (Determination of compensation and Declaration of Award by Agreement) Rules, 1997- Legal position- person accepting compensation in tenurs of agreement under Rules have no right to maintain a reference application u/s/ 18 of above Act

Court is of the considered opinion that the legal position with regards to the person accepting compensation in terms of the Agreement under Rules, 1997 having no right to maintain a reference application under Section 18 of the Act, 1894 is well settled from the judgment relied upon by the counsel for the respondent. But at the same time if there are allegation of fraud, what is the remedy available to the tenure holders?
Court is of the considered opinion that in cases where execution of agreement under the Rules, 1997 is questioned on allegations of fraud, the application for reference need be entertained and referred to the Court concerned for examined at the first instance as to whether the agreement is vitiated by fraud or not. It is only when the first issue is answered in affirmative that the other questions namely adequacy of compensation to the petitioners can be gone into. If the first issue is answered in negative, the amount of compensation paid in terms of the agreement would be final and binding between the parties. **[Rameshwar and another v. State of U.P. and others 2015 (112) ALR 100]**

S. 18 –Reference can be made if tenure holder is not satisfied with compensation determined under the award.

Court may record that if a tenure holder is not satisfied with the quantum of the compensation determined under the award he has the remedy of making a reference under section 18 of the Land Acquisition Act. Therefore, in the facts of the case, court are of the opinion that the petitioner must be asked to seek his remedy in the matter of quantum of the compensation of which he would be

entitled by making an appropriate application for reference under section 18 of the old Act. **[Ishwar Chand Sharma v. State of U.P. and others, 2015 (112) ALR 98]**

S. 18 -Reference –To be treated as original proceeding like suit

In Chimanlal Hargovinddas v. Special Land Acquisition Officer , 1988 (3) SCC 751, the Court has said that a reference is like a suit which is to be treated as an original proceeding. The claimants is in the position of a plaintiff who has to show that the price offered for his land in the Award is inadequate. However, for the said purpose the Court would not consider the material, relied upon by Land Acquisition Officer in Award, unless the same material is produced and proved before the Court. The reference court does not sit in appeal over the Award of Land Acquisition Officer. The material used by Land Acquisition Officer is not open to be used by the Court suo motu unless such material is produced by the parties and proved independently before the Reference Court. **[N.O.I.D.A. v. Surendra Singh, 2015 (128) RD 748]**

S. 23- Determination of market value- sale-deed executed after notification – There is no bar under the Act to accept such sale-deed as an exemplar – Imperative for court to be cautious and careful while relying on such sale-deed with regard to genuineness of the transaction

The first question which arises is whether a sale-deed/exemplar relied upon by the parties, executed after the notification under section 4(1) of the LA Act would be admissible in evidence and relied upon or not? There is no bar under the LA Act for not accepting into evidence a sale-deed as an exemplar for determining the market value which may have been executed after the notification under section 4(1) of the LA Act. There is likelihood and possibility that the sale-deed executed subsequent to the notification, under section 4(1) of the LA Act, may not depict the true market value and it could be highly inflated in order to derive unwarranted and excessive compensation i.e., to say that such a sale-deed could be malafided or with oblique motive in order to enure excessive compensation. It is therefore imperative that where such a sale-deed is to be considered then the Courts should be cautious and careful in relying upon them. Such sale-deeds should be put to strict proof of its genuineness and bona fide. **[Power Grid Corporations of India v. State of U.P. and another, 2015 (128) R.D. 620]**

Limitation Act

S. 5- Condonation of delay- Exercise of power – Not available to the U.P.

Public Service Tribunal

As per Section 5 (1) (b) of the Act of 1976 the provisions of the Limitation Act, 1963 apply mutatis mutandis to a reference under Section 4 of the Act of 1976, as if, the reference were a suit filed in a Civil Court. As Section 5 of the Limitation Act is not applicable to suits, therefore, ipso facto it does not apply to a reference under Section 4 of the Act, 1976. There is no power available to the U. P. Public Services Tribunal to condone the delay or extend the limitation in filing a petition before it, as is available to the Tribunals established under the Administrative Tribunals Act, 1985. As the petitioner was considered for promotion in 1984 but was not recommended, it can also not be said that he had a continuing cause of action. The wrongful act in this case occurred in 1984 when the petitioner was considered but not recommended and juniors were promoted. This wrongful act caused a complete injury. There was no continuing wrong even though the damage resulting from the act may have continued. **[Habib Ali v. State of U.P. and Others 2015 (33) LCD 2260]**

Motor Vehicles Act

S. 15- Driving Licence- -Validity- renewal of Driving licence within five days of the Accident would be valid

The Tribunal after considering the evidence oral as well as documentary brought on record by the parties has returned a finding that the accident was caused by the offending bus in which the claimant suffered serious injuries and his motorcycle was badly damaged and there was no contributory negligence on his part. The Tribunal has further held that the driver of the bus was having a valid driving license as the same was renewed within five days of the accident for a period of three years from 19-10-2004 to 18-10-2007 and thus it cannot be said that on the date accident he was not having valid driving license in view of Section 15 of the Motor Vehciles Act. Similarly, the Tribunal has also held that the bus was duly insured with the appellant Insurance Company.

No challenge has been made by learned counsel for the appellant to the aforesaid findings and court also does not find any illegality in the aforesaid finding returned by the Tribunal. **(Manager, United India Insurance Company v. Swaroop Medhavi and others, 2015 (33) LCD 2090)**

S. 168- Award of compensation –Validity compassionate appointment or ex gratia has no correlation with amount receivable under M.V. Act occasioned on account of accidental death and same cannot be ground for

denying compensation under Act

In this case, the argument of learned Standing Counsel that since the wife or the deceased has been given compassionate appointment, she is not entitled for compensation as it amounts to double benefit, cannot be accepted. The compassionate appointment has been given under the Dying-in-Harness Rules. The compassionate appointment or ex gratia has not correlation with the amount receivable under the Motor Vehicles Act, 1988 occasioned on account of accidental death and will not ground for denying the compensation under the Motor Vehicles Act, 1988. **[State of U.P. v. Smt. Satyavati Devi and others 2015 (4) ALJ 465]**

Compensation –Calculation of –Computation of future prospects –Manner of addition of income for future prospect

Court find that Apex Court in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra) has provided an addition of 50% of the actual salary income of the deceased towards future prospect, where the deceased had a permanent job and was below 40 years. The addition should be only 30% if the age of the deceased was 40 to 50 years and there should be no addition, where the age of deceased is more than 50 years. Apex Court further held that where the deceased was self-employed or was on fixed salary (without provision for annual increments etc.), the Courts will usually take only the actual income at the time of death. A departure there from should be made only in rare and exceptional cases involving special circumstances. The view taken in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra) has not been over-ruled in any of the subsequent decision. However, on the consideration of later part of the decision in the case of Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another (Supra), the Apex Court, in the case of Santosh Devi Vs. National Insurance Company Limited and others (Supra) has provided that where the deceased was self-employed or on fixed salary, the benefit of future prospect to the extent of 30% should be given. Apex Court observed as follows:

> "We do not think that while making the observations in the last three lines of paragraph 24 of Smt. Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is Self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

In the case of Rajesh & Ors. Vs. Rajbir Singh & Ors. (Supra), Apex Court on a consideration of the case of Santosh Devi Vs. National Insurance Company Limited and others (Supra) has held that in the case of self-employed or persons with fixed wages, where the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Addition should be 30% in case deceased was in the age group of 40-50 years and an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.

Thus, after closely examining the decisions of the Apex Court, referred hereinabove, we are of the view that Apex Court held that in case where the deceased was in a permanent job and less than 40 years of age, there shall be an addition of 50% of actual salary towards future prospect. **[Shriram General Insurance Co. Ltd., Jaipur v. Smt. Alka and others 2015(111) ALR 713]**

S. 168- Method of determination –Determination of compensation by use of multipliers not an arithmetical exercise

With respect court would like to clarify that determination of amount of compensation by use of multipliers is not an arithmetical exercise. The tribunal and courts try to assess the loss and work out fair and just compensation to minimise the losses suffered by the legal representatives of the victim. [**Smt. Jai Kumari Devi and others v. Smt. Pushpa Gupta and another 2015 (111) ALR 434]**

S. 168- Compensation- Whether unmarried daughter and unmarried brother of the deceased entitled to get same portion of compensation?- Held "yes"

In the present case, appellant nos. 3 and 4 were unmarried, they were living with the deceased alongwith their parents. It is not on record that the deceased was the sole bread earner of the family but we are of the opinion that dependency is not confined to material things. Brothers and sisters all unmarried living under the same roof not only have emotional attachment but emotional dependence also. Those who are unemployed expects something from their kith and kin to provide them things in material form though they may not be necessary for maintaining only their animal existence but useful for them to improve their quality of life. The contribution made by the deceased may include presents on festive occasions, eatable items, wearing apparels etc.

In this way they are dependents of the deceased. In this factual background, we come to the conclusion that in the present case, appellant nos. 3 and 4 come within the category of legal representatives and they are entitled to be compensated.

Parents are entitled for greater amount of compensation to take care of their old age where as brothers and sisters are entitled to get fair amount as compensation. Rs.1,00,000/- to each appellant nos. 3 and 4 would suffice the purpose. **[Smt. Jai Kumari Devi and others v. Smt. Pushpa Gupta and another 2015 (111) ALR 434]**

S. 169- C.P.C. Sec. 9 –Writ of certiorari against order of MACT is maintainable

There is no dispute about the fact that against the award of Motor Accident Claims Tribunal, Insurance company can file an appeal under section 173 of the Act. Moreover, there is not provision of review in the Motor Vehicles Act and the Tribunal has become functous officio after declaration of the award. **[The Oriental Insurance Co. Ltd. v. Dharmendra and another, 2015 (4) ALJ 701]**

S. 173- Award –Towards loss of future earning –sustainability of

The claimant at the time of accident was aged 52 years and was working as a clerk in Syndicate Bank drawing a monthly salary of Rs.16,437/-. A disability certificate was filed before the Tribunal certifying that he has suffered 60% disability in the right lower limb. The certificate was duly proved by producing Dr. Ravindra Singh who issued the disability certificate. The Tribunal on the basis of the documentary and oral testimony of P.W.3 returned a finding that the claimant suffered disability to the extent of 50%. It was pleaded before the Tribunal that on account of the disability suffered in the accident, the claimant was denied opportunity to a promotional post which carried a pay scale of Rs.14320/- and on account of that, he has suffered a lost of Rs.8000/- per month. The Tribunal proceeded on the presumption that the claimant has suffered future loss of earning as he was denied promotion on that basis and treating his disability to be 50%, he was incurring loss of Rs.98,522/- per year and applying a multiplier of 11 determined a sum of Rs.10,84,842/- towards compensation for loss of future earning.

The Hon'ble Apex Court in the case of Raj Kumar v. Ajay Kumar & another, 2011(1) TAC 785 has laid down the principles of assessment of future loss of earning due to permanent disability in the following words :

(i) All injuries (or permanent disabilities arising from injuries), do not result

in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

The Tribunal failed to consider this aspect of the matter and simply proceeded on the assumption that he has suffered loss of future earning on account of being deprived of promotion by taking difference of present salary being drawn by him and the salary admissible to the promotional post.

In the case in hand, the extent of permanent disability of the limb could not be considered to be functional disability of the body nor could it be assumed to result in a corresponding extent of loss of earning capacity as the disability did not prevent the claimant from carrying on his vocation as a clerk in the bank. More so, there was no evidence to demonstrate that denial to a promotional post was on account of the disability caused due to accident. Thus the Tribunal cannot be said to be justified in awarding a sum of Rs. 10,84,842/- towards loss of future earning.

