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From the Editor's Desk

The adversarial criminal justice system leaves for a victim with a very limited role and does not permit him to have greater say in criminal trial. The procedural law hitherto treated a victim of crime merely as nothing more than an eye-witness. Indian Judiciary, however, has played a significant role in protecting the rights of the victims in the criminal justice system. It tried to fill up the gaps where the law was inadequate or found wanting in protecting the interests of the victims. The constitutional courts made endeavour to involve the victim in the trial proceedings in a more meaningful way and to protect his interests. The courts gave several directions to involve the victim in the process of investigation, allow him to engage a lawyer and not to withdraw the charges against the wrongdoer without the knowledge of victim though the State has power to withdraw the case at any stage of the trial.

The important contribution of the Apex Court is evolution of the compensatory jurisprudence, to provide compensation to the victims of crime or their dependents. Compensatory jurisprudence is the classical example of judicial activism where the courts make order to give compensation for the violation of basic human rights. The Apex Court through its judgments prompted the district courts to be liberal in applying the statutory provisions especially Section 357 (3) of CrPC and award compensation to victims of crime or their dependents. Taking cue from the judicial pronouncements the legislature came up with important legal provision i.e., 'Victim Compensation Scheme' by introducing Section 357A in the Criminal Procedure Code, 1973 by Criminal Law Amendment Act, 2008 (Act No. 5 of 2009). It provides that every State government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. No doubt the courts in India have realised the role of victim in the criminal justice system and have tried to address his concerns. Though the compensation may be an effective remedy in some cases to give much needed monetary relief to the victims, yet it cannot be a complete remedy for the victims who suffer more emotional injury than physical injuries.

Rights of the victims of crime is a subject that has, unfortunately, only drawn a sporadic attention of the Parliament, the judiciary and civil society. Yet, the evolving and developing jurisprudence has taken great strides. We still have to go a long way to bring the rights of victims of crime to the center stage and to recognise them as human rights and an important component of social justice and the rule of law. The victim needs to be given an important role at every stage of pre-trial, trial and post-trial proceedings. The State by itself has not, in the traditional system, been able to ensure complete justice to the victim of a crime, the focus as such has to be brought back to the victim.

LEGAL JOTTINGS

"Human Rights are individual and have a definite linkage to human development, both sharing common vision and with common purpose. Respect for human rights is the root for human development and realization of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights."

Dr A.K. Sikri, J. in *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 760, para 39.

CRIMINAL

Supreme Court Judgments

Criminal Appeal No. 1008 of 2010
R. Damodaran v. State Represented by the Inspector of Police
Decided on: February 23, 2021

The Supreme Court held that in a case based on circumstantial evidence, the settled principle of law is that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and such circumstances should be conclusive in nature and moreover the circumstances should be complete and there should be no gap left in the chain of events. However, the circumstances must be consistent only with the hypothesis of the guilt of the accused and inconsistent with the innocence.

Criminal Appeal No. 125 of 2021
Pravat Chandra Mohanty v. State of Odisha & Anr.
Decided on: February 11, 2021

The Supreme Court held that the prosecution by the State is the policy of law because all the offences are against the society. The offenders have to be brought to the courts and punished for their offences to maintain peace and order in the society. It is the duty of the prosecution to ensure that no offender goes scot-free without being punished for an offence. It is also the settled principle of law that innocent should not be punished.

The question arises as to while granting leave of the Court for composition of offence, what is the guiding factor for the Court to grant or refuse the leave for composition of offence. The nature of offence and its affect on society are relevant considerations while granting leave by the court for compounding the offence. The offences which affect the public in general and create fear in the public in general are serious offences, nature of which offence may be relevant consideration for the court to grant or refuse the leave.

Criminal Appeal No. 123 of 2021
M/s. Kalamani Tex & Anr. v. P. Balasubramanian
Decided on: February 10, 2021

The Supreme Court reiterated that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

The Court observed that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for dishonour of cheque as well as civil liability for realisation of the cheque amount.

The Court further observed that it is also well settled that there needs to be a consistent approach towards awarding compensation and unless there exist special circumstances, the Courts should uniformly levy fine up to twice the cheque amount along with simple interest at the rate of 9% per annum.

Criminal Appeal No.1078 of 2010

Surendra Bangali @ Surendra Singh Routele v. State of Jharkhand
Decided on: February 04, 2021

The Supreme Court while taking note of judicial precedent in *Laxman v. State of Maharashtra (2002) 6 SCC 710,* observed that the Constitution Bench clearly held that mere absence of doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. It was further held that evidentiary value of such a declaration would depend on the facts and circumstances of the particular case. In the present case Judicial Magistrate, who has appeared in the witness box, has proved the dying declaration and looking to the facts and circumstances especially the presence of doctor who had signed the dying declaration and who had told the Judicial Magistrate that the injured was in a fit condition to give statement, we see no reason to take any contrary view to one which has been taken by learned Trial Court as well as the High Court.

Criminal Appeal Nos. 100-101 of 2021
N.Vijayakumar v. State of Tamil Nadu
Decided on: February 03, 2021

The Supreme Court reiterated that mere recovery of money from the accused by itself is not sufficient to prove the charge under the Prevention of Corruption Act. It held that:

"It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in the case of C.M. Girish Babu v. CBI, Cochin, High Court of Kerala (2009) 3 SCC 779 and in the case of B. Jayaraj v. State of Andhra Pradesh (2014) 13 SCC 55. In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.

The above said view taken by this Court, fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cell phone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment of the High Court is fit to be set aside. Before recording conviction under the provisions of Prevention of Corruption Act, courts have to take utmost care in scanning the evidence. Once conviction is recorded under provisions of Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record."

J&K High Court Judgments

CRM(M) 57/2021
Sunil Choudhary v. Union Territory J&K and another
Decided on: February 25, 2021

The Court held that for making out a charge of rape against an accused where the prosecutrix has consented to sexual intercourse there has to be material to show that the prosecutrix had consented to sexual intercourse in consequence of a misconception of fact arising from the promise of the accused.

CRMC No. 70/2012
Bablu Devi & Anr. v. State of J&K & Ors.

Decided on: February 24, 2021

The Court held that some settlement between the parties may not be a ground to quash the proceedings by the High Court in respect of serious offences or other offences of mental depravity or offence of dacoit or offences under special statutes like Prevention of Corruption Act or the offences committed by public servant while working in such capacity. The Court shall refuse to quash the proceedings, even if, there is a settlement arrived at between the parties. In the instant case, the dispute between the parties overwhelmingly and predominantly has civil flavor, the registration of FIR and counter FIR emanates from a dispute between the employer and employee and, therefore, falls within the permissible parameters laid down by the Supreme Court for quashing the proceedings on settlement between the parties.

CRMC No. 384/2018
Fayaz Ahmed Lone v. State of J&K
Decided on: February 19, 2021

The Court reiterated that power under Section 319 CrPC. (351 of State CrPC) is discretionary and extraordinary and is required to be exercised sparingly and only in those cases where circumstances of the case so warrant. The crucial test, which has been laid down is "the test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction."

The Court further held that a person cannot be arrayed as an accused and subjected to trial by merely naming him as one of the accused without ascribing any specific role played by him in the commission of the offence.

CM No.5005/2019
Mehraj-ud-Din v. State of JK & Ors.
Decided on: February 19, 2021

The Court held that a judgment may be wrong, erroneous, incorrect, perverse, legally untenable etc., but, the only course available for the aggrieved party is to go in appeal against the said judgment. Such grounds do not constitute errors of fact or of law on the face of the record as would call for a review.