In view of the aforesaid facts and discussions, court is constrained to delete the award made by the Tribunal for Rs.10,84,842/- under the head of loss of earning capacity and the award stands modified to that extent. **[Manager, United India Insurance Company, Divisional office Meerut v. Anand Swaroop Medhavi and another 2015 (111) ALR 392]**

Practice and Procedure

Question of jurisdiction – When can be raised –Consideration of – Can be raised at any stage

No doubt, the question of jurisdiction can be raised at any stage, but in the present case, there was no other forum for the plaintiff where he could have sought his remedy. The High Court has observed that the relief could not have been sought by the plaintiff before the Gujarat Civil Services Tribunal as the defendant was simply a Board and not covered within jurisdiction of said Tribunal. It was not a matter to be heard by the Central Administrative Tribunal either as the plaintiff was not a Central Government employee. As such, we do not find any error in the impugned order passed by the High Court. **[Gujarat Maritime Board v. G.C. Pandya 2015 (2) ARC 802]**

Circulars –Scope-Reiterated circular being an administrative or executive order can not have retrospective effects

As per the judgment referred in Jaspal Kumar's case, the claim cannot be decided as per 2005 Scheme providing for exgratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993 **[Canara Bank and another v. M. Mahesh Kumr 2015 (33) LCD 2058]**

Writ Jurisdiction – Not to be exercised for restoring illegal orders

Writ jurisdiction of High Court under Articles 226 and 227 or the Constitution is an extra-ordinary supervisory jurisdiction. For exercising writ jurisdiction , High Court has to primarily satisfy as to whether there was miscarriage of justice to the petitioner. Supreme Court in State of U.P. v. District Judge Unnao, AIR 1984 SC 1401 and Roshan Deen v. Preeti Lal, AIR 2002 SC 33 held that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such Constitutional powers being conferred on the High Courts is that no man should be subjected to in the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice become by-product of an erroneous view of law, the High Court is not expected to erase such justice in the name of correting the error of law. In Mohammad Swaleh v. IInd Addl. District Judge and others AIR 1988 SC 94 and Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 it has been held that writ jurisdiction cannot be exercised for restoring illegal orders**. [Rajendra Prasad and others v. Dy Director of Consolidation, Mau and others, 2015 (128) RD 677]**

Provincial Small Causes Courts Act

S. 17 – Nature of- Provisions under held mandatory- no- compliance would entail dismissal of application

In rebuttal, Sri A.K. Pandey, learned counsel appearing for the respondents IInd set would submit that proviso to Section 17 of the Act, 1887 is a mandatory provision and not directory, it is not in dispute that the petitioner had not deposited the entire decretal amount, there is no illegality or infirmity in the impugned order.

The court below vide order dated 8 September 2006 noted that the judgment and decree was passed on 23 December 1998 whereas the application under Order 9 Rule 13 of the C.P.C. was filed supported by an affidavit dated 23 November 2002. It was admitted by the petitioner in the application that due to wrong legal advise, mandatory provisions of Section 17 of the Act 1887 was not complied with, accordingly, the application was rejected. The petitioner on 4 January 2011 moved another application to recall the above mentioned order stating that due to inadequate legal advice, he was not aware of the provisions contained in Section 17 of the Act, 1887. It was further stated that the petitioner realised the mistake, consequently, filed an application to recall the order dated 8 September 2006 which has been rejected by the impugned order being an application for the same cause of action. The record would, thus, reflect that the requirement of depositing the decretal amount in terms of Section 17 of the Act 1887 was not complied by the petitioner.

This Court in the case of Khilla Devi @ Manju Singh v. Vishwa Mohini 2005 (1) ACR 253, Jai Prakash v. Gulab Singh Rathor 2002 (1) ARC 440, Dinesh Kumar Dubey v. Ganga Shankar Tiwari2006 (4) Supp ARC 571 and in Raj Kumar and another vs. Neeraj Kumar Singhal,2010 (1) ARC 432 held that the compliance of Section 17 of the Act is mandatory for the maintainability of an application under Order IX, Rule 13 C.P.C.

The Division Bench considered the judgment rendered in Kedarnath (supra) and held that the provisions of Section 17 of the Act is mandatory and non compliance thereof would entail dismissal of the application, non-compliance cannot be condoned or overlooked by the Court. There is no provision in the statute that would provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the Court does not have the power to do so.

The Constitution Bench of the Supreme Court in Radhey Shyam and another vs. Chhabi Nath and others, 2015 (1) ARC657 held that writ petition under Article 226 of the Constitution is not maintainable against a judicial order of a court .The Court approved the ratio laid down in Shalini Shetty and another vs. Rajendra Shankar Patil 2010 (8) SCC 329, that no petition can be entertained in writ jurisdiction being a dispute between landlord and tenant i.e. amongst private parties.

For the reasons and law stated herein above, I do not find any illegality or irregularity in the impugned order dated 16 April 2011 passed by first respondent, Judge Small Causes Court, Gorakhpur. **[Gorakhnath (Dr.) Judge, Small Cuases Court and Others 2015 (2) ARC 527]**

S. 17 – Application for permission to furnish security- Rejected, directing to deposit entire decreetal amount in cash- Order would lead to serious prejudice and miscarriage of justice and it would detrimental to the object of the proviso to s. 17

It may also be visualized that when a person, coming to the court, is praying that he may be permitted to furnish security showing his/her helpness to deposit the entire amount in cash, the court without giving any proper reason and without looking into the hardship of the applicant in order to deposit the entire decreetal amount in cash cannot pass an order directing the applicant to deposit entire amount in cash and if it is allowed to sustain, it would lead to serious prejudice and miscarriage of justice. It would further be detrimental to the object of the proviso to Section 17. **[Pyari Mohan Parida v. Multani Mal Modi Degree Society 2015 (3) ARC 220]**

S. 25- Ejectment suit- -Arrear of rent- After termination of tenancy by notice, Rent Act not applicable- Suit decreed- Legality of

Before this Court the basic question which goes to root of the matter raised by learned counsel for the revisionist is, "whether any notice of demand and termination of tenancy was served upon defendant-revisionist and the findings recorded by court below in this regard are in accordance with law or not?"

Notice dated 17.11.997 is paper No. 11-C. It was sent by registered post addressed to Sri Shiv Narayan Goswami son of Sri Lal Chand Goswami, resident of 1606/A, Nai Basti, Sushila Enclave, Jhansi. Admittedly, notice was given at the correct address of disputed premises at which defendant-revisionist was residing. This notice stood returned by postal department with endorsement that sendee is out of station and it is not known as to when he will come back.

Learned counsel for the plaintiffs-respondents, when queried, he could not dispute that aforesaid endorsement cannot be construed as service of notice upon the addressee, i.e., defendant.
Then comes the second notice dated 17.02.1998 which was also sent by registered post in which also address mentioned as 1606/A, Nai Basti, Sushila Enclave, Jhansi. Here also the endorsement made by Postman on the envelop dated 18.02.1998, 19.02.1998, 20.02.1998 and 21.02.1998 shows that the addressee did not meet on said residence being out of station and ultimately this notice was returned with postal endorsement. This Court has no manner of doubt that even this notice cannot be said to have been served upon defendant-revisionist.
Here the presumption in respect of registered letter applies only if otherwise in not proved. In the present case letters have been received back with endorsement "not met" and that being so there cannot be presumption that registered letter must be deemed to have been proved. Here is also not a case where letter has been received with endorsement of 'refusal'.
The court below, therefore, in holding that since letters were sent by registered post, they will must be deemed to have been delivered to the addressee and the mere fact that letters have been received with endorsement that addressee did not meet would make no difference, in my view, is not correct. Since no valid notice was served upon revisionist, it cannot be said that tenancy was validly terminated entitling revisionist to have a decree of eviction against him. **[Shiv Narayan Goswami v. Jagdish Prasad Gupta (Died) & Others, 2015 (3) ARC 171]**

Registration Act

Ss. 17 and 49 –Instrument of family partition-validity of- Instrument of partition of immovable property is compulsorily to be registered and stamp duty has to paid as per schedule 1-B of Article 45
In view of Section 17, instrument of partition of immovable property is compulsory to be registered and stamp duty has to be paid as per Schedule I-B Article 45. Admittedly, the same has not been paid in the present case. Further, section 35 of the Indian Stamps Act, 1899 provides that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. This fact is also no disputed that the duty has not been paid on the instrument in terms of Article 45 of Schedule I-B of the Indian Stamp Act, 1899. Furthermore, regist4ration is

also compulsory under section 49 of the Registration Act, 1908, which provides that the document, which has to be registered compulsor8ly, can only be read for collateral purposes. **[Smt. Shashi Agrawal and others v. Additional Collector (F&R) D.D.C. and others 2015 (111) ALR 295]**

Rent Laws

Eviction suit in respects of waqf property would be maintainable before the small causes court

Learned counsel for the petitioners submits that SCC Suit wherein decree for eviction has been passed itself was not maintainable as landlord-respondent herein was a waqf and the matter could be tried only by the tribunal created under Waqf Act. Submission is that though such objection has been raised, but neither any issue has been framed nor the same has been appropriately considered by both the courts below. Learned counsel further submits that notice under section 106 of the Transfer of Property Act was inconsequential as landlord continued to receive rent thereafter, and there is otherwise no default in payment of rent. Reliance has been placed upon a decision of this court in Maulvi Abdul Rahman Siyai v. Sardar Maqbool Hasan:2009 (2) ALJ 71 as well as decision of Madras High Court in I. Salam Khan v. Tamil Nadu Wakf Board: 2005 AIR (Madras) 241 to contend that eviction suit was not maintainable before Small Cause Court.

In reply, Sri M.A. Qadeer, learned senior counsel appearing for landlord-respondent, submits that no issue on the aspect of jurisdiction of civil court has been framed, and therefore, such a question is not liable to be entertained. It is further submitted that this question has otherwise been answered by the Apex Court in its judgment in Ramesh Gobindram v. Sugra Humayun Mirza Wakf: AIR 2010 SC 2897, wherein it has been held that eviction suit against tenant of waqf property would be maintainable before the civil court and not before the waqf tribunal. It is also submitted that tenancy has already been terminated after service of notice under section 106 of the Act, and deposit of rent thereafter would not come in the way of securing eviction of tenant from the premises in question.

Having considered the aforesaid submissions, this court finds that the issue as to whether suit for eviction could be filed, in respect of waqf property, before the waqf tribunal or before the civil court, is no longer res integra, in view of law laid down by the Apex Court in Ramesh Gobindram.

In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the

lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed."

In view of the law settled by the Apex Court, it is no longer open for the petitioners to contend that eviction suit would not be maintainable before the Small Cause Court. **[Smt. Saira and others v. Additional District Judge and others, 2015 (112) ALR 116]**

S.A.R.F.A.E.S.I. Act

S. 13 –Recovery proceedings- Consideration of Guarantor's liability was coextensive with that of the principal debtor i.e. decree holder bank execute the decree against the guarantor without proceeding against the principal borrower

The respondent no. 6 took a loan from the respondent Bank in which the petitioner stood as a guarantor. The borrower failed to repay the loan and consequently recovery proceedings were initiated against the borrower as well as against the guarantor that is, the petitioner. An original application was filed before the Debt Recovery Tribunal which was decreed by an order dated 30.8.2011 directing the borrower and the petitioner to pay the amount of Rs. 16,28,126.60 paise along with interest and cost within a period of two months failing which it was open to the Bank to sell the mortgaged properties. The Tribunal also held that the petitioner and the borrower were liable to pay the amount jointly and severally.

On 26.8.2014 a notice was issued to auction the property of the petitioner which was mortgaged in favour of the respondent Bank. The petitioner, being aggrieved by this auction notice has filed the present writ petition.

Having heard the learned counsel for the petitioner and the submission made by Sri Satish Chaturvedi for the respondent, we find that the Debt Recovery Tribunal has clearly held that the borrower and the petitioner are liable to pay the amount jointly and severally. Further Section 13 (11) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 permits the secured creditor to proceed against the guarantor or sell the pledged assets without taking any of the measures specified in clauses (a) to

(d) of sub-section (4) of Section 13 of the Act which provides a secured creditor to pursue against the borrowers.
In State Bank of India Vs. Indexport Registered [AIR (1992) SC 1740] the Supreme Court held that the decree holder bank could execute the decree against the guarantor without proceeding against the principal borrower. The Supreme Court held that the guarantor's liability was coextensive with that of the principal debtor. Similar view was reiterated by the Supereme Court in Industrial Investment Bank of India Limited Vs. Biswanath Jhunjhunwala [2009 (9) SCC 478].
In light of the aforesaid decisions of the Supreme Court coupled with the provisions of Section 13(11) of the Securitisation Act and the order of the Debt Recovery Tribunal which has not been challenged till date, we do not find any justification to interfere in the impugned auction notice. **[Umesh Kumar Singh v. State of U.P. Through its Chief Secretary, Ministry of Finance, Govt. of U.P., 2015 (112) ALR 176]**

Service Law

Compassionate appointment –Limitation –Provisions- In absence of specific mention, three months time can be the reasonable time to pass order on the application fee compassionate appointment
When no time is prescribed, legislative intent is to be taken into account which is to provide immediate financial support to the family of deceased. The intention of legislature is manifest, as such, a prompt exercise is expected from the appointing authority. In the absence of any specific mention, three months time can be the reasonable time to pass orders on the application for compassionate appointment.
It has been observed in the case of Priyanka Tripathi Vs. State of U.P. and another [Writ petition No. 6168 of 2009(SS)] and Sunil Kumar Vs. District & Sessions Judge Balrampur and others [Writ Petition No. 2975 of 2007 (SS)] relying upon various decisions of Hon'ble Apex Court that three months is a reasonable time when no time is prescribed.
From the above, following principles can be deduced on interpretation of U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974:
(a) Application should be disposed of within three months from the date dependent applies for a job. Under Rules, no time limit is prescribed but intent of the rule is to provide immediate relief to the bereaved family to meet immediate financial crisis [Shiv Kumar Dubey (supra)]. In this background, Appropriate Authority is supposed to dispose of such applications within a

shortest possible time. In any case, application should not be kept pending for more than three months.
(b) Appointment under the Rules cannot be refused merely on the ground that financial status of the applicant is sound. Nor payment of retiral benefits at the time of death, furnishes any ground for refusal.
(c) Non availability of posts is no ground to refuse appointment.
(d) Appointment on Class III post cannot be refused merely on the ground that deceased was Class III/IV employee.
(e) Appointment has to be offered according to qualification and suitability of candidate and the applicant should be given an appointment commensurate therewith. If appointing authority does not give appointment on the post claimed by applicant because of non-suitability, reasons have to be recorded by the appointing authority.
(f) Dependent of deceased has no right to claim particular position or place and it is in the discretion of the appointing authority to pass appropriate order warranted in the facts and circumstances of the case. **[Prakash Agarwal v. Registrar General, Allahabad High Court, Allahabad and Others 2015 (33) LCD 1962]**

Departmental Enquiry- Mode and Manner
Apex Court, in the case of State of U.P. and others Vs. Saroj Kumar Sinha 2010(2) SCC 772 has dealt with in extenso, as to what is the status of enquiry officer and as to what are the duties of enquiry officer. An enquiry officer acting in a quasi judicial authority is in the position of independent adjudicator. He is not supposed to be representative of Department/Disciplinary /Government, his functions are as follows;
A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to 18 fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.
Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the

department/ disciplinary authority/ Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been 19 taken into consideration to conclude that the charges have been proved against the respondents.

When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet."

On the parameters of the aforementioned, it is clearly reflected in the present case that at no point of time Inquiry Officer has ever proceeded to fix any date, time or place to hold the inquiry, inasmuch as after the reply has been submitted on 5th January, 2014, thereafter attempt and endeavour has been made to serve supplementary charge-sheet and Dr. Smt. Rizwana Jamal was being asked to file her reply to the supplementary charge-sheet and therein also she was asked to inform and indicate in case petitioners intends for personal hearing and wants to examine and cross-examine any witness, then they should give opportunity of hearing.

The fact of the matter is that in the inquiry in question, the charges in question ought to have been substantiated by leading oral evidence and in case, the charge in question was based on documentary evidence, then the said documents in question ought to have been got proved by the oral evidence.

In view of this, once the Vice-Chancellor has proceeded to disapprove the resolution of the Managing Committee of the Institution by mentioning that

reasonable opportunity has not been provided to Dr. Smt. Rizwana Jamal, then there is no occasion for this Court to interfere with the order passed by the Vice-Chancellor. The order passed by the Vice-Chancellor dated 24th March, 2015 is affirmed and once the inquiry in question has been held to be bad, being vitiated and invalid for violation of Principles of natural justice, then it is always open to the Committee of Management of the Institution concerned to re-initiate disciplinary proceedings in accordance with law after associating the petitioners and after providing opportunity of hearing and it is always expected that Dr. Smt. Rizwana Jamal would also extend full co-operation in the same. [**The C/M, Jawwad Ali Shah Imambara Girls P.G. College and Another v. State of U.P. and others, 2015 (33) LCD 2155**]

Services –Pension/family Pension, right of –Held, is a continuing right – failure of the employer to deny such pension would constitute a continuing wrong- Learning Single Judge was manifestly in error in dismissing the writ petition on the ground of laches

The case of the appellant is that her husband was a peon in the Town Area Committee, Atmadpur, Agra. It has been stated that he attained the age of superannuation on 31 December 1997. The grievance of the appellant is that after the death of her spouse on 5 October 2001, she was entitled to payment of family pension which, however, was not released.

The writ petition was filed in May 2015 for the release of family pension and other benefits to which the appellant would be entitled to after the death of her husband. The learned Single Judge dismissed the writ petition holding that it was barred by laches.

The right to receive pension or, for that matter, family pension is a continuing right. The failure of the employer to deny such pension would constitute a continuing wrong. A distinction has to be made between cases where a delay in moving the Court results in a situation where vested rights of third parties are disrupted. Consequently, issues such as seniority have to be adjudicated at the earliest. On the other hand, a matter such as pension relates to the employee himself and where family pension is involved, it does not affect rights of third parties in spite of delay. Consequently, it is also well settled that a claim to pension, where pension has not been paid, is based on a continuing wrong and relief can be granted even if there is a delay. However, on the entitlement of arrears, it would be open to the High Court to restrict the relief by confining the payment of arrears to a period of three years prior to the date of the filing of the writ petition.

Court is of the view that the learned Single Judge was manifestly in error in dismissing the writ petition on the ground of laches. The appropriate remedy

would be to direct that the claim of the appellant be duly verified in accordance with law. Court clarify that authorities shall duly scrutinize the basis of the claim on merits and if the appellant is entitled to the payment of family pension, such payment, for a period of three years prior to the filing the writ petition, shall be effected in favour of the appellant. Court clarify that this would be subject to due verification of each and every factual averment which is contained in the petition by the competent authority. This exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. The appellant would be entitled to simple interest at the rate of 6% per annum. **[Smt. Somwati v. State of U.P. and others 2015 (33) LCD 2077]**

Constitution of India, Art. 16- Secondary Education services selection Bare Act, Ss. 12, 2 (1) –U.P. Secondary Education services selection Board Rules, Rs. 14(2), 10- Promotion to lecturer's grade –Eligibility- Relevant date- as not date on which vacancy has occurred, but year of recruitment when is relevant for determination of eligibility for promotion of Lecturer
Section 2(1) or the Act specifically defines the 'year of recruitment' to mean a period of twelve moths commencing from the first day of July of a calendar year. Rule 14 contains an express provision by which, where any vacancy is to be filled in by promotion, all teachers working in the trained graduates grade or Certificate of Teaching graded who possess the qualification prescribed and have completed five years' continuous regular service on the first day of the year of recruitment shall be considered for promotion. The expression 'all' must be given its plain and natural meaning. Every teacher who fulfills the norm of eligibility on the first date of the year of recruitment has to be considered for promotion. A teacher who fulfills the prescribed norm cannot be excluded on the ground that he/she did not fulfill the condition of eligibility when the vacancy occurred at an anterior point in time. The court cannot substitute the words "year in which the vacancy occurred" for the words "rear of recruitment". That is not the function of the Court. This must particularly hold fined it to mean. This must particularly hold good in the context of the history of the Sub-Ordinate legislation. Rule 9 of the Rules of 1983 which related to promotion, defined 'eligibility' with reference to the date of the occurrence of a vacancy. Those words were specifically substituted when the Rules of 1995 were framed. In the Rules of 1998 as well, Rule 14, refers to the year of recruitment and not to the year in which the vacancy has occurred. There is not basis in the contention that the first proviso to Rule 10 would indicate a different interpretation. All that the proviso lays down, is that if in any year of recruitment, suitable and eligible candidates are not available for

recruitment by promotion, the post may be filled in by direct recruitment. This proviso means that a post can be filled in by direct recruitment, if suitable and eligible candidates are not available in the year of recruitment for promotion. This does not indicate that the eligibility of candidates has to be determined not with reference to the year of recruitment, but with reference to the year in which the vacancy occurred.

All vacancies which exist or are likely to fall vacant, during the year or recruitment, can be clubbed irrespective of the year of the occurrence of vacancies. The criterion for promotion under Rule 14(2) is seniority subject of the rejection of the unfit. The position of the senior employee is adequately safeguarded by Rule 14(2) subject to satisfaction of fitness. The authorities have sufficient powers to ensure that vacancies in the promotional stream are not kept unfilled to the detriment of the educational requirements of students.

For these reasons, is not the date on which the vacancy has occurred, but the year of recruitment which is relevant for the determination of eligibility for promotion to the Lectures' grade under dthe Rules of 1998 **[Raeesul Hasan v. State of Uttar Pradesh Through Secy. Education and others , AIR 2015 All. 139]**

Constitution of India, Art 16- compassionate appointment –entitlement of- Claimant son being beneficiary of unlawful accumulation by his father is not entitled for grant of compassionate appointment

The petitioner is the son of Late Ashutosh Asthana a former employee of District Judgeship, Ghaziabad, who was involved in the GPF Scam. He had been suspended and during that period an FIR was also lodged pursuant whereto the father of the petitioner was lodged in jail. He died there on 17.10. 2009. The petitioner and his mother filed applications for compassionate appointments under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, that have been rejected hence this petition only questioning the order passed against the petitioner.

In the instant case the petitioner's father was charged with the offence of having duped the State Exchequer by making huge withdrawals running into crores of rupees that resulted into the G.P.F. Scam. The acquisition of property through these unlawful methods therefore accumulated up in the family of the petitioner of which the petitioner is a beneficiary. In the aforesaid background compassion cannot be generated so as to sympathize with the petitioner nor the rules can be pressed into service for the purpose of a claim through a writ petition in the exercise of discretionary jurisdiction under Article 226 of the Constitution of India. Compassion is pity shown to a person in distress. Here the statement of Late Ashutosh Asthana recorded under Section 164 Cr.P.C.

before the trial court in the criminal proceedings admits of fraudulent withdrawals as also the same having been spent on officials and Judges for their personal needs. The same is filed as Annexure 2 to the petition which also entails a list of immovable properties possessed by him. A perusal of the same does not evoke any sympathy, rather it reflects on the sound financial status of the petitioner's family. In such a situation, that too after six years of the death of the employee, I find no good reason to invoke discretion under Article 226 of the Constitution of India. **[Akshay Asthana v. State of U.P. & another 2015 (4) ALJ 742]**

Article 101- Scope- Nomination for election from more than one constituency– Propriety- Proper as there is no restriction on filing of nomination from more than one constituency in general election

The petitioner has also challenged the validity of Section 33 (7) of the Act of 1951. Under clauses (a) and (b) of Section 33 (7), a person cannot be nominated as a candidate for an election for more than two constituencies at a general election to the House of the People or, as the case may be, the Legislative Assembly of the State.

Article 101 of the Constitution provides as follows:

"101. Vacation of seats.-- (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102, or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the as may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is

without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

The constitutional validity of Section 33 (7) has been upheld by a Division Bench of this Court in Raja John Bunch vs. Union of India & others3 in a judgment delivered on 28 April 2014. The Division Bench observed as follows:

"Article 101 does not contain any prohibition or restriction on a person contesting an election or filing a nomination from more than one constituency. Clause (1) of Article 101 provides that a person shall not be a member of both the Houses of Parliament. Clause (2) of Article 101 provides that no person shall be a member of Parliament and of a House of the Legislature of a State. If such an eventuality occurs, then, upon the expiry of the period specified in the rules made by the President, the seat held in Parliament would become vacant, unless the person has previously resigned his seat in the Legislature of the State.

Sub-clause (b) of Clause (3) of Article 101 allows a member of either House of Parliament to resign his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be. The seat becomes vacant upon the acceptance of the resignation by the Chairman or the Speaker.

Consequently, a plain reading of Article 101 would indicate that it does not place any restriction on the number of constituencies from which a person may file his/her nomination during the course of a general election. Such a restriction is imposed in sub-section (7) of Section 33 of the Representation of the People Act, 1951. There is nothing inconsistent between Article 101 and Section 33 (7). Under Section 70, if a person is elected to more than one seat in either House of Parliament or of the Legislature of a State, he has to resign from all but one of the seats within the prescribed time failing which all the seats shall become vacant. The submission is that the provision by which a candidate may contest or file his nomination from more than one seat (subject to a maximum of two) results in a situation where the constituency would be unrepresented once the candidate resigns from the seat. This circumstance would not, in our view, render a provision unconstitutional. A seat may fall vacant for a variety of reasons including, amongst them, the disqualifications which are contained in Article 102 of the Constitution. The seat which falls vacant has to be filled up in accordance with law.

As a matter of fact, Article 101 (3) (b) contemplates that a seat would become

vacant when the resignation of a member of either House of Parliament from his seat is accepted by the Chairman or the Speaker, as the case may be." [**Prabuddhan Naagrik Chetna Manch, Gonda v. Union of India and Another, 2015 (33) LCD 2283]**

Constitution of India, Art. 311 (2) –Departmental enquiry- Holding of – Holding of departmental enquiry, A constitutional protection available to civil servant cannot be taken away on whims of appointing authority

Holding of departmental enquiry before dismissal or removal, is mandatory under Article 311(2). This case is sought to be covered by second proviso to Article 311(2) read with procedure prescribed under U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as "Rules, 1999). A heavy onus lay upon respondent to show that from all the angle the case is covered by one of the grounds on which departmental enquiry may not be held or dispense with i.e. when it is not "reasonably practicable".