A review cannot also be used as a tool for changing the opinion/ view of the Court. In a review petition, it is only an error, apparent on the face of the record, which can be considered and gone into by the Court. It is not open to the Court, dealing with review of its decision, to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at, on appreciation of evidence and after hearing the rival parties cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of the record. So far as the grievance of the review petitioners on merits of the case is concerned, virtually the review petitioners seek the same relief which they had sought at the time of arguing the main matter and had been negative. Once such a prayer has been refused, no review petition would lie which would convert re-hearing of the original matter. It is well settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate Court. It is not re-hearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review has to be exercised with extreme care, caution and circumspection, that too, only in exceptional cases. The power of review is exercised when some mistake or error, apparent on the face of the record, is found. A mistake or an error, apparent on the face of the record, means a mistake or an error which is, prima facie, visible and does not require any detailed examination. Such an error must strike one on mere looking at the record and should not require any long-drawn process of reasoning on the points where there may, conceivably, be two opinions.

LPA No. 157/2019
State of J&K v. Gul Mohammad Bhat & Ors
Decided on: February 19, 2021

The Court held that there is no scope for the Magistrate to record preliminary statement of the complainant at the time of issuing a direction to the officer in charge of a police

station to investigate a cognizable case. In fact, a direction under Section 156(3) CrPC is issued at a pre cognizable stage. So far as recording of preliminary statement of complainant and his witnesses is concerned, the same is provided in Section 200 of the Code of Criminal Procedure, which finds placed in Chapter XVI of the said Code.

A perusal of the aforesaid provision clearly shows that when a complainant is examined by a Magistrate, it means that he has taken cognizance of an offence on complaint.

Thus, when a person approaches a Magistrate with a complaint containing the allegations with regard to commission of a cognizable offence, the Magistrate has two options. He may either proceed under Section 156(3) of CrPC and direct the officer in charge of a police station to register the FIR and investigate the case or he may proceed to record preliminary statement of the complainant and his witnesses after taking cognizance of an offence and thereafter proceed in the manner as provided under Section 202, 203 and 204 of the Code. If the Magistrate after examining the complainant and his witnesses is not sure about the truth or falsehood of the contents of the complaint, he may proceed under Section 202 of CrPC and postpone the issue of process and direct an enquiry or investigation to be made by any Magistrate subordinate to him or by any police officer or by such other person. A Magistrate has option of directing an investigation in order to ascertain the truth or falsehood of the complaint. However, the scope and nature of investigation or inquiry contemplated under this provision is not the same as contemplated in Section 156 of CrPC. Under Section 202 of CrPC, the scope of investigation is limited to assist the Magistrate in ascertaining truth or falsehood of the contents of the complaint so that the Magistrate is in a position to make up his mind whether to pass an order of dismissal of the complaint in terms of Section 203 of CrPC or to issue a process against the accused in terms of Section 204 of CrPC. The investigation contemplated in Section 156 CrPC involves registration of an FIR, arrest of accused, if need be, and laying of charge sheet or closure report before the Magistrate in terms of Section 173 of CrPC. So the scope and area of investigation under Section 156 and 202 CrPC is entirely different and distinct from each other.

CrlM No. 147/2021
Reyaz Ahmad Khan v. Director, Anti-Corruption Bureau & Ors
Decided on: February 16, 2021

The Court held that the Court, while dealing with a petition filed under Section 482 CrPC should refrain from making any prima facie decision at interlocutory stage when entire facts of the case are incomplete, hazy and more so, when material evidence is yet to be collected and issues involved could not be seen in their true and correct perspective.

CRM(M) No.06/2021
Hilal Ahmad Lone v. Gulshana Begum
Decided on: February 11, 2021

The Court held in this case that at the stage of grant of interim maintenance, the court is only supposed to look to the admitted factual position and not embark upon determination of disputed questions of fact.

CRM(M) No.283/2020
Zakir Hussain v. UT of Ladakh & Ors
Decided on: February 11, 2021

The Court in this case summed up the legal position regarding sections 154, 196 CrPC, and sections 124A, 153A and 153B IPC, that for making out an offence under Section 124A, 153A, 153B and 505(2) IPC, it is necessary to demonstrate that the words written or spoken or signs or visible representation have the tendency or intention of creating public disorder or disturbance of public peace by incitement to offence.

The provisions of section 196 CrPC do not, in any manner, control section 154 of the Code of Criminal Procedure, in that, the police is competent to register an FIR, if information received by it discloses commission of cognizable offence, even if it is referable to section 196 CrPC.

The police, who are competent to register

FIR under Section 154 CrPC, are equally competent to investigate the same and present the final report before the court.

Section 196 CrPC would come in operation at the stage of taking of cognizance by the court and the court will refuse to take cognizance of the offence(s) referable to section 196 CrPC, if there is no previous sanction by the Central Government or State Government or District Magistrate, as the case may be.

In case, challan with regard to the offence (s) having reference to Section 196 CrPC is presented before the Judicial Magistrate without obtaining prior sanction from the competent authority, the court shall not take its cognizance but return the same to be presented only after seeking previous or prior sanction of the competent authority.

The court shall be deemed to have taken cognizance only if it applies its mind to the Final Police Report submitted before it in terms of section 173 CrPC with a view to proceed further in the manner provided in law.

The Magistrate, who finds the police report not in consonance with section 196 CrPC shall not retain the challan and proceed in the matter rather it would return the same to the prosecution.

CRM(M) No. 257/2019
Nissar Ahmad Matoo v. Ulfat
Decided on: February 05, 2021

The High Court held that merely putting forth the plea of divorce by the husband would not be sufficient to deny interim maintenance to the wife under Section 125 CrPC. As observed above and reiterated herein that there is presumption of subsistence of marriage and the onus is on the person, who alleges divorce, to prove cessation of the marital ties. Otherwise also, proceedings under Section 125 CrPC are summary in nature and complicated disputed questions are not required to be gone into.

At the stage of grant of interim maintenance, the Magistrate shall simply ignore the plea of divorce, however, while considering the application under Section 125 CrPC finally, it may take note of prima facie evidence on record with regard to subsistence or otherwise of the marriage between the parties. For final determination the Magistrate shall leave the parties to seek adjudication before the Civil Court, which is well equipped to determine such complicated disputed questions of title or status.

The Court reiterated that maintenance awarded under Section 20(1)(d) of the D.V. Act could be in addition to an order of maintenance made under Section 125 CrPC, also provided that while considering an application under Section 12 of the D.V. Act, the court would take into consideration the order of maintenance passed under Section 125 CrPC or any other law for the time being in force and vice versa. It is equally well settled that the Court while granting interim maintenance under Section 125 Cr.P.C. to the wife or children shall also take into account the similar maintenance, if any, granted to the aggrieved party under the D.V. Act or some other provision for the time being in force for grant of maintenance to the destitute wife and the children and the position is equally true vice versa.

CRMC No. 4/2019
Mushtaq Ahmad Khuroo v. Sterlite Technologies Ltd
Decided on: February 03, 2021

The Court held that it is only the person who has issued the cheque for discharge of legally enforceable debt, which is bounced or returned by the Bank due to insufficiency of funds in the account of such person, alone can be arraigned as accused in the complaint under Section 138 of the N.I. Act. It is only where the person committing an offence under Section 138 of the N.I. Act is a company, every person, who, at the time of commission of offence was incharge of, and was responsible to the company for conduct of business of the company, as well as the company, shall be deemed to be guilty of offence and liable to be proceeded against and punished accordingly.