Article 311 (2)(b) was considered by a Constitution Bench in Union of India and another Vs. Tulsiram Patel (1985) 3 SCC 398, and the Court said:

"130. The condition precedent for the application of Clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by Clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by Clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation."

Again Court explained circumstances in which departmental enquiry can be dispensed with by resorting to Article 311(2)(b) in Jaswant Singh Vs. State of Punjab and Ors. (1991) 1 SCC 362. This decision has been followed very recently in Risal Singh Vs. State of Haryana and others AIR 2014 SC 2922. Therein following a sting operation by a Television channel in which appellant Police Officer was found indulged in an act of corruption, he was dismissed

from service without any enquiry by resorting to Article 311 (2) second proviso (b). The Court held that before resorting to Article 311(2) second proviso (b), appropriate and valid reasons have to be recorded, as contemplated in the Constitution. Dispensation of departmental enquiry, a constitutional protection available to civil servant, cannot be taken away or denied on whims and caprices of appointing authority or the disciplinary authority. **[Dr. Tarun Rajput v. State of U.P. and others, 2015 (112) ALR 210]**

Constitution of India, Art. 311 (2) – Order of punishment –opportunity of hearing –Petitioner has been convicted U/s 307 r/w Section 34, IPC- Cannot be allowed to be reinstated in service

On consideration of the facts in this case, The petitioner herein having been convicted under Section 307 read with Section 34 of the Indian Penal Code cannot be allowed to be reinstated in service.

As far as the denial of notice required under proviso to Rule 14 (iii) of the Railway servants (Discipline and Appeal) Rules, 1968 is concerned, the proviso to Article 311 (2) of the Constitution of India excludes any opportunity of hearing before imposing a punishment in such cases. Similar proposition has been laid down by the Constitution Bench in the case of Union of India Vs.Tulsi Ram Patel (supra), and in the case of Shankar Das Vs. Union of India (supra) wherein it was held that imposition of punishment in such cases has to be an ex-parte action.

However, even if the version of the petitioner is accepted on its face value, in view of the facts of the present case and considering the seriousness of the criminal offence for which the petitioner has been convicted, in court view, it is not a case where the disciplinary authority could have taken any other view of the matter even if an opportunity of hearing was given to the petitioner. Thus, it would have been an empty formality, therefore, no prejudice has been caused to him. Principle of natural justice is not like an unruly horse. Its application depends upon the facts of a case and not in a factual vacuum. Moreover, it is also trite that even if there has been violation of the principles of natural justice this Court under Article 226 of the Constitution of India is not bound to interfere in exercise of its extraordinary jurisdiction because by doing so it would be restoring an illegality. A person convicted under Section 307 of the Indian Penal Code should not be reinstated in service till he is absolved in appeal. Therefore, doing so on the plea of violation of proviso to Rule 14 (iii) of the Rules would amount to bringing to life another illegality, and would do more harm than good. Reference may be made in this regard to the judgments of Supreme Court reported in the case of M. C. Mehta Vs. Union of India, reported in (1999) 6 SCC 237, and State of Maharashtra Vs. Prashu, reported in (1994) 2 SCC 481. Except for the writ of habeas corpus and cases involving

violation of fundamental rights invocation of the writ jurisdiction under Article 226 is not as a matter of right but discretionary.
Court is of the view that considering the conviction of the petitioner under Article 307 IPC read with Section 34 IPC giving of notice would have been an empty formality, therefore, no prejudice has been caused to the petitioner.
In view of the above discussion court decline to exercise our discretionary powers under Article 226 of the Constitution of India in favour of the petitioner as court does not find any valid ground to interfere with the impugned order passed by the Tribunal. [**Mahoj Kumar v. Union of India and others 2015 (111) ALR 856]**

Salary for period of leave without pay shall not be payable
Salary for the period of leave shall not be payable and that period shall not be counted for the purpose of determining pension, Admittedly after excluding the period of leave without pay, service of appellant is not ten year **[Balveer Singh Ponia v. State of U.P. and others 2015 (111) ALR 785]**

Compulsory Retirement- Has no stigma –Does not imply suggestion of misbehavior
It is clear that order of compulsory retirement has no stigma nor it implies suggestion of misbehaviour. Principles of natural justice has no role to play. The order is passed on subjective satisfaction of the Competent authority, forming opinion, that it is in public interest to retire Government servant compulsorily. Any adverse entry prior to earning of promotion/crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering overall performance of the employee during the whole of his tenure of service whether it is in public interest to retain him in service, as per clause (a) of sub-rule (2) of Rule 56 of U.P. Fundamental Rules of Financial Handbook, Volume II, Part II to IV. High Court, on challenge been made, will not act as appellate forum, and will interfere only when satisfaction is recorded, that order passed is (i) malafide (ii) based on no evidence (iii) same is arbitrary, in the sense that no reasonable person would form the requisite opinion on the given material, in short order in questions perverse order. **[Ravindra Nath Yadav v. State of U.P. and another, 2015 (111) ALR 550]**

Specific Relief Act

S. 20 –specific Performance of Contract – Grant of Discretionary- Court is not bound to grant such a relief merely because it is lawful to do so- Guided by judicial principles of Law
Under section 20 of the Specific Relief Act, grant of specific performance of contract is discretionary. Though the decree for specific performance is discretionary, yet the Court is not bound to grant such a relief merely

because it is lawful to do so. But the discretion of the Court is not arbitrary, but sound and reasonable, guided by judicial principles of law and capable of correction by a exercise keeping in view the settled principles of law as envisaged in section 20 of the Act. The jurisdiction of decreeing specific performance is a discretion of the court and it depends upon facts and circumstances of each case, the court would take into consideration circumstances of each case, conduct of the parties, recitals in the sale agreement and the circumstances outside the contract have to be seen. **[Nagappa v. Ramasamy and another, 2015 (128) RD 627]**

Transfer of Property Act

S. 60 – Mortgage by a Bhumidhar- Delivering the possession of the land- Deigned to be a sale to the transferee

In the first case cited on behalf of the respondents it has been held that even if a transaction is alleged to be mortgage with conditional sale and there is refusal for re-transfer of land, the same , in view of the deeming provisions of section 164, would be deemed to be sale and the mortgagor upon execution of the same would loose all his rights in the land in question.

The Apex Court, upon a consideration of section 164 held that a mortgage with possession "would be deemed at all times and for all purposes to be sale to the transferee" and therefore, the statutory right of redemption under Section 60 of the Transfer of property Act would not be available the mortgagor in view of section 164. [**Moti Lal v. Dy. Director of Consolidation, Jhansi and others, 2015 (128) RD 661]**

Gift –Nature and scope- Gift must be given voluntarily his its donor and the same should have also been accepted by the donee

Substantial question is whether the gift deed in question was executed against the provisions of Section 122 of the Transfer of Property Act? Section 122 of the Transfer of Property Act provides as under:-

"122. "Gift" Defined- "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made-Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the done dies before acceptance, the gift is void."

In view of the provisions, the gift must be voluntarily and it should also been accepted by the done. In the evidence, it has come that the said gift deed was

not executed voluntarily but was the outcome of undue influence, misrepresentation and fraud. It has also come in the evidence that the plaintiff had not only retained the said gift deed with him but he was also in possession of the property in dispute at the time of filing of the suit there is no specific acceptance by the defendant. In view of aforesaid discussion, the said gift deed cannot be said to have executed voluntarily, therefore, it was against the provisions of Section 122 of the Transfer of Property Act. The said substantial question of law is accordingly decided in affirmative and in favour of the plaintiff. **[Smt. Prabha Devi and Others v. Ram Asrey, 2015 (33) LCD 1835]**

U.P. Consolidation of Holdings Act

Ss. 4(1) and 6(1) –Notification –Issued u/s 6 of the Act- Nature, scope of and effect

The provisions of Sections 4 and 6 of the Act came up for consideration before a Division Bench of this Court in Agricultural & Industrial Syndicate Ltd. (supra). The Division Bench held that when the Director of Consolidation issues a notification under Section 4 or Section 6, he performs neither a quasi judicial function nor does he exercise an administrative power. In the view of the Division Bench, the power was of a legislative nature. Moreover, it was held that if a notification is issued under Section 6, the land holder has no rights which are affected in consequence of such a notification. The Supreme Court in the judgment in Harbhajan Singh (supra) while considering a similar provision contained in Section 16(1) of the Consolidation Act in the State of Himachal Pradesh held as follows:-

"It is, thus, clear that it is only when the persons entitled to possession of holdings under the Act have been delivered possession of the holdings that they acquire rights, title and interest in the new holding allotted to them and the consolidation scheme in the area is deemed to have come into force. Till such possession of the allotted land under the consolidation scheme is delivered to the allottees and the consolidation scheme is deemed to come into force, the State Government has the power under Section 16(1) of the Act to cancel the declaration under Section 14(1) of the Act."

The Supreme Court also held as follows:

"Court has already held that the State Government can issue a notification under Section 16(1) of the Act cancelling the declaration under Section 14(1) of the Act in respect of any area at any time before the persons entitled to possession of holdings under the Act have entered into possession of the holdings allotted to them. Since before the persons enter into possession of the

holdings allotted to them, they do not acquire any right, title and interest in the holdings allotted to them and they do not lose in any manner their rights, title and interest in their original holdings, their rights are not affected by the issuance of a notification under Section 16(1) of the Act. In other words, a notification under Section 16(1) of the Act issued by the State Government before delivery of possession of the allotted holdings to persons has no civil consequences and, therefore, the State Government is not required to follow the principles of natural justice before issuing such a notification."

The principle of law which has been laid down in the judgment of the Division Bench and in the judgment of the Supreme Court is that before persons have entered into possession of the holdings allotted to them, they do not acquire any right, title or interest and they would not lose their rights by the issuance of a notification under Section 6 of the Act. That is the position in law. The writ petition challenging the notification under Section 6 of the Act was not maintainable since there were no rights enuring to the benefit of the original petitioners which were taken away or affected by a notification under Section 6 of the Act.

The issuance of a notification under Section 6 of the Act cannot be regarded as arbitrary having due regard to the facts and circumstances of the case noted above. No rights enuring to the benefit of the first, second and third respondents stood affected by the issuance of a notification under Section 6 of the Act. Hence, the order of the learned Single Judge quashing the notification was clearly not warranted. The learned Single Judge, in fact, issued a further direction to the consolidation authorities to ensure the demarcation of chaks and the delivery of possession with the assistance of police force. These directions have caused serious prejudice to the appellants who are not parties to the proceedings and would be directly affected by such directions. **[Dalip Singh and others v. Vikram Singh and others, 2015 (128) RD 666]**

S. 19- Chak allotment – outsider cannot challenge the allotment, only co-sharing can challenge the allotment

So far as plot no. 286 is concerned, the Consolidation Officer and Settlement Officer Consolidation also found that plot is situated in the side of village and by the side of road, therefore it was a more valuable land than plot no. 293/2 which was allotted in the chaks of respondent- 2 to 4. So far as share of respondents - 2 to 4 are concerned they are allotted chak on their original holding. Only their co-sharers can challenge the allotment of excess share and an outsider cannot challenge the allotment. In such circumstances, the substantial justice has been done and no interference is required by this Court. **[Sudhakar and others v. Dy. Director of Consolidation, Mau and**

others, 2015 (128) RD 650]

S. 48- Exercise of power under – Once record of subordinate Authority summaned, Revisional jurisdiction can be invoked

A full Bench of this court in Ramakant Singh v. DDC and others, held that Deputy Director of, Consolidation can exercise suo motu revisinal jurisdiction under section 48 of the Act, for which no limitation has been provided. One record of sub-ordinate authority has been summoned then in spite of fact that delay was not liable to be condoned, suo motu revisional jurisdiction can be invoked. **[Anil Kumar Gera v. State of U.P. and others 2015 (128) RD 316]**

S. 48 (3) –Scope of

In the instant case, neither the Consolidation Officer has afforded opportunity of hearing to the parties while making reference to the Deputy Director of Consolidation nor the Deputy Director of Consolidation has afforded opportunity of hearing to the parties prior to passing the impugned order. This shows that both the authorities i.e. Consolidation Officer and Deputy Director of Consolidation have completely overlooked the provisions of Section 48 of the Act and passed the impugned orders. Therefore, the impugned order is not only contrary to the provisions of Section 48 of the Act but also in breach of the settled principle of natural justice.

It is well settled that where a statute requires to do certain thing in a particular method, then, that thing must be done in that very method and other methods or mode of performance are impliedly and necessarily forbidden. Herein, it has been specifically provided under the statute i.e. Section 48 (3) of the Act, as stated hereinabove, that prior to making reference, the Consolidation Authority is to afford opportunity of hearing and further, on receipt of reference, the Deputy Director of Consolidation is also under a legal obligation to afford opportunity of hearing to the parties prior to passing any order on reference. But surprisingly, both the authorities have overlooked the aforesaid provisions of the Act.

For the reasons aforesaid, the writ petition is allowed. The order dated 19.2.2001 passed by the Deputy Director of Consolidation, Pratapgarh is hereby quashed and the order dated 14.9.1989 passed by the Consolidation Officer is confirmed. [**Jagdev v. D.D.C. Pratapgarh and another 2015 (128) RD 658]**

S. 49- Bar of- When attracted –Discussed

In this case, entry of the name of Lalloo Singh was continued from 1359 F to basic consolidation year 1991. Previously consolidation operation was held in

the village and finalized in 1963. Although name of Lalloo Singh was recorded basic consolidation year but no objection was raised for deleting the name of Lalloo Singh from the land in dispute as such claim of the petitioners is barred under Section 49 of the Act. Plea of the petitioners that name of Lalloo was recorded during previous consolidation by making forgery is incorrect as such the cases relied upon by the counsel for the petitioners are not applicable. Section 49 of the Act as amened by U.P. Act No. V of 1954 is quoted below:-

"49. Bar to civil jurisdiction.-- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure holders in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other rights arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act."

Supreme Court in Sita Ram v. Chhota Bhondey, AIR 1991 SC 249 held that from a perusal of Section 49 it is evident that declaration and adjudication of rights of tenure holders in respect of land lying in an area for which a notification has been issued under Section 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Act, has been taken away. The language used in Section 49 is wide and comprehensive. Declaration and adjudication of rights of tenure holders in respect of land lying in the area covered by the notification under Section 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act, would cover adjudication of questions as to title in respect of the said lands.**[Har Swaroop and others v. Dy. Director of Consolidation, Bijnor and other, 2015 (112) ALR 102]**

S. 49 –Bar of Suit- Suit is not barred as findings of consolidation authorities being summary in nature do not bound the civil court

It is well settled law that the Civil Court is not bound by the findings of the

consolidation authorities because they are summary in nature. Learned first appellate court as well as learned trial court have held that the suit was not barred under Section 49 of the Consolidation of Holding Act. **[Smt. Prabha Devi and Others v. Ram Asrey, 2015 (33) LCD 1835]**

Review –Of Remand order- Passed by the D.D.C. – Sustainability of – D.D.C. has no power of review, order of reviews passed by D.D.C. is not sustainable

It is not denied that Settlement Officer of Consolidation by order dated 12.11.1973, allowed the appeal of the Vikrama and set aside the order of the Assistant Consolidation Officer dated 10.3.1973. This order was not challenged by the respondent also. Thus dispute remains between the parties as in basic consolidation record, name of Vikrama alone was recorded and the order of Assistant Consolidation Officer by which the respondents were given co tenancy right, has been set aside.

In such circumstances, at least the respondent should have either pursue their objection before Consolidation Officer or should have filed the application for clarification of the order of Settlement Officer of Consolidation.

In the fact of this case, the allegations that Vikrama was an illiterate person could not understand the real fact noted in the memo of appeal has been accepted by the Deputy Director of Consolidation by order dated 19.12.1979 and that order was not challenged by any party. After remand, this issue cannot be raised.

By the order dated 13.7.1982, the matter has been remanded to the Consolidation Officer for trial of the objection of the respondent on merit. Therefore, the respondents have opportunity to contest their case on merit before the Consolidation Officer. In such circumstances, the order dated 9.11.2000 being without jurisdiction as the Deputy Director of Consolidation had no power of review as held by Full Bench of this Court in Shiv Raji versus Deputy Director of Consolidation 1997 RD 562. **[Saudagar Singh and others v. D.D.C., Ghazipur and others, 2015 (128) RD 801]**

Review – Consolidation authorities have no power of review under Act

So far as the findings that recall application dated 19.10.2011 amounts to review is concerned, Settlement Officer Consolidation in order dated 24.09.2014 found that in the order dated 20.08.2011, validity of the orders dated 11.11.1980, 04.03.1981, 08.04.1981 and 13.07.1988 were examined as such the application dated 19.10.2011 amounts to review application and is not maintainable. A perusal of the recall application dated 25.04.2011 filed by the petitioner shows that she had raised a ground that order dated 27.04.2007 was

illegal. In paragraph-26 of the writ petition it has been stated that due to inadvertence, in recall application dated 25.04.2011, the petitioner did not pray for recall the order dated 27.04.2007. Thus validity of order dated 27.04.2007 had been specifically challenged by the petitioner and was very much in issue at that time. If this issue was not decided or incorrectly decided, second application for examining this issue again amounts to review application. Full Bench of this Court in Shivraji Vs. DDC and others, 1997 RD 562 (FB) held that consolidation authorities have not been conferred with the power of review under the Act. The application dated 19.10.2011, filed by the petitioner was not maintainable and amounts to a review application. **[Smt. Striti Sharma v. Director of Consolidation, Jhansi and other 2015 (128) RD 359]**

U.P. Land Revenue Act

Revenue entry- Entries in revenue record is not conclusive proof of actual physical possession of person whose name is entered therein

In Gurunath Manohar Pavaskar and others v. Nagesh Siddappa Navalgund and others 2008 (70) ALR 176, the Court said :

"A revenue record is a not a document of title. It merely raises a presumption in regard to the possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under section 110 of the Indian Evidence Act."

Further, mere entries in revenue record are not conclusive proof of actual physical possession of the person whose name is entered therein as held in Corea v. Appu Hamy Corea v. Appu Hamy 1912 Appeal Cases 230. Thakur Nirman Singh and others v. Thakur Lal Rudra Pratap Narain Singh and others AIR 1926 PC 100. **[State of U.P. v. Daiya Charitable Society, 2015 (112) ALR 138]**

S. 219 (2) Revision –Before the Board of revenue after getting the revision before the court of commissioner dismissed as not pressed- Maintainability of

So far as the contention of learned counsel for the petitioner that the second revision preferred by the petitioner had come up for admission before the Board of Revenue on 21.2.2015 and at that time no revision was pending, as such, it cannot be treated to be a second revision and Board of Revenue has wrongly come to conclusion that it was not maintainable is concerned, suffice is to observe that the provision under Section 219 (2) of Land Revenue Act are very much clear. It is specifically provided that if an application for revision has been preferred before any of the authorities given, no further application by the

same person shall be entertained, meaning thereby that once first revision was preferred by the petitioner which was dismissed as withdrawn without seeking any liberty to file revision again, the second revision was not maintainable. Even in the application for withdrawal the petitioner had not disclosed that he has preferred another revision before the Board of Revenue and do not want to pursue this revision. The application for withdrawal was filed simply on the ground that petitioner does not want to pursue the revision and it may be dismissed as withdrawn. The petitioner had not sought any liberty to file fresh revision, the first revision was, as such, dismissed as withdrawn without providing any liberty to file another revision. It is immaterial whether the second revision preferred by the petitioner had come up for admission on 21.2.2015 i.e., at the time when the first revision was already dismissed as withdrawn. Since no liberty was sought or given while withdrawing the first revision, as such, court is of the considered opinion that the second revision preferred by the petitioner was not maintainable. The larger Bench of the Board of Revenue by the impugned judgment and order has rightly come to conclusion that the second revision by the petitioner before Board of Revenue was not maintainable. The larger Bench was also right in dismissing the revision preferred by the petitioner as there was no question of remanding or sending the matter back to the authority who had made the reference to the larger Bench, once the larger Bench of the Board of Revenue had come to conclusion that the second revision was not maintainable. **[Smt. Umman Bibi v. Board of Revenue, U.P. Lucknow and others, 2015 (128) RD 654]**

U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules

Rr. 5 and 6- Compassionate appointment- It cannot be claimed as a matter of right

The compassionate appointment do not constitute a reservation of a post in favour of the member of the family of the deceased employee. It can not be claimed as a matter of right. The compassionate appointment is exception to the general rule of recruitment. The object and purpose providing the compassionate appointment is to enable the dependent members of the family of the deceased employee to tied over the immediate financial crises caused by the death of the bread-earner. In determining as to whether the family is in financial crises, all relevant aspects must be borne in mind including the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment and for such determination, the details sought is required to be

given in the application as provided under Rule 6 of the Rules.
In the present case, the respondent in the application has not given the name and age and other details pertaining to all family members of the deceased employee, particularly about their marriage, employment and income and the details of the financial crises as required under Rule In the application, he was not able to substantiate any financial crises. Moreover, the respondent is maintaining himself and his family members since last 14 years and is involved in litigation, incurring expenses, which shows that he and his family members are not in financial crises.
The respondent has declined the offer of the compassionate appointment on the post of Constable.
On the facts and circumstances, court is of the view that the respondent is not at all entitled for any compassionate appointment.
In view of the above, court is of the view that the direction of the learned Single Judge to reconsider the claim of the respondent for compassionate appointment, is not justified.
Court is of the view that without determining the financial crises and recording finding in this regard, the compassionate appointment cannot be given, if given, is illegal.
In the circumstances, court direct Chief Secretary, Government of U.P., Lucknow to issue circular to all department of the State of U.P. to abide by the law laid down in the present case and by the Full Bench of this Court in the case of Shiv Kumar Dubey Vs. State of U.P. and others, reported in 2014 (2) ADJ, 312 (FB). **[State of U.P. and others v. Raj Surya Pratap Singh Chauhan, 2015 (4) AWC 3000]**

U.P. Urban Buildings (Reg. of Let., Rent and Eviction) Act

"Rent"- What Constitutes- It is comprehensive and it includes the maintenance charges/ service charges

The Supreme Court in the case of Karnani Properties Ltd. v. Miss Augustine (AIR 1957 SC 309) considered the term 'rent'. The Court was considering a case arising out from the West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950). In the said case the word 'rent' was not defined. The Supreme Court relying on a judgment of Property Holding Company Ltd. v. Clark, (1948-1 KB 630) held that the term 'rent' is comprehensive and it includes all payment by the tenant to be paid to his landlord for the use and occupation of the building. It also includes the furnishing, electric installations

and other amenities agreed between the parties. The relevant part of the judgment reads as under :-

> " The term 'rent' has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. The term 'rent' is comprehensive enough, to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. Therefore all that is included in the term 'rent' is within the purview of the Act." (emphasis supplied by me)

The judgment of Karnani Properties Ltd.(supra) was relied by the Supreme Court in Pushpa Sen Gupta v. Susma Ghose (1990) 2 SCC 651. This Court also in the case of P.L.Kureel Talib Mankab, Bidhan Parishad v. Beni Prasad and another, (AIR 1976 Allahabad 362) considered the service charges which the landlord had been realizing from the tenant every month. In the said case the services included maintenance and operation of lift, electricity, furnishing and cleaning water pump, salary of the watchman etc. The Court was of the view that the service charges were part of the 'rent'. The Court has relied the judgment of the Supreme Court in Karnani Properties Ltd. (supra). Same view has been taken by the Full Bench of this Court in the case of Gokaran Singh v. Ist Additional District and Sessions Judge, Hardoi and others, 2000 (40) ALR (All)(FB). The full Bench held that word 'rent' in absence of any definition must be held to have been used in its ordinary dictionary meaning and the term 'rent' is comprehensive and it includes all payments agreed by the tenant to be paid to his landlord. **[Ram Lakhan Gupta v. M/s Taksal Theatres Pvt. Ltd., 2015 (111) ALR 689]**

S. 2-B (1) –Constitution of Rent control Tribunal –Discretion

Prayer is to issue a mandamus to effect an amendment in the Act of 1972. It is a well settled principle of law that a mandamus cannot be issued for amending a legislation since it lies within the constitutional power of the Parliament or, as the case may be, State Legislature. The guidelines which have been framed by the Supreme Court in Mohd. Ahmad vs. Atma Ram Chauhan, (2011) 7 SCC 755 have in paragraph 22 of the decision been recorded as being illustrative guidelines and norms but not exhaustive, which can be worked out between the landlord and tenat so as to avoid unnecessary litigation in court. There is no substance in the prayer or in the submission that a mandamus should be issued by the Court for an amendment by the State legislature. **[Prayag Gaurav Samman Evan Sanskritik Ayojan Jan Seva v. State of U.P. and 6 Others, 2015 (3) ARC 218]**

S. 20 (4)- Explanation- tenant in case acquires a residential building in the same city, he would not be entitled to get benefit of Section 20 (4) of Act

In so far submission of the landlord that admittedly the tenant has purchased a vacant house and has shifted in that house along with his son. The trial court has recorded a finding of fact that the tenant is not entitled for the benefit of proviso under section 20 (4) of the Act in view of the admitted position that he has purchased a residential house in the same City in name of his son. The plea taken by the tenant/revisionist that his son is living separately has not been accepted by the trial court in view of the definition of the family provided under section 3 (g) of the Act. The landlord has adduced the evidence that the tenant has locked the disputed premises and is living with his son for the last several years. The plea of the landlord that he is not living with his son has been rightly disbelieved by the trial court.