"The world's greatest paintings, sculptures, songs and dances, India's lustrous heritage, the Konarks and Khajurahos, lofty epics, luscious in patches, may be asphyxiated by law, if prudes and prigs and State moralists prescribe paradigms and prescribe heterodoxies. It is plain that procedural issue is important and the substantive issue portentous."

V.R. Krishna Iyer, J. in *Raj Kapoor v. State*, (1980) 1 SCC 43, para 9 .

CIVIL

Supreme Court Judgments

Civil Appeal Nos. 3786-3787 of 2020
Joydeep Majumdar v. Bharti Jaiswal Majumdar
Decided on: February 26, 2021

The Supreme Court held that the conduct of the spouse would fall within the realm of mental cruelty if the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the other spouse. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.

The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not justify the persistent effort made by her to undermine the dignity and reputation of the husband. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no court has determined that the allegations were false.

Civil Appeal No.5167 Of 2010
Khushi Ram & Ors. v. Nawal Singh & Ors
Decided on: February 22, 2021

The Supreme Court held that a perusal of Section 15(1)(d) of Hindu Succession Act indicates that heirs of the father are covered in the heirs, who could succeed. When heirs of father of a female are included as person who can possibly succeed, it cannot be held that they are stranger.

The Court also held that a property which is not the subject-matter of the suit or a proceeding would come within the purview of exception contained in clause (vi) of sub-section (2) of Section 17 of the Act. If a compromise is entered into in respect of an immovable property, comprising other than that which was the subject-matter of the suit or the proceeding, the same would require registration.

The Court reiterated the legal position regarding compromise decree as under:

(1) Compromise decree if *bona fide*, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration. In a converse situation, it would require registration.

(2) If the compromise decree were to create for the first time right, title or interest in immovable property of the value of Rs 100 or upwards in favour of any party to the suit the decree or order would require registration.

(3) If the decree were not to attract any of the clauses of sub-section (1) of Section 17, decree would not require registration.

(4) If the decree were not to embody the terms of compromise, benefit from the terms of compromise cannot be derived, even if a suit were to be disposed of because of the compromise in question.

(5) If the property dealt with by the decree be not the "subject-matter of the suit or proceeding", clause (vi) of sub-section (2) would not operate.

The Court clearly held that since the decree which is sought to be executed is with regard to the property, which is subject matter of suit, hence, is not covered by exclusionary clause of Section 17(2)(vi) and decree did not require registration.

Civil Appeal No. 3966 of 2010

Amitabha Dasgupta v. United Bank of India & Ors.
Decided on: February 19, 2021

The Supreme Court emphasized that irrespective of the value of the articles placed inside the locker, the bank is under a separate obligation to ensure that proper procedures are followed while allotting and operating the lockers:

(a) This includes maintenance of a locker register and locker key register.

(b) The locker register shall be consistently updated in case of any change in allotment.

(c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish.

(d) Banks may consider utilizing appropriate technologies, such as blockchain technology which is meant for creating digital ledger for this purpose.

(e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed.

(f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker.

(g) The concerned staff shall also check that the keys to the locker are in proper condition.

(h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security.

(i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard.

(j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider.

(k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder.

The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future.

(l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard.

(m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

(n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities.

(o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra.

The above principles shall remain binding upon the banks which are providing locker or safe deposit facilities. It is also left open to the RBI to issue suitable rules with respect to the responsibility owed by banks for any loss or damage to the contents of the

lockers, so that the controversy on this issue is clarified as well.

The Court observed that with the advent of globalization, banking institutions have acquired a very significant role in the life of the common man. Both domestic and international economic transactions within the country have increased multiple folds. Given that we are steadily moving towards a cashless economy, people are hesitant to keep their liquid assets at home as was the case earlier.

Thus, as is evident from the rising demand for such services, lockers have become an essential service provided by every banking institution. Such services may be availed of by the citizens as well as by foreign nationals. Moreover, due to rapid gains in technology, we are now transitioning from dual key operated lockers to electronically operated lockers. In the latter system, though the customer may have partial access to the locker through passwords or ATM pin, etc., they are unlikely to possess the technological knowhow to control the operation of such lockers.

On the other hand, there is the possibility that miscreants may manipulate the technologies used in these systems to gain access to the lockers without the customers' knowledge or consent. Thus the customer is completely at the mercy of the bank, which is the more resourceful party, for the protection of their assets. In such a situation, the banks cannot wash off their hands and claim that they bear no liability towards their customers for the operation of the locker.

The very purpose for which the customer avails of the locker hiring facility is so that they may rest assured that their assets are being properly taken care of. Such actions of the banks would not only violate the relevant provisions of the Consumer Protection Act, but also damage investor confidence and harm our reputation as an emerging economy.

Special Leave Petition (Civil) Nos. 3063-3064 of 2021

The High Court of Judicature at Madras Rep. by its Registrar General v. M.C. Subramaniam & ors.

Decided on: February 17, 2021

The Supreme Court reiterated that legislative intent of Section 16 of Court Fees Act was made broad enough to take cognizance of all situations in which parties arrive at a settlement irrespective of the stage of the proceedings. It is also obvious that the purpose of making this provision was in order to provide some sort of incentive to the party who has approached the court to resolve the dispute amicably and obtain a full refund of the court fee.

Settlement of dispute only through any of the mode prescribed under section 89 of C.P.C is not sine qua non of section 89 C.P.C., rather it prescribes few methods through which settlement can be reached, Sine qua non for applicability of section 89 is settlement between the parties outside the court without the intervention of the courts.

The purpose of Section 16 of Court Fees Act is to reward parties who have chosen to withdraw their litigations in favour of more conciliatory dispute settlement mechanisms, thus saving the time and resources of the court, by enabling them to claim refund of the court fees deposited by them. Such refund of court fee, though it may not be connected to the substance of the dispute between the parties, is certainly an ancillary economic incentive for pushing them towards exploring alternative methods of dispute settlement.

Court Fees Act is a taxing statute and has to be construed strictly and benefit of any ambiguity if any has to go in favour of the party and not to the State.

The object and purpose of Section 89 is to facilitate private settlements, and enable lightening of the overcrowded docket of the Indian judiciary. This purpose, being sacrosanct and imperative for the effecting of timely justice in Indian courts, also informs Section 69A of the 1955 Act, which further encourages settlements by providing for refund of court fee.

The provisions of Section 89 of CPC must be understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty.

Special Leave Petition (Civil) Nos. 2224-2225 of 2021
Compack Enterprises India Pvt. Ltd. v. Beant Singh
Decided on: February 17, 2021

The Supreme Court has held that it would be slow to unilaterally interfere in, modify, substitute or modulate the terms of a consent decree, unless it is done with the revised consent of all the parties thereto.

The Court observed that it is well settled that consent decrees are intended to create estoppels by judgment against the parties, thereby putting an end to further litigation between the parties.

Civil Appeal No. 538 of 2021
Kotak Mahindra Bank Pvt. Limited v. Ambuj A. Kasliwal & Ors.
Decided on: February 16, 2021

The Court held that appeal from the order of Debt Recovery Tribunal is not maintainable before the Debts Recovery Appellate Tribunal without pre-deposit of a portion of the debt determined to be due under section 21 of the Recovery of Debts and Bankruptcy Act, 1993.

The Court observed as under:

"A perusal of the provision which employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said Section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five per cent of the amount of such debt which is due. Hence the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver. It is in that background, keeping in perspective the said provision, the DRAT has in the instant case ordered deposit of fifty per cent of the amount. The respondents No.1 and 2 while seeking waiver of the deposit have essentially projected the case to indicate that the recovery certificate ordered by the DRT is for the sum of Rs.145 Crores with interest at 9% per annum and the amount realised by the Bank from the compensation amount payable to respondent No.3 is itself a sum of Rs.152,81,07,159/- (Rupees One Hundred Fifty Two Crores Eighty One Lakhs Seven Thousand and One Hundred Fifty Nine) and as such there is no debt due."