Moreover, from the explanation of Section 20 (4) of the Act it is evident that intention of the Legislature is that in case a tenant acquires a residential building in the same City he would not be entitled to get benefit of Section 20 (4) of the Act. Relevant it would be to mention that the similar intention of the Legislature reflects in Section 16 and 21 when a sitting tenant acquires a building in the same City. In my view it is immaterial where the tenant has acquired the building before the first date of hearing or subsequently will not make any difference as the said issue can be considered at the time of hearing. In the case of Vasudeo Chaturvedi v. VII Additional District Judge, Varanasi and Another, 1988 (14) ALR 678, this Court has observed as under :-

> "From a reading of sub-section (4) of S.20 of the Act, it is clear that it is open to the Court to relieve a tenant against his liability for evicting., if he has complied with the condition laid down in the above sub-section in lieu of passing of decree for eviction. From this, it is clear that what the Legislature intended was that at the time of final hearing if the Court is passing a decree for ejectment, it will relieve the tenant of that decree if he complies with the condition laid down aforesaid. In the circumstances, this can only be possible at the time of the final hearing of a suit. This cannot be done at a preliminary stage. The conclusion whether benefit under aforesaid sub-section would be available to the tenant, is dependent upon the facts and the appropriate stage for deciding this question is at the time of final hearing." [**Devendra Kumar Sharma v. Ajit Kumar Jain, 2015 (111) ALR 627]**

Non–impleadment of heir of sub-tenant- effect of –when plea of sub-

tenancy not pressed-Non impleadment of heirs cannot be faulted

It appears that landlord had also set up a plea of sub-tenancy for securing eviction. No written statement was filed by the alleged sub-tenant. Subsequently, the alleged sub-tenant died. It has been brought to the notice of this Court that landlord had filed an application stating that none of the heirs of the alleged sub-tenant are sitting/occupying the shop, and there is not need to substitute the heirs of the defendant no. 2. This plea was not pressed any further. In such circumstances, when the plea of sub-tenancy had not been pressed, non-impleadment of the heirs can.

S. 21 (1) Clause (ii) Third Proviso- Release application- commercial purpose- Dominant purpose of the building is commercial, so building cannot be said to be a residential Building as per clause (ii) of third Proviso of S. 21 (i) –Building can be vacated

The word "residential building" refers to the building as a whole and not only the tenanted accommodation/tenement." Admittedly, in the front portion of the building, the landlord is doing his brassware business for the last 40 years. There is nothing on record brought by the petitioner/tenant that there are other tenants in the building in question or the other portion of the building is being used for residential purpose except the accommodation in possession of the petitioner tenant. The extent of the tenement in occupation of the petitioner has not been disclosed in the written statement.

Learned counsel for the respondent/landlord submits that the tenant occupies only one small room and is using open verandah which exists at back portion of the building. Apart from this, the entire front portion of the building is being used for commercial purpose. Thus, the dominant purpose of the building as it reflected from the record is commercial. The building cannot be said to be a "residential building" as per Clause (ii)of third proviso of section 21(1) .

In this view of the matter, the argument of learned counsel for the petitioner is that it could not be released for commercial purpose cannot be accepted. There is no other submission. No infirmity is found in the order impugned.

The writ petition is dismissed.

In view of the same, it is directed that the petitioner shall file an undertaking before the Court below within a period of two weeks stating therein that he would vacate the premises in question on or before 30th November, 2015. In case, he fails to file the undertaking or vacate the premises within the time provided herein above, proceedings for his eviction shall be undertaken. **[Rehanul Haq @Kallu v. Imranul Haq, 2015 (3) ARC 176]**

S. 21 (1) (a)- Comparative hardship –Consideration of

The second limb of petitioner's submission with regard to aspect of comparative assessment of hardship, it is not in dispute that during the pendency of the proceedings under Section 21(1)(a) of the Act, it was found, as a matter of fact, that the tenant had sufficient accommodation in the form of House No. 11-E(3) Pokherpurva, Kanpur Nagar, which was in the name of the tenant's wife. This accommodation was found to be sufficient for tenant's need, as per Commissioner's report, which was on record as Paper No. 55-C. This premise is allegedly transferred by the tenant, during the pendency of present proceedings. Once the proceedings for eviction, at the instance of the landlord, was pending and it was found that the tenant had sufficient accommodation available, which was in the name of his wife, tenant's decision to transfer the property, during the pendency of dispute, was at his own risk. Hardship, if any, of tenant is self generated, and he has only himself to blame for it. The aspect of the tenant's need, which is sought to be protected by Act No. 13 of 1972, was adequately protected, and once the tenant had his own personal property where he could live, he cannot be permitted to dispose of such property and thereafter seek continuance of tenancy on the ground of personal hardship. In such circumstances, the reasons assigned in the orders passed by both the courts below, holding that the tenant had sufficient accommodation, and the aspect of comparative hardship is in favour of landlord, cannot be said to be perverse. **[Ashfaq Ahmad v. Abdul Sattar And 2 Other, 2015 (2) ARC 594]**

Ss. 21 (i) (a) (b)- Comparative hardship- Determination of- Absence of tenant searching for an alternate accommodation will tilt the balance of comparative hardship in favour of landlord

The respondent/landlord being unemployed required the shop in dispute for setting up a business of general merchandise. He claimed that apart from the shop in dispute he did not have any other shop. Further, the premises was also said to be dilapidated. Accordingly, the release of the premises was sought both under Section 21(1)(a) and under Section 21(1)(b) of the Act No. 13 of 1972. The matter was contested by the petitioner/tenant, who instead asserted that the landlord was settled in a business of silver ware, and, as such did not require the shop in dispute. It was further asserted that the landlord/respondent owned multiple commercial properties, as such also, his need was not bonafide.

To the contrary, the petitioner/tenant contended that he ran a beetel shop over the last several years, as such, had a general goodwill and popularity. Even the factum of the shop being dilapidated was disputed. Though however, the

landlord/respondent accepted the fact that he was doing business of silverware, however the same was started during the subsistence of the release application and was being carried out from a residential premises. Upon the exchange of pleadings and upon evidence being led by the respective parties, the prescribed authority allowed the release application vide order dated 19.07.2007 both under Section 21(1)(a) and 21(1)(b) of the Act. The prescribed authority while allowing the release application, found that apart from the shop in dispute, the landlord/respondent owned no other shop and had none other at his disposal. The multiple properties referred to by the tenant as belonging to the landlord were also found on the basis of municipal assessment and other evidence on record, as neither belonging to the landlord nor being under his possession.

Similarly, while considering the factum of comparative hardship, it was found by the court below that the tenant/petitioner had made absolutely no attempt to search for an alternate accommodation. This is despite the fact that the proceedings have undisputedly remained pending for several years. Accordingly, the said facets of the matter were also decided in favour of the landlord/respondent. Further while considering the release application under Section 21(1)(b), it was held that the premises in question is dilapidated and that the landlord/respondent fulfilled the requirement under Rule 17 of the Act.

In light of the above, it is apparent that the courts below have noted that the landlord respondent does not have any shop to his disposal. It is also a trite law that a landlord cannot be compelled to carry out commercial activity from his residential premises. This apart, it has also been settled in a catena of judgments that every member of the landlords family is entitled to start his independent business and cannot be compelled to participate in the family business as being otherwise asserted by the tenant/petitioner.

Upon the absence of the tenant to search for an alternate accommodation will have the factum of comparative hardship tilt in favour of the landlord/answering respondent.

The concurrent finding of fact have settled the issue of both bonafide need and comparative hardship, the same cannot be disturbed by this Court under Article 226 of the Constitution of India.

The matter at hand has been settled by both the courts below and does not warrant any interference by this Court in exercise of its powers conferred under Article 226 of the Constitution of India. **[Prahlad Tamoli v. Rajesh Kumar Agrawal, 2015 (111) ALR 685]**

S. 25 – Revision –Scope of

This Court has taken consistent view that the revisional court while exercising its power under section 25 of the Act, ordinarily will not set aside the finding of

facts and substitute its own finding after re appreciation of evidence. The Court interfere only in those cases where it finds the finding is based on no evidence or suffers from vice of perversity.

The Supreme Court has recently in the case of Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 78, has held that ordinarily appellate jurisdiction involves a rehearing but in the revisional jurisdiction Court cannot act as Second Court of first appeal. Paragraph 31 of the judgment reads as under:-

> "31. We are in full agreement with the view expressed in Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259 that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial Court or the subordinate tribunal which is never the case. The classic statement in Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, 1979 All CJ 473 that revisional power under the Rent Control Act may not be as narrow as the revisional power under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three Rent Control Statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent." **[Ram Lakhan Gupta v. M/s Taksal Theatres Pvt. Ltd., 2015 (111) ALR 689]**

S. 34 (1) (g) – Issue of Commission for local inspection is sale domain of Court and it cannot be claimed as a matter of right by part

As far as the provision of Section 34(1)(g) and the Rule 22 (f) are concerned, the commission may be issued by the court, if it is not able to arrive at a just conclusion or where the court feels that there is some ambiguity in the evidence of the parties, which can be clarified by making local inspection or inspection through commission.

Local inspection or issue a commission by the court cannot be claimed as of right by any party. Such inspections are made to appreciate the evidence already on record and Court is not expected to visit the site for collecting evidence. (See:- Randhir Singh Sheoran Vs. 6th Additional District Judge, 1997(2) JCLR 860, Radhey Shyam Vs. A.D.J., Court no. 13, Lucknow and others, [2010(2) A.D.J., 758] and Sonpal Vs. 4th Additional District Judge, Aligarh and others, 1992 2 ARC, 596).

Further to go for local inspection or issue of commission for the proper disposal of the controversy pending is a sole prerogative of the Court to decide whether to move the same or not.

Accordingly, it is a sole domain of the Court to issue a commission or not and the local inspection or commission cannot be claimed as a matter of right by a party, so arguments as advanced by the learned counsel for petitioner for issuing commission having no force and is liable to be rejected.

As the situation and location of the shop in dispute was not in controversy and the landlord has also specified his shop as well as the portion of the first floor, therefore, in the facts and circumstances of the case, there was no ambiguity regarding the location and situation of the shop in question. Thus, the application for commission has also been rightly rejected. [**Krishna Mohan Mahrotra v. Additional District Judge Court No. 3, Lakhimpur & others 2014 (4) ALJ 773]**

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules

R. 14- Execution pracee- Building released u/s 21 of Rent Act- Court below directed the petitioner to vacate the premises –Plea of has compliance of Rule

R. 8 - U.P. Urban Building (Reg. of Let., Rent and Eviction) Act-S.12 – vacancy- declaration of – Validity of

Challenging the order of declaration of vacancy dated 24.7.2015 , the contention of the learned counsel for the petitioner is that no notice was given to the petitioner before carrying out on the spot inspection of the property in dispute. The submission is that the petitioner is living in the disputed accommodation for the reason that house No. 762 Mohalla Rampuri, district Muzaffar Nagar which was purchased by him by registered sale deed dated 16.11.2011 is in occupation of some other person.

Learned counsel for the petitioner further relied upon Rule 8 of U.P. Urban Buildings (Regulations of Letting Rent & Eviction) Rules, 1972(hereinafter

referred to as the Rules 1972) to submit that after ascertaining the vacancy before passing order of allotment or release in respect of the disputed building, an inspection is to be carried out by the Rent Control and Eviction Officer under Sub-Rule 2 of Rule 8 of the Rules 1972 which provides the manner in which the inspection report is to be prepared. Further Sub-Rule 3 of Rule 8 of Rules 1972 provides that objection, if any, could be made on the inspection report. Rule 8 of Rules 1972 has been framed with a view to streamline the procedure of inspection in respect of building which is alleged to have been vacated under section 12 of the Act. The submission is that the Tehasildar's report was taken into consideration by the Rent Control and Eviction Officer for declaration of vacancy and hence procedure provided under Rule 8 of Rules 1972 as required to be followed by him was not followed and hence the order of declaration of vacancy is vitiated and deserves to be quashed.