Special Leave Petition (Civil) No. 31844 of 2018
K. Akbar Ali v. K. Umar Khan & Ors.
Decided on: February 12, 2021

The Supreme Court held that the suit which is *ex facie* not maintainable for want of cause of action against the defendants or any of them, be dismissed which would save precious judicial time as also inconvenience and expenditure to the parties to the suit.

The Court further held that the provisions of Order VII Rue 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

The Court observed as under:

"In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC v. Debts Recovery Appellate Tribunal reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rue 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court."

Transfer Petition (Civil) No. 970 of 2016
Ravinder Nath Agarwal v. Yogender Nath

Agarwal & Ors.
Decided on: February 12, 2021

The Supreme Court held that a person claiming to be an executor or legatee under a Will cannot rely upon the Will, in any proceeding before a Court of justice, unless he has obtained probate (if an executor has been appointed) or letters of administration with the Will annexed, if such a Will has been executed by certain classes of persons; and that the jurisdiction to grant probate or letters of administration vests only in courts located within the towns of Calcutta, Madras or Bombay and the Courts in any local area notified by the State Government in the Official Gazette.

Civil Appeal No. 1844 of 2010
H.S. Goutham v. Rama Murthy & Anr.
Decided on: February 12, 2021

The Court reiterated that for production of additional evidence at the appellate stage, it is must for the party seeking production of such evidence to satisfy the conditions laid down in Order XLI Rule 27 CPC. Unless the conditions are satisfied, additional evidence can not be permitted to be led. The Court observed as under:

"Even otherwise, it is required to be noted that as per the provisions of Order XLI, the appellate court may permit additional evidence to be produced whether oral or documentary, if the conditions mentioned in Order XLI Rule 27 are satisfied after the additional evidence is permitted to be produced in exercise of powers under Order XLI Rule 27. Thereafter, the procedure under Order XLI Rules 28 and 29 is required to be followed. Therefore, unless and until the procedure under Order XLI Rules 27, 28 and 29 are followed, the parties to the appeal cannot be permitted to lead additional evidence and/or the appellate court is not justified to direct the court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court."

Civil Appeal No. 4028 of 2020
Chintels India Ltd v. Bhayana Builders Pvt Ltd
Decided on: February 11, 2021

The Supreme Court settled the legal position as to maintainability of appeal against the order refusing to condone delay in filing application under section 34 of the Arbitration Act, as under:

"……..after the non-obstante clause, the section states that no judicial authority shall intervene "except where so provided in this Part". What is "provided in this part" is section 37, which therefore brings us back to square one. Undoubtedly, a limited right of appeal is given under section 37 of the Arbitration Act, 1996. But it is not the province or duty of this Court to further limit such right by excluding appeals which are in fact provided for, given the language of the provision as interpreted by us hereinabove. Thus, this last argument also has no legs on which to stand.

Consequently, the question of law is answered by stating that an appeal under section 37(1)(c) of the Arbitration Act, 1996 would be maintainable against an order refusing to condone delay in filing an application under section 34 of the Arbitration Act, 1996 to set aside an award."

Civil Appeal No. 9472 of 2010
A. Subramanian & Anr. v. R. Pannerselvam
Decided on: February 8, 2021

The Supreme Court held that it cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership, has a perfectly good title against the entire world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title.

In the suit for declaration for title and possession, the Plaintiffs could succeed only on the strength of their own title and not on the weakness of the case of the Defendants. The burden is on the Plaintiffs to establish their title to the suit properties to show that they are entitled for a decree for declaration.

Civil Appeal No. 4394 of 2010
Boloram Bordoloi v. Lakhimi Gaolia Bank & Ors.
Decided on: February 8, 2021

The Supreme Court held that the punishment is imposed based on the findings recorded in the enquiry report, as such, no further elaborate reasons are required to be given by the disciplinary authority.

The Court further observed that the manager of a bank plays a vital role in managing the affairs of the bank. A bank officer/employee deals with the public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. If an officer/ employee of the bank is allowed to act beyond his authority, the discipline of the bank will disappear. When the procedural guidelines are issued for grant of loans, officers/employees are required to follow the same meticulously and any deviation will lead to erosion of public trust on the banks.

If the manager of a bank indulges in such misconduct, which is evident from the findings of the enquiry officer, it indicates that such charges are grave and serious. Inspite of proved misconduct on such serious charges, disciplinary authority itself was liberal in imposing the punishment of compulsory retirement. In that view of the matter, it cannot be said that the punishment imposed in the disciplinary proceedings on the appellant, is disproportionate to the gravity of charges.

J&K High Court Judgments

OWP No. 1305/2014
Ashu Deep Kohli v. State of J&K & Anr.
Decided on: February 22, 2021

The court held that the disposal of the public property by the State or its instrumentalities partake the character of a trust. The method to be adopted for disposal of public property must be fair and transparent as also to protect the financial interest of the State as the government being the guardian of the finances of the State. The right to refuse the lowest or any other tender is always available to the government and even if a public auction had been completed and a person found to be highest bidder no right accrued to the highest bidder till the confirmation letter is issued to him.

LPA No.157/2019
State of J&K v. Gul Mohammad Bhat & Ors
Decided on: February 19, 2021

The court held that the liability to pay the compensation in respect of acquisition of land is, primarily, that of the indenting department and any amount which is included in the cost of acquisition would have to be borne by the indenting department. Therefore, the appellant, which happens to be the indenting department in this case, cannot escape its liability to pay the interest to the land owners in terms of Section 35 of the land Acquisition Act because the same is included in the cost of acquisition.

While making the award, the Collector acts as an agent of the Government and functions under its administrative control.

So far as deposit of amount of compensation in terms of Section 32 of the Act is concerned, the said provision makes it very clear that the deposit of the amount has to be with the Reference Court. Therefore, mere deposit of awarded sum by the appellant with the Collector would not absolve it of its liability. It was the duty of the Collector to deposit the same with the Reference Court once the land owners, immediately after making of the award, applied for making a reference thereby expressing their dissatisfaction with the award passed.

M.A. No. 68/2016
National Insurance Company Limited v. Jamal Master & Ors
Decided on: February 11, 2021

The court held that if risk of an occupant of a car, inmate of a vehicle or passenger in a private car, is to be covered, additional premium has to be paid. If no additional premium is paid, their risk is not covered. The statutory liability under Section 146 and 147 of the Act has to be read with the terms of the insurance policy issued under Section 146 of the Act. But that does not prevent an insurer from entering into a

contract of insurance covering a risk wider than minimum requirement of the statute, covering risk to gratuitous passengers as well. A third-party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. The liability is restricted to the one arising out of the statutory requirements under Section 146 only.

Mac App No. 36/2020
Bajaj Allianz General Insurance Company v. Imaad Durrani & Ors
Decided on: February 01, 2021

The court held that disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being and permanent disability refers to residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving maximum bodily improvement or recovery, which is likely to remain for remainder life of injured. Temporary disability refers to incapacity or loss of use of some part of body on account of the injury that ceases to exist at the end of period of treatment and recuperation whereas permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity whereas total permanent disability refers to a person's inability to perform any vocation or employment related activities as a result of accident. Permanent disabilities, arisen from motor accident injuries, are of a much wider range when compared to physical disabilities which are mentioned in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

However, if any of disabilities mentioned in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for claiming compensation.