Now question as raised by the tenant as a last resort is that the abovementioned house purchased by him is not available in the vacant state and therefore he is forced to live in the house in question. He would vacate the house as soon as the house purchased by him becomes vacant.This assertion has been made in the written statement filed on 28.1.2015 .

The submission of the learned counsel for the petitioner is that house purchased by him is not available in the vacant state and the petitioner is still living in the disputed accommodation. As the petitioner is occupying the house as an unauthorised occupant, he is liable to pay the damages to the landlord. It is further reflected from the record that the petitioner has paid only Rs. 8.75 towards rent. The house was purchased by the petitioner-tenant on 16.11.2011 and his occupation is of unauthorised occupation soon after the purchase of the house. Even after declaring the vacancy on 24.7.2015, petitioner tenant has not vacated the house in question.

In view thereof it is directed that the petitioner shall handover vacant possession of the house in question within one month from today. **[Govind Ram v. Jugul Kishor Paliwal and another, 2015 (3) ARC 169]**

R. 14 of above Rules- Rule 14 do not applicable in the present cases, since petitioner just lingering the execution proceeding

Writ Petition No.121 (R/C) of 2013; (Bhanu Prakash Chaturvedi Vs. Smt. Jairani and others) is pending before this Court against the judgment and order dated 07.04.2004 and 26.04.2013 and the application for interim relief is also pending in the said petition. It has also been submitted that the learned court below has committed an error of law by not serving the order in Form-C upon the petitioner directing him to vacate the same and in view of the provisions of Rule 14, the Form-D cannot be issued. It has also been submitted that it was the

mistake of lawyer of the petitioner that he has not moved an application for adjournment. Therefore, the impugned order dated 04.05.2015 is liable to be set aside.

As per the petitioner himself, the Writ Petition No.121 (R/C) of 2013 is already pending before this Court, in which, no interim order has been passed. In view of the fact that when there is no interim order of this Court, the court below is at its liberty to proceed with the matter.

Learned counsel for the petitioner has mainly emphasized the non-compliance of Rule 14 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972,

Rule 14 reveals that it relates to the building which is about to fall vacant or has been released under Section 16 (1) of the Act. Admittedly, the said building has not been released under Section 16 (1) of the Act, but it has been released under Section 21 of Act No.13 of 1972. Therefore, I do not find any substance in the submission of learned counsel for the petitioner that the learned court below has committed any error of law by not following the provision of Rule 14 of the Rules.

Learned court below has considered all aspects of the matter in detail and it appears that the petitioner only wants to linger on the execution proceedings regarding which the eviction order has been passed in the year 2004. I also do not find any error of law or perversity in the impugned order because ample opportunity of hearing was given to the petitioner who could have filed the objection or even the adjournment.

Considering the facts and circumstances mentioned above, I do not find any sufficient ground to interfere with the said orders because Rule 14 of the Rules, 1972 does not apply in the present case. **[Bhanu Prakash Chaturvedi v. Smt. Jairani And Ors. 2015 (2) ARC 592]**

U.P.Z.A. and L.R. Act

S. 22-B (4-F)- U.P.Z.A. and L.R. Rules, Rules 115-C, 115-D –Protection from eviction- power of judicial review- Long duration of illegal occupation of Gaon Sabha land cannot be regarded as justification for regularizing unlawful occupation

The reference to the Division Bench has been occasioned by an order dated 1 October 2013 of a learned Single Judge while dealing with the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

The learned Single Judge noticed several judgments of coordinate Benches dealing with the provisions of Section 122-B. In some of the judgments,

learned Single Judges had held that in certain circumstances, while deciding a challenge to an order of eviction under Section 122-B, this Court, in the exercise of its power of judicial review under Article 226 of the Constitution, had the jurisdiction to direct the settlement of the land in favour of an individual found to be in unauthorized occupation by substituting an order for the payment of damages in lieu of the order of eviction.

For these reasons, court answered the reference as follows:

(i) The law laid down by the learned Single Judge in the decisions in Ajanta Udyog Mandal Vidyalay (supra), Budhaee (supra), Sukhdeo (supra), Kishore Singh (supra) and Siya Ram (and other decisions following the same line) do not reflect the correct position in law and those decisions are hence overruled;

(ii) A person against whom an order of eviction has been passed under Section 122-B would not be entitled to a protection against eviction on the grounds which have weighed with the learned Single Judges in the above cases. Once the legislature has, by enacting a specific provision in sub-section (4-F) of Section 122-B, made a specific statutory provision which overrides the other preceding sub-sections of Section 122-B, it would not be open for the Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, to create a new legislative category and to issue a mandamus contrary to law;

(iii) The decision in Sukhdeo (supra) to the effect that if a person is in possession for more than 12 years, instead of eviction, an award of damages would be the appropriate relief, does not express the correct position in law. No such provision has been made by the legislature and it would not be open for the Court to introduce a new legislative category or to introduce a period of limitation as was purported to be done in the decisions of the learned Single Judge noted above.

The reference to the Division Bench is, accordingly, answered. The writ petition shall now be placed before the regular Bench according to the roster of work for disposal in the light of the reference as answered. **[Jagat Narain and others v. State of U.P. and others 2015 (4) ALJ 420]**

Bhumidhari Right- A person who is Bhumidhar of land cannot claim to be owner of trees standing on the land by reason of such tenancy unless it is shown that he had planted the same

In Lalita Singh v. Patiraj Singh, this Court held that a person, who is bhumidhar of land, by reason of such tenancy rights itself cannot claim to be owner of trees standing on the land, unless it is shown that he has planted the same or otherwise own the same.

Even if court follow the principle, “trees goes with land”, yet the findings has

to be recorded against the plaintiff since plaintiff is not the owner of land. In absence of any other evidence to show that plaintiff own the trees standing on the land in question having planted or otherwise, it cannot derive its claim only from his status of bhumidhar. Court has no hesitation in observing that Trial Court in the case in hand has proceeded in a very perfunctory manner while deciding the suit. It has failed to look into the real issues in correct perspective. Point No. 2, therefore, is answered against the plaintiff and in favour of appellant. Court hold that plaintiff, may be in symbolic possession of trees standing on the land in question having bhumidhari rights over the land in question, but plaintiff did not have ownership rights over the trees in question. The findings of Trial Court otherwise are reversed. [**State of U.P. v. Daiya Charitable Society, 2015 (112) ALR 138]**

S. 122 (B) (4A) – Benefit of –Petitioner Entitled to get only if he can show that his name entered in revenue records as occupant before 1-5-2002

In another case of Ghanshyam Singh v. State of U.P. Secretariat, Lucknow and others, 2005 (98) RD 489, it was held that the petitioner therein was entitled to get U.P.Z.A. and L.R. Act only if he can show that his name was entered in the revenue records as occupant before 1.5.2002 and not otherwise.

In view of the above discussion this court finds that the petitioners are not entitled for protection of section 122 (B) (4F) as they have failed to establish that their name have been recorded in the revenue records prior to 1.5.2002. This apart they are also not entitled for benefit of Section 123(1) as it is clearly emerged that they have not build their house prior to 1.5.2002. **[Satya Veer And another v. State of U.P. and others, 2015 (4) AWC 3557]**

Amaldaramad- contraction in mutation order and decree will prevail and not amaldaramad

So far as the recording of the order in khatauni 1366-1368 fasli is concerned, if there is contradiction in the mutation order and decree of the Court then decree will prevail and not amaldarmad, which is mutation of the main decree. So far as the decree is concerned, in paragraph 2 of the plaint it has been clearly admitted that share of Baithole was inherited by his mother Smt. Maraji, who was also co-plaintiff in the suit. So far as share is concerned, inheritance will be decided under law and not on the basis of admission of the parties. **[Gyandas and others v. Chief Revenue officer, Basti and 2015 (128) RD 334]**

S. 155 and 164- Mortgage –Right of redemption –Right of redemption can be rejected U/s 164 above Act if transaction is contravention of legal provisions contained U/s 155

In the first case cited on behalf of the respondents it has been held that even if a transaction is alleged to be mortgage with conditional sale and there is refusal for re-transfer of land, the same , in view of the deeming provisions of section 164, would be deemed to be sale and the mortgagor upon execution of the same would loose all his rights in the land in question.

The Apex Court, upon a consideration of section 164 held that a mortgage with possession "would be deemed at all times and for all purposes to be sale to the transferee" and therefore, the statutory right of redemption under Section 60 of the Transfer of property Act would not be available the mortgagor in view of section 164.

In view of the aforesaid decision as also section 164 itself, it must necessarily be held that the deed in question was a transfer or sale. **[Moti Lal v. Dy. Director of Consolidation, Jhansi and others, 2015 (128) RD 661]**

Statutory Provisions

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) ORDINANCE, 2015

[NO. 6 OF 2015]

(Promulgated by the President in the Sixty-sixth Year of the Republic of India)

An Ordinance further to amend the Negotiable Instruments Act, 1881.

Whereas the Negotiable Instruments (Amendment) Bill, 2015 has been passed by the House of the People and is pending in the Council of States;

And whereas, Parliament is not in session and the President is satisfied that circumstances exist which render it necesary for him to take immediate action;

Now therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. Short title and commencement- (1) This Ordinance may be called the Negotiable Instruments (Amendment) Ordinance, 2015.

(2) It shall come into force at once.

2. Amendment of Section 6. In the Negotiable Instruments Act,1881 (hereinafter referred to as the principal Act), in section 6,—

(i) in Explanation I, for clause (a), the following clause shall be substituted, namely:—

'(a) ''a cheque in the electronic form" means a cheque drawn in electronic form by using any computer resource and signed in a

secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;';

(ii) after Explanation II, the following Explanation shall be inserted, namely:—

'Explanation III.—For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.'.

3. Amendment of Section 142- In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.".

4. In the principal Act, after section 142, the following section shall be inserted, namely:—

''142A. *Validation for transfer of pending cases*.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in

that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.''.

The Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 2015

[U.P. Act No. 1 of 2015]

(As passed by the Uttar Pradesh Legislature)

An Act further to amend the Uttar Pradesh Public Services (Tribunal) Act, 1976

Fit is hereby enacted in the Sixty-sixth Year of the Republic of India as follows-

Prefatory Note- Statement of Object and Reasons- The Uttar Pradesh Public Services (Tribunal) Act, 1976 (U.P. Act No. 17 of 1976) has been enacted to provide for the constitution of tribunal to adjudicate disputes in respect of matters relating to employment of all public servants of the State of Uttar Pradesh. Sub-section (4-A) of Section 3 of the said Act provides that a person shall not be qualified for appointment as Vice- Chairman (Administrative) unless he has for at least two years held the post of an Administrative member or has for at least two years held the post of Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the government of India and has in the opinion of the State Government adequate experience in dispensation of Justice. With a view to ensuring availability of adequate pool of talented and more experienced skilled and sufficient number of eligible officers of appointment to the post of Vice- Chairman (Administrative) it has been decided to amend the said Act,-

(a) To omit the words "for at least two years" wherever occurring in the said sub-section;

(b) To provide that a person who has held the post of secretary in the State Government or a post equivalent to the post of the Joint Secretaty to the

Government of India shall be eligible for appointment to the post of Vice-chairman (Administrative) instead of a person who has held the post of "Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India.

The Uttar Pradesh Public Services (Tribunal) Amendment) Bill, 2015 is introduced accordingly.

1. Short title- This Act may be called the Uttar Pradesh Public Services (Tribunal) (Amendment) Act, 2015.

2. Amendment of Section 3 of U.P. Act No. 17 of 1976- In Section 3 of the Uttar Pradesh Public Services (Tribunal) Act, 1976, for sub-section (4-A) the following sub-section shall be substituted, namely-

"(4-A) A person shall not be qualified for appointment as Vice-Chairman (Administrative) unless he,-

(a) Has held the post of an administrative Member; or

(b) Has held the post of Secretary in the State Government or a post equivalent to the post of Joint Secretary to the government of India and has, in the opinion of the State Government adequate experience in dispensation of justice."