The court further elucidated that where claimant suffers a permanent disability because of injuries, computation of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. In most of the cases, percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from percentage of permanent disability. What requires to be assessed by Tribunal is the effect of permanent disability on earning capacity of injured and after assessing loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at future loss of earnings, by applying standard multiplier method used to determine loss of dependency.

The vital aspect that has to be taken into consideration, thus, is to assess as to whether permanent disability has any adverse effect on earning capacity of injured. If a victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation, not only for physical injury and treatment, but also for pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for disability caused due to accident.

CM Nos. 690/2021
Sunil Suri v. Union Territory of JK & Ors
Decided on: February 01, 2021

The Court held that It is well settled legal position that a person shall have no locus standi to file a Writ petition if he/ she is not personally affected by the impugned action or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his/ her acquired interests have been violated ignoring the applicable rules.

WORKSHOP ON SENSITIZATION OF JUDICIAL OFFICERS ON EFFECTIVE IMPLEMENTATION OF COTPA AND OTHER TOBACCO LAWS

On 20th of February 2021, a workshop was organized by the Judicial Academy in collaboration with the Directorate, Health Services Kashmir, through virtual mode, on Sensitization of Judicial officers on effective implementation of COTPA and other Tobacco laws. 40 Civil Judges (Junior Division) of 2020 batch participated in the workshop. Few Doctors and officers in the Directorate, Health Services Kashmir associated with Tobacco Control Programme in the UT of Jammu & Kashmir also participated.

The workshop commenced with welcome address and a general introduction of the topic by Dr. Maria Zaffar. She welcomed the experts, speakers, participating judicial officers, doctors and other officer from the Health Department. This was followed by address of Mr. Praveen Sinha, Head WHO India Office, on the topic 'Burden of Tobacco Epidemic and Its Health and Human Cost'. It was highlighted by the speaker that Tobacco is the world's leading cause of fatalities, avoidable premature mortality and a common risk factor for most noncommunicable diseases, cardiovascular diseases, cancer, chronic lung disease and diabetes, which puts people with these conditions at a higher risk of developing severe illness in the present times when affected by COVID-19. Each year tobacco use kills about one million Indians, India is the 2nd largest producer and consumer of tobacco products in the world. It was also highlighted that Cigarette and other Tobacco products put a lot of burden on the health system and thereby on the national economy. Though it is believed that the governments generate a lot of revenue from the Tobacco products and liquor but the fact of matter is that compared to revenue generated, the loss to economy caused by health emergencies caused by use of Tobacco products is significantly high. In the nut-shell the national economy suffers a lot as occasioned by use of Cigarettes and other Tobacco products. Talking about Jammu & Kashmir, the speaker said that use of Tobacco Products in Jammu & Kashmir is somewhat lesser as compared to national average but it is found in the research that health hazards are not in any way insignificant. It is also found that use of chewable tobacco is less but smoking of cigarettes of Hukahs is very common, especially among rural population. Younger generation is getting attracted to smoking in a big way.

Mr. Ranjit Singh, a legal expert, spoke on the Cigarette and Other Tobacco Products Act, 2003, and other legislations supporting tobacco control in India. The speaker talked about the regime of the Cigarette and Other Tobacco Products Act, 2003, which was enacted to regulate the manufacture, commercial exploitation and use of tobacco products and to discourage the consumption of tobacco products in order to protect the masses from the health hazards. The speaker further elaborated on the following areas:

1. prohibition of smoking in public places;
2. prohibition of advertisement of cigarettes and other tobacco products;
3. prohibition of sale of cigarettes or other tobacco products to anyone below the age of 18 years and in a particular area;
4. regulation of trade and commerce in production, supply, and distribution of cigarettes and other tobacco products.

He also discussed various other equally important legislations supporting the tobacco control including the Food Safety & Standards Authority of India (FSSAI) which lays down that tobacco and nicotine shall not be used as ingredients in any food products. He also asserted how one must have a Tobacco Retail Dealer license to sell cigarettes or tobacco products directly to consumers. Further the legal position regarding protection of minors from use of tobacco products was discussed. As per the Juvenile Justice (Care and Protection of Children) Act, whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be

punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

Dr. Naheed Anjum, State Nodal Officer, NTCP Cell DHS Kashmir spoke on the topic 'National Tobacco Control Programme and support needed from the judiciary. She introduced the participants about the National Programme launched by the central government in collaboration with the State Governments. She talked about the progress made so far in this regard and vision plan for future. She also spoke about the policy framework being followed to strengthen the tobacco control regime in the UT of Jammu & Kashmir. The work done so far and the future plans was also discussed. She said that focus of the programme is on the younger generation between the age group of 14-25, which is most vulnerable. Stress is being laid on control of use of tobacco by this age group.

Dr. Amit Yadav, Sr. Technical Advisor spoke about the Role of Judiciary in advancing Tobacco Control in India. Prominent role being played by the judiciary in advancing tobacco control was discussed by the speaker. He told the participants that the constitutional courts have been pioneer in tobacco control and time and again the courts have directed the governments to curb smoking in public places to prevent violation of non-smokers' right to breathe air free from tobacco smoke. Role of the Supreme Court was specifically highlighted and the important judgments handed by the Supreme Court on various aspects of tobacco regime were also enlisted and discussed.

Various decisions of High Courts to ban the use of plastic sachets of gutka and pan masala; directions to prevent sale of any kind of tobacco products in and around the educational institutions; directions of ban on gutka; were enumerated and it was noted with satisfaction that the courts taking a positive stand in these matters has been the hallmark of the Indian judiciary.

After the addresses of the expert speakers on the above topic, a question and answer session was conducted wherein the participants put forward their queries and discussions were held regarding the same. Many doubts of the participants were cleared in the session.

In the end, Director, J&K Judicial Academy and Dr. Rana J Singh, Dy. Director Tobacco Control/NCD in the Government of India gave valedictory addresses. They expressed satisfaction on the quality of the inputs given by the experts and speakers in the programme and talked about the usefulness of such programmes for creating awareness among the stakeholders. They highlighted the need to have continued association for spreading the message of tobacco control and the involvement of all government agencies, NGOs and common masses to work in tandem to create awareness and thereby to get rid of the health emergencies and to reduce the burden on the national exchequer. They concluded the workshop by speaking about the various ways and mannerism in which tobacco control can be effectively implemented. Director, Judicial Academy requested the organisers to devise a schedule for training of all the Judicial Magistrates over a period of time, on collaboration basis. Dr. Rana J Singh assured of full support of the National Tobacco Control Directorate in this regard. Mr. Pravin Sinha, from WHO also appreciated the proposal and assured that WHO shall provide all technical and expert support whenever such programmes are organized by the Judicial Academy.

Dr. Mohammad Naser, State Programme Coordinator Tobacco Control in Jammu & Kashmir, proposed the vote of thanks and drew the workshop to a close.

The workshop was quite successful in achieving its objective of creating awareness among the judicial officers and to strengthen their knowledge. It would now be easy for the officers participating in the workshop to effectively deal with the cases concerning tobacco control coming up before them.

PROTECTION OF WOMEN AND ACCESS TO JUSTICE

A woman with a voice is defined as a true woman but being both soft and strong is what truly being a woman is who stands not only for herself but also stands up for everybody close, who lifts and builds others as well. There is a need to inspire a strong daring woman who meet challenges every day and strikes a balance both at home and at work place.

Women of today is equal to men and so are her rights as guaranteed by the constitution and in other statue books, suffice it to say that she has equal access to justice as their male counterparts have.

Today, we need women at all levels, including the top to change the dynamic reshape the conversation to make sure women's voices are heard and not to be overlooked and ignored. Women is already strong, it's about changing the way the world perceives that strength.

Infact, the mission and vision of Indian judiciary is to give effect to the constitutional vision of justice. We just need a Road map to enhance the real spirit of justice and access to it. Article 15 of constitution of India specifically speaks about prohibition of any discrimination on the basis of race, caste and sex meaning thereby that women shall not be discriminated at any level so far as her rights (Legal/ constitutional) are concerned.

Despite, women's helplines, NGOs, Legal aid agencies still the violence and intolerance is growing. There is no denial that there are trapped domestic violence victims also during Covid-19 times.

So far as working women is concerned safe, congenial and sustainable environment is need of the hour and again it is a dire need to enforce laws like sexual harassment against working women.

A successful woman is one who builds a strong foundation with the Bricks others have thrown at her. They should become greedy for their ambitions and hungry for their aims. Thumb rule is that "no-one can make you inferior without your consent". If you want to fly high, give wings to your dreams. I think in the present scenario, there is a need to break the Glass ceiling. Women should not try to squeeze into a glass slipper instead shatter the Glass ceiling and must make a Dent wherever they can, for aiming high. Parents/elders should encourage and inspire their girl child to fly high and be aware of their basic human rights as well as legal rights for their protection.

Today, women's hygiene and mental Health is a big issue. We need to make every endeavor to reduce violence against women and children as more than 80% of women had experienced domestic or family violence/ emotional abuse. Even, women are subject to sexual harassment at work places also, and there are still cases of gender inequality and violence against women are reported. Women are still not paid equally for work of equal value. Sadly, women is still struggling to strike a balance both at work place as well as at domestic front and is facing abuse particularly Emotional Abuse which seriously affects mental Health of a woman.

I think legal empowerment of the women in the changing scenario is a sine-qua-non. Every other day we come across cases of violence, harassment, molestation, eve teasing, stalking, rape and many more and women's safety is our prime concern. Though, there are numerous laws around us for welfare and security of women and children yet there are serious matters coming before stakeholders for instance courts/police/crime reporting agencies. Even, despite DB Act and Posco Act 2012 cases of sexual offences against women and children are still reported which shows that there is a serious need for attitudinal change and complete change of mindset because despite plethora of laws still there is a lot to do for safety of women and children those each day are subject to abuse and violence by the strangers, family friends/ neighbors and some times by their own family members. Even our Indian Constitution has provided constitutional

protection for women and 17 most powerful rights for women are incorporated in the Constitution/statue books.

I think women should be aware of dangers luring against them in the dark and should protect themselves through appropriate usage of legal measures to help law in punishing the culprits.

Basic human rights of women should be implemented in TOTO for instance right to good Health and medical aid including right to free legal aid, right to privacy and safe environment, right to be protected in the office against sexual harassment/right to victim's compensation/right to property/right against honour killings and right against forced abortion and sterilization.

To my mind, society needs to be sensitized regarding protection of women/ children and bringing culprits to book by reporting crime and by giving them moral, physical and financial support if need arises. Parents role is also questionable at times, they should support the children or their major daughter for reporting the crime whenever it is found that she or he is victimized of sexual violence. Even the community head of a village has a very pivotal role to play and to ensure that each girl child/women should get atleast basic education which is granted to them by our Constitution also. "As educating a woman is a way forward to empowerment".

Law is not a brooding omni potence in the sky but a flexible instrument of social order thus keeping in view growing violence and nature of crime many important amendments in law has been incorporated and many enactments are there to deal with heinous crimes.

Unfortunately, despite so many stringent laws, guidelines laid down by Hon'ble Apex Court as well as Union Health Ministry. Still, we are facing problems of mandatory reporting of the crime and ignoring health issues of the victims of crime be a cases of children or of adults even cases of marital rape despite so much awakening are not being reported and still there is a hue and cry of sexual violence which needs to be curbed at all levels. As under DB Act also rape trauma and PTSD syndrome are also apprehended. There should be a strong and loud message of zero tolerance of violence at all levels. Media and social media too has to play a very pivotal role in reporting the crimes against women or victims of violence under POCSO Act. They have to maintain confidentiality, gender sensitivity and neutrality. In the changing scenario, a women has to emerge as a stronger tool internally as well to come at par with their counterparts.

It is high time that women should standup for their rights and speak about not letting their dignity be at stake at work places. By incorporating strict rules and regulations, enforcement of strict laws will help some extent in stilling fear in the minds of culprits. Our country would become fully developed if the women of the country start feeling safe and can live without fear, without losing their dignity.

Safe environment for women is need of the hour for protecting their Dignity and Self-Esteem.

- Ms. Bala Jyoti
District & Sessions Judge
(Judicial Member),
J&K Special Tribunal, Jammu

STATUS QUO - BASIC CONCEPT

An order of *status quo* is a specie of interim orders, when granted indiscriminately and without qualifications or conditions, leads to ambiguity, difficulties, and injustice. If courts want to give interim relief, they should endeavour to give specific injunctive relief. If grant of order of "status quo" is found to be the only appropriate relief, then Courts should indicate the nature of status quo, that is whether the status quo is in regard to possession, title, nature of property or some other aspect. Merely saying "status quo" or "status quo to be maintained" should be avoided. If in a suit for injunction, where plaintiff claims that he is in possession of the suit property and the defendant is attempting to interfere with his possession, and the defendant contents that he is

in possession and petitioner was never in possession. If the Court merely directs status quo to be maintained by parties, without saying anything more, it will cause confusion and in many cases even lead to breach of peace. On the basis of such order, the plaintiff would contend that he is in possession and he is entitled to continue in possession; and the defendant would contend that he is in possession and he is entitled to continue in possession. In such a case, if the Courts wants to direct status quo, it should specify the context in which or conditions subject to which, such status quo-direction is issued. Maintaining Status Quo on property.

If a court orders maintain the status quo on the property it means that two components of the property that comes under the purview of status quo one is the possession and other is the title. When status quo is ordered when a suit is instituted then the person who is holding the possession and title shall retain such possession and title until the suit is disposed of. Basically status quo is ordered to prevent the third party interests in the property that is with respect to leasing, selling, mortgaging, gifting, willing or any acts which is done to transfer the interest in the property under the Transfer of property act.

However if a status quo is ordered then party who is in the possession of the property will be free to enjoy the possession of the property as he feels like, he shall be continue to do his business or use the property as he was using the only restriction is on the transfer of rights, title, interest in the property to a third person. Therefore Status quo does not mean that whatever mesne profits (i.e., profits from the property) a person is deriving is to be stopped as status quo is not a stay order there is a wide difference between the Status quo and stay order, a stay order compels the person to start or stop any activity, while status quo is maintaining the status of the property as it is.

However as S. 52 of Transfer of Property if a litigation is pending against the suit property the actions related to sale, purchase or transferring title in the property will automatically governed by the doctrine of Lis Pendence which is envisaged under s. 52 of TPA therefore neither the status quo nor section 52 TPA acts as a stay order on peaceful enjoyment of the possession of property. The person who is enjoying the property would continue to do so and if he faces any interference with respect to this right he may sue the person who is causing, status quo does not bars any of the rights of the property holder only the right pertaining to transfer the property gets on hold till the pendency of the suit.

Therefore if a court passes an order pertaining to maintenance of Status Quo with respect to a disputed property it means that the status quo is maintained only with respect to title and possession of the disputed property and nothing more should be extended with this respect.