English translation of Rajaswa Anubhag- 13 Not. No. 35/I-13-2015- 7 Ka (25)– 2014, dated April 9, 2015, published in the U.P. Gazette, Extra., Part 4, Section (Kha) dated 9th April, 2015 P.2

In exercise of the powers under Sub-clause (vi) of clause (i) of Section 3 of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013)**, the Governor is pleased to specify the administrative cost as follows-

Sl. No.	**Land Acquisition Item**	**Administrative cost (Percentage of total amount of Compensation)**
1.	Expenditure incurred towards establishment of acquisition units includes pay, allowances, leave, pay pension, gratuity, and all other relevant expenses.	3.00 per cent

2.	Expenditure incurred towards preparation of records, preliminary spot inspections, and other work in the preliminary stages of acquisition, expenses on the process where consent of affected family has to be obtained or not to be obtained, as the case may be.	3.00 per cent
3.	Expenditure incurred towards the honorarium of private or retired government employees, such as retired tehsildar/naib-tehsildar, revenue inspector, lekhpal, circle officer, surveyor, engineers, horticulture officers, forest officer, assistants, computer operator, field engineer, driver, and peons etc., to be engaged for the evaluation of assets, crops and trees etc. attached to the land.	1.50 per cent
4.	Expenditure incurred towards survey of rehabilitation and resettlement element and reimbursement of other administrative expenses including honorarium.	1.50 per cent
5.	All other expenditure incurred towards publication of all notifications (in official Gazzette, two daily newspaper, upload on website, and on notice board) and expenses over advertisement, printing and stationery including honorarium.	1.00 per cent

Waqf Act

Ss. 85 and 7 –Jurisdiction of Civil Court- once the dispute is in respect of a waqf property, the question is to be determined by the Tribunal in view of above sections and not by civil Court

The sole question for adjudication is whether the Civil Court has jurisdiction to entertain the suit. Section 85 of the Act clearly bars jurisdiction of the Civil Court

A conjoint reading of Section 7 and 85 of the Act, it is apparent that wherever there is a dispute regarding the nature of the property or whether the suit property is a wakf property or not, a Tribunal constituted under the Wakf Act, which has exclusive jurisdiction to decide the same.

Section 6 of the Act provides that if any question whether a particular property

specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the Mutwalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in such matter shall be final in this regard.

The trial court has placed reliance on paper no. 71Ga, which is a letter dated 19-08-2013, certifying that the land situate in Gata No. 3042 of village Hardauli is reserved for charitable purpose and the income from the same is concerned to Madarsa. Once this document was on record Section 6 of the Act also does not come to any benefit of the appellant. So far as the question of partition is concerned, once the dispute is in respect of a wakf property the question is also be determined by the Tribunal in view of Section 85 and Section 7 of the Act. **[Sageer Khan and another v. Maksood Husain Khan and another, 2015 (111) ALR 707]**

Words and Phrases

"Access" and "non –access" –Meaning of

The Supreme Court in the Case Gautam Kundu v. State of W.B. and another, 1993 (3) SCC 418 has held in paragraphs 24 as under

"24. This section requires the party disputing the paternity to prove non-access in order to dispel the presumption . "Access" and "non-access" mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation. **(Mushafir Yadav v. State of Uttar Pradesh and another, 2015 (9) ACC 911)**

"Possession"- Meaning of

The meaning of the word 'possession' would depend upon the context of a particular enactment in which it is used. See also NDPS Act 1985. [**Mohanlal v. State of Rajasthan, AIR 2015 SC 2098]**

* * * * *

Legal Quiz

Q. 1 कौशाम्बी जनपद का सृजन जनपद इलाहाबाद से कटकर हुआ है और इलाहाबाद जजशिप में लम्बित नव सृजित कौशाम्बी जजशिप से सम्बन्धित मूल वाद व सत्र परीक्षण वाद तथा अन्य फौजदारी वाद स्थानान्तरित होकर इस जजशिप में प्राप्त हुये हैं। इस जजशिप में प्राप्त मूलवाद व सत्र परीक्षण वाद के मुल नम्बर के बारे में स्थिति स्पष्ट नही हो पा रही है कि इस जजशिप में प्राप्त मूल वाद व सत्र परीक्षण वाद को नये नम्बर पर पंजिका में दर्ज कर कार्यवाही की जायेगी अथवा उनके पुराने मूल नम्बर पर ही पंजिका में इन्द्राज कर उनका नियमानुसार निस्तारण किया जायेगा।

Ans. All the guidelines are mentioned in rule -21 chapter –IV of General Rule (Criminal) in this context, which are quoted below:

"Court of Session exercising criminal jurisdiction over two or more district shall keep a separate series of numbers of each district"

Besides this, the circular letter of Hon'ble High Court of Allahabad is being quoted below for you information:

"C.L. No. 16/D-2 dated 4th February 1952 as amended by C.L. No. 69/26-B, dated 9the June 1952.

As under Rule 21 Chapter IV General Rules (Criminal), 1957 a separate series of number is to be allotted to each district, a separate register in Form No. 15 should be maintained for each revenue district in a sessions division."

Further, for exercising a original Civil suit transferred from one court to another court, the rules are given below:

"C.L. No. 1578/44dated 15th May, 1912

The number on a suit transferred from one court to another should not be altered.

The following is the correct procedure in this cases:

A case is instituted, say, in the court of the Munsif of Muhammadabad and on institution is marked:

Munsif Of Muhammadabad
No. 10 of 1910
A v.X

It remains in that court till, say, issues have been struck and is then transferred to the court of the Munsif of Azamgarh, on reaching that court it will be entered in the register on the date of receipt as an entry after the last entry in the register, but instead of getting a serial number it will be entered as-

Munsif of Azamgarh
No. 10 of 1910 of Musif of Muahmmadabad
A v. X

And this will be the inscription on the papers following:

It will go into the record room when completed as a complete record of the court of the Munsif of Azamgarh but the record-keeper will on examination place it in the basta of the Munsif of Muhammadabad according to the date of institution, making an entry in the list of the fact of transfer of the case to the court of Munsif Azamgarh."

Q. 2 किशोर न्याय बोर्ड के दानों सदस्यगण अपने पद से त्याग-पत्र दे दिये हैं। ऐसी स्थिति में निम्न विषयों पर विस्तृत दिशा निर्देश दे-

क्या उक्त दोनों सदस्यों की अनुपस्थिति में क्या प्रधान मजिस्ट्रेट द्वारा अन्तरिम आदेश जैसे किशोर अपचारी घोषित किया जाना तथा जमानत प्रार्थना पत्रों का निस्तारण किया जा सकता है

क्या उक्त दोनो सदस्यों के अनुपस्थिति में क्या प्रधान मजिस्ट्रेट द्वारा अन्तिम निस्तारण सम्बन्धी आदेश पारित किया जा सकता है

Ans. Sub section 2 of section 4 of Juvenile Justice (Care & Protection of Children) Act, 2000 provides that-

(1) ……

(2) "A Board shall consist of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2) of 1974) on a metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class and the Magistrate on the Board shall be designated as the principal magistrate"

Sub section (3) of Section 5 of Juvenile Justice (Care& Protection of Children) Act, 2000 provides that –

(1) …….

(2) A child in conflict in law may be produced before an individual member of the board, when the board is not sitting.

(3) A board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any state of proceedings:
Provided that there shall be atleast two members including the principal magistrate present at the time of final disposal of the case.

Likewise, sub rule 4 & 5 of Rule 6 of Juvenile Justice (Care & Protection of Children) Rules, 2007 provides as under:

(1) ……..
(2) …….
(3) …….
(4) A member may resign any time, by giving one month's advance notice in writing or may be revoked from his office as provided in sub-section (5) of Section 4 of the act.
(5) Any vacancy in the Board may be filled by appointment of another person from the penal of names prepared by the Section Committee, and shall hold office for the remaining term of the board.

Likewise, sub rule 10 & 14 of Rule 11 of Juvenile Justice (Care & Protection of Children) Rules, 2007 provides as under:

(1) …….
(2) …….
(3) …….
(4) ……
(5) ……..
(6) ……..
(7) …….
(8) …….
(9) ……
(10) In case the Board is not sitting, the juvenile in conflict with law shall be produced before the single member of the Board as per the provision laid down under the sub-section (2) of Section 5 of the act
(11) …….
(12) …….
(13) ……..
(14) When a juvenile is produced before an individual member of the Board, and order obtained, such order shall need ratification by the Board in its next meeting.

The cumulative effect of above noted Sections and Rules gives an impression that perhaps a principal magistrate of Juvenile Justice Board, in the absence of both Members, can person judicial work of a very urgent, immediate and interim nature. However, in such condition, he

shall not be in a position to pass final orders, it is also pertinent here to mention that the answers provided through Judicial helpline of this Institute is only of a advisory character. Despite my best efforts, I could not find any judicial precedent on this point and whatever has been written above is an opinion. So, you are advised to go through the above noted provisions carefully and act according to law.

Q. 3 Suit Valuation के निर्धारण के संबंध में पहले बोलने का अधिकर न्यायालय वादी का होगा या प्रतिवादी का होगा?

Ans. In regard your question I have to say that Hon'ble High Court of Allahabad has in the case of Wajid Ali v. Isar Bano AIR 1951 Allahabad 64 [C.N. 8] [F.B.] " has held that section 149, Civil Procedure Code has to be read as a proviso to S.4, Court-Fees Act, in order to avoid contradiction between the two sections. As a thus: (1) Ordinarily a document insufficiently stamped is not to be received, filed, exhibited or recorded in a Court. (2) when, however, an insufficiently stamped exercise its discretion in allowing time to the party presenting the document to make good the deficiency. (3) If it decides that time should not be granted, it will exercise its discretion in allowing time to the party presenting the document to return the documents as insufficiently stamped. (4) if it decides that time should be granted, it will give time to the party to make good the deficiency, and in order to enable the party to make good the deficiency within the time allowed, the Court will tentatively for that limited purpose receive the document. (5) If the deficiency is made good within the time fixed, the document is to be deemed to have been presented and received on the date on which it was originally filed. (6) If the deficiency is not so made good, the documents is to be returned as insufficiently stamped by virtue of S. 4 of the Act.

Again it has been held by the Hon'ble High Court of Allahabad in the case of "Jaggannath v. Ram Dularey" AIR 1956 Allahabad 63 (Vol. 43, C. 23 Jan.) that, under S. 6 Court Gee Act the Court is directed not to accept a document which is not properly stamped, but this section has to be read, as pointed out in the, Full Bench Case referred to above, along with S. 149 C.P.C. when as, insufficiently stamped memorandum of appeal is presented before a court that court has jurisdiction under S. 149 to grant time for making good the deficiency in the court-fee. At that stage there is no occasion for the Court to issue notice to the respondent as there is not appeal and no respondent till then, and discretion vested in the Court under S. 149 has, in the very nature of things, to be exercised ex parte. It is at that very point of time that the Court has to make up its mind whether to allow time or not. No doubt, the Court must exercise its

discretion in a reasonable manner, but if it errs, it appears to us that its discretion cannot be questioned at a subsequent stage of the case after the deficiency has been made goo in compliance with the order of the Court unless at the time of making the order the Court expressly reserved to the opposite party the right to object the order.

Q. 4 क्या कलेक्ट्रेट के रिकार्ड रूम में न्यायालय की निर्णीत की गयी पत्रवालियाँ न्यायालय के अभिलेखागार में स्थान अभाव के कारण ली जा सकती है?

Ans Query pertaining to consignment of the judicial record to the record room of the Collectorate. Query related to rule 108 of General Rule (Criminal) and Circular No. C.E. No. 44 dated 21st April, 1969, which are self explanatory. It is therefore advised that the relevant rule& circular order be applied accordingly.

Q. 5 Offence committed u/s 363. 366, 504 and 506 IPC after investigation I.O. submitted Charge-Sheet. But after taking evidence u/s 164 Cr. PC I.O. has obtained order u/s 173 for further Investigation. After investigation I.O. has now submitted final report in the same case. Accused has prayed to the court for inclusion of charge-sheet in this case. The main question of P.O. is that what appropriate order should be passed in this case?

Ans. Query pertaining to section 173(2), 173(8) and 190 Cr.PC relating to cognizance of offence where the police has submitted final report after further investigation, whereas earlier cognizance is taken by the magistrate on the charge sheet submitted by police in the same case. The Magistrate is not bound by the conclusions drawn by investigating officer during investigation. It is clearly held by Supreme Court, in Dharamatma Singh vs. Hariminder Singh & Ors 2011 (74) ACC 266 (SC) that "where the police report forwarded to the Magistrate under section 173(2) of the Cr.PC states that a person has committed an offence, but after investigation the further report under Section 173(8) of the Cr.PC states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person." It is advised that please go though the following case laws and then apply according to the facts and circumstances of the case. See the following cases-

(1) Gangadhar Janardhan Mahatre v. State of Maharashtra (2004) 7 SCC 768.
(2) State of Orissa v. Habibullah Khan (2003) 12 SCC 129.

* * * * * *