Maintaining status quo is different from injunctions and stay order where the court compels the person to do or restrain any act, therefore the injunction and stay orders are right in personam and is directed towards a person only. Whereas the maintenance of status quo is towards the property and only restraint on a person is that he cannot alienate the property or create any third party interests in the property.

The Supreme Court of India in Bharat Cooking Coal Limited vs State Of Bihar & Ors 1988 AIR 127, held that the expression 'status quo' is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation the term implies existing state of things at any given point of time. The court further held that status quo as in the High Court cannot mean anything else except status quo as existing when the matter was pending in the High Court before the judgment was delivered.

In Ghulam Ahmad Darren & Ors v. Mushtaq Ahmad 2005, the High Court of J & K held that 'status quo' means the existing position at the time of order should not be changed which means that in no way the features or character of the subject matter should be altered or changed.

The court further held that literally 'status quo' means "the situation that currently exists",

and the order of status quo means that the situation currently existing i.e at the time of the order should not be changed. The order of status quo sometimes creates difficulties in its implementation.

Plainly stated, the import of the order is that nothing further be done with respect to the subject of the dispute so as to change its features or character where the subject matter of dispute is some tangible property. That is how the Court explained its order observing that the party who is in actual possession will continue with the possession.

-Ms. Poonam Gupta
Munsiff, Leave Reserve Post,
J&K High Court, Jammu

Guest Column

Interpretation of Constitution of India Vis-a-vis Doctrine of Constitutional Morality by Supreme Court

The Constitution of India is a living document as per the old saying and, therefore, one can find a culture of Invention-ism in the reading or interpretation of the Constitution. The supreme law of land i. e Constitution of India is a living document rather than a book containing words. Of late, use of the Doctrine of Constitutional Morality has become much more significant and relevant while interpreting the Constitution of India by the Judges than ever before. The Supreme Court has applied different facets of this progressive and transformative doctrine, as it has come to be known, in a catena of cases, some of which may possibly be counted as the finest and seminal Judgments. The term 'constitutional morality' has often been invoked by Supreme court in India for striking down laws which could be termed as manifestations of popular morality. There are many judicially crafted inventions that is not explicitly mentioned in constitutional text formally anywhere. The Doctrine of Constitutional Morality; is relatively recent addition which is time and again provoked by the Supreme Court in past rulings by giving some landmark Judgement. This phrase of "constitutional morality", existed in the Indian Constitutional Scheme since times of Dr B. R. Ambedkar, but post-1950 until recently it was in a somewhat dormant state. But this term is not found in Constitution of India.

Nevertheless, the word 'morality' in the Constitution of India at various places (Article 19, 25 & 26). Dr. B R Ambedkar used 'Constitutional Morality' multiple times in 'Parliamentary debates.

While the concept of 'Basic Structure' tended to nullify the constitutional amendments which go against the fundamental spirit of the Constitution of India, there was a need for an alternative jurisprudential concept that can be used to nullify ordinary legislations instead of using the Basic Structure; doctrine so as to avoid weakening the sanctity of the concept. This is not to say that only constitutional amendments come under the purview of the Basic Structure; doctrine, however, it is true that it applies mostly to such amendments!

What is the Doctrine of Constitutional Morality?

The Constitutional Morality is not still defined anywhere, there are many different notions on the same. The doctrine of constitutional morality means adherence to noble principles enshrined in a Constitution of India, principle interpretation of the Constitution in line with the ethos of constitutional democracy. It may also be defined as it means adherence to core values of principles and philosophy of constitutional democracy that extended to create egalitarian moral based society based on social, economic and political justice.

Elements of Constitutional Morality

* Rule of Law
* Individual liberty
* Right to Equality
* Freedom of choice expression
* Preamble
* Social justice
* Due process of law

'Constitutional Morality' is not limited only to following the constitutional provisions

literally but vast enough to ensure the ultimate aim of the Constitution it is so broad that it includes commitment to inclusive and democratic political process in which the individual and collective interests are satisfied, a judicial scenario providing an opportunity to unfold the full personhood of every citizen for whom and by whom the Constitution exists etc. It specifies norms for institution to survive and an expectation behaviour that will mere not just the text but the soul and spirit of the Constitution of India. It means practical percolation of constitutional values in governance and citizen entitlement requires a sensitive state apparatus. The Judiciary as a interpreter of Constitution of India has effectively used Constitutional morality to overcome age old laws, which needs to get reformed with changing time, as society can't be static it gets evolved with changing times same goes with the law to cater the needs of society by keeping in mind the spirit of Constitution of India.

The Doctrine of Constitutional Morality is concept which commands and empower the Judicial minds to interpret the Constitution of India and its provisions in a moral way subject to the Constitution and not to the public morality, in the recent development we get to see this from our Judiciary. The essence of constitutionalism which provides as rigid feature and serves as a moral compass in the interpretation and implementation of the Constitution of India is the Doctrine of Constitutional Morality.

Evolution of Doctrine

The doctrine is not new but in Indian context it is now evoked in many Judgements recently, first time the concept of Constitutional morality was first propounded by the British Classicist named George Grote in the 19th Century in his book "A History of Greece." In Grote's formulation, constitutional morality meant as:

That all citizens would respect and adhere the constitution.

No own would disobey authorities acting under the constitution.

All citizens would have the unrestrained freedom to criticize public officials acting in the discharge of their constitutional duties.

All Public officials would have to act within the confines of the constitution.

All the contenders for political power would respect the constitution and know that their rivals also respect the same.

In the Indian context the word constitutional morality was propounded by Dr. B. R. Ambedkar on 4th November, 1948 in Parliamentary Debate to inculcate the morality in the Constitution of India with its great importance and effectiveness. While addressing he said quoted Grote's word that constitutional morality was not a "natural sentiment" and said that Indians "Have yet to learn it". According to Ambedkar, constitutional morality was not to be used by Courts to invalidate legislation or Government action. Simply he used the Grote's idea as a persuasive or rhetorical device to justify why seemingly mundane details about the administration of the Government had been in the Constitution of India. In Ambedkar's view, 'constitutional morality' means an effective coordination between conflicting interest of different people and the administrative cooperation to solve those issues or conflicts amicably or in friendly way as far as possible".

The phrase had been used in less than 10 reported cases by the Apex Court till 2010 from the time the Constitution of India was adopted but in recent time in the year 2018 alone it has been used more than in 10 reported cases by Supreme Court of India. First it was referred by two judges (Justice A. N. Ray & Justice P. Jaganmohan) Reddy in celebrated Basic Structure case [Kesavananda Bharati & Ors. Vs State of Kerala & Anr., (1973) 4 SCC 225]. Justice Venkataramiah in [S. P. Gupta Vs. Union of India, 1981 Suppl (1) SCC 87] also known as First Judge Case found that violation of constitutional convention would "be a serious breach of constitutional morality." In 2003, Justice S. B. Sinha held that affirmative actions; might be valid but it would violate "constitutional morality" if it is not in

consonance with doctrine of equality. The doctrine is continuously evolving from the adoption of Constitution of India itself as it's a form of Judicial activism. Tracing the evolution of doctrine from the Basic structure case to the recent landmark Judgements which was delivered by Supreme Court.

In recent, the doctrine become buzzword as the word "Constitutional Morality" is reiterated by Supreme Court in many landmark Judgements. CJI Dipak Mishra (as he then was) in his Judgement said " that magnitude and sweep of constitutional morality is not confined to the provisions and a literal text which a Constitution contains, rather it embraces within itself a virtue of a wide magnitude that ushers in a pluralistic and inclusive society." The doctrine is an emphatic guarantee that Court plays a counter majoritarian role within constitutional scheme and it is committed to protecting all minorities.

Salient features

The salient features of "doctrine of constitutional morality" can be stated as follow:

Commitment to liberty

The constitutional supremacy and equality.

It is a synonym for the Rule of Law.

It relates to parliamentary form of government which is self-restraint by providing limitation on the functioning of state to curtail liberty of citizen.

It is soul and spirit of constitution; it assures that all inequality is eliminated by it from social milieu.

It empowers judiciary to take a step ahead for purposive interpretation, as we have written constitution it allows rooms, space and flexibility.

It always supersedes majoritarian morality or public morality for better of society.

Not limited by provisions of constitution but it is mandate to accomplish the aim of the constitution.

It is akin to doctrine of basic structure and perfect remedy what is called "constitutional silence"

Landmark Judgements

There are many landmark Judgements which have been rendered by Supreme Court by applying this doctrine, they are as following:

Navtej Singh Johar & Ors. Vs Union of India & Ors., (2018) 10 SCC 1]: To protect the right of LGBTQ community, the Apex Court comes up with the Judgement which partially struck down Section 377 of IPC which declared the "Carnal intercourse against the order of nature" (Homosexuality) a crime. The doctrine is applied here. The former CJ Dipak Misra found that Court must not be remotely guided by majoritarian view or popular perception, they must be guided by constitutional morality. Justice Chandrachud differentiated between public and constitutional morality and said that the ideal of Justice always have an overriding effect i.e. constitutional morality have an overriding effect on public morality. Out of 5 Judges 3 held that goal of the Court is to transform society or to convert public morality into constitutional morality. The Court took a progressive and proactive approach, the human dignity, freedom and right to privacy under Article 21 of Constitution of India was cited as the ratio of the decision.

Joseph Shine Vs. Union of India, 2018 SCC OnLine SC 1676: Upholding the right of gender equality and right to equality Supreme Court struck down Section 497 of IPC which made adultery (a crime for a man to have sexual intercourse with a married woman, though the married woman was not to be punished as an abettor. Here it was noted by Supreme Court that the constitutional validity of criminal laws not be determined by popular/public morality which are not in consonance with constitutional morality. The idea of "Husband as master of Women" or "a Woman as a possession of her Spouse" was held to be completely contrary to the spirit of constitutional facets and ideals. Here doctrine comes as counterpoise to "Public Morality".

Indian Young lawyers Association & Ors. Vs State of Kerala & Ors., 2018 SCC OnLine SC 1690] Judgement which is biggest blow on the Public morality and also criticised

by religious prophets and other. Supreme Court held that exclusion between the age of 10-50 in Sabrimala temple for worship of Lord Ayyappan is violative of 4 key constitutional morality tests, which includes: 1. Justice 2. Liberty 3. Equality 4. Fraternity.

To pass constitutional muster and get rights under Article 25 & 26 of Constitution of India must be in conformity with these four tests, the same principle was used by Supreme Court in Triple Talaq case. Supreme Court noted that the word "morality" in Article 25 & 26 of Constitution of India must mean "constitutional morality" and not popular. There is minority decision by Justice Indu Malhotra.

NCT of Delhi Vs Union of India & Anr., 2019 SCC OnLine SC 193] The Judgement again reiterated the doctrine of constitutional morality. The issue is to figure out how power is to be shared between the Central and provincial Government of Delhi under Constitution of India. It was unanimously held that Chief Minister and not the Lieutenant Governor is the Executive head of Government, Court noted that "morality is constitutional norm and conscience of the Constitution of India."

Analysing the above series of Judgments, one thing becomes amply clear that, "the silences of the Constitution of India are also to be ascertained to understand the Constitution". Constitutional Morality is this silence of the constitutional text regarding which Justice Chalemeshwar talks eruditely in the [Justice K S Puttaswamy (Retd.) & Anr Vs. Union of India & Ors., Latest Caselaw 604 SC] where 'Right to Privacy' was elevated to the status of a fundamental right.

Critical analysis

The doctrine is not only restricted to some texts of the Constitution rather it is in the spirit of Constitution of India. It requires in a democracy the assurance of basic rights, which are essential for existence to every member of society. The doctrine is a counterpoise to public morality and also it is a facet of Basic Structure of Constitution of India, which provide Judiciary a power to keep check on the "spirit", "soul" of the Constitution of India by taking a step ahead then purposive and literal interpretation. The doctrine is a progressive approach with change in time and evolution of society but there are no demerits of doctrine?

Every coin has two faces, same here with the doctrine. The "constitutional morality" is nowhere located in Constitution of India and it is necessary to do the same, as there is evident danger that might concept be used in constitutional Courts as per the whim and fancies of Judicial brains as in absence of definite clarity and consensus being reached on the doctrine. The objective of doctrine is to preserve the Rule of Law and also not to act in a manner which is in violation of provision of Constitution of India or arbitrary in any manner.

Liberals and progressives have lauded the Supreme Court for espousing this progressive approach. However, at the same time, on the opposite end of the ideological spectrum, many among those who rail against liberals', claims that the application of this doctrine amounts to Judicial overreach and are thereby pitting "constitutional morality" against "societal/ popular morality".

Even the Attorney General of India, taking a pot shot at the application of this doctrine, has observed that "constitutional morality" is a "dangerous weapon" as the Courts have applied it subjectively. Senior Advocate Abhishek Manu Singhvi, in his latest book, From The Trenches (2020), commenting on "constitutional morality", specifically in regard to the Sabarimala case (2018) argues that this phrase is full of subjectivity. Further, Singhvi maintains that the Judicial approach to "constitutional morality" could vary from Judge to Judge like the proverbial 'Chancellor's foot'. As 'Rule of Law' is not explicitly mentioned in the constitutional text still it is not just part of the Constitution of India but also Basic Structure. In the want of an express definition should we say that 'Rule of Law' is also subjective?

However, on the other hand, apologists of social morality basically premise their argument on two grounds. First, premised upon the wrong

presumption that "constitutional morality" is for mature society. This is possibly a superficial understanding of the issue. Second, the Courts are not the appropriate fora to adjudicate upon these issues. It is quite strange that these arguments just sweep under the carpet the well-established dictum that the Supreme Court, the sentinel on qui vive, is mandated by the Constitution of India to protect the fundamental rights of every citizen. Also, giving leeway to social morality, at the altar of "constitutional morality", in a highly religious and diverse nation, as India is, can embolden majoritarianism. However, it is the Rule of Law which should be the order of the day and not the social morality, an enabler of majoritarianism. It should, therefore, be sparingly used while interpreting the Constitution of India. However, taking a diametrically opposite stand and in an unprecedented move, gives primacy to Social Morality over "constitutional morality", wouldn't it amount to losing the forest for the woods?

Significantly, in the Navtej Singh Johar verdict, the Supreme Court observed in regard to social morality, that "Any attempt to push and shove a homogeneous, uniform, and consistent and a standardized philosophy throughout the society would violate the principle of "constitutional morality". Further, it was added, "Devotion and fidelity to "constitutional morality" must not be equated with the popular sentiment prevalent at a particular point of time".

Referring to Judgements in which it was used each one connotes a different meaning, as resulted in confusion that what actually this doctrine is? e. g when we see the dissenting note of Justice Indu Malhotra in Sabrimala case it is also based on the same doctrine but with different interpretation for allowing ban under, while the same concept used by Justice Chandrachud for saying that ban as not permitted as this is discrimination, is it like a mercury sleeping from fingers. There is need to think is this doctrine now used as a touchstone by Judiciary.

Conclusion

Dynamism of "constitutional morality" has to be understood in proper perspective. It expects the constitutional authorities to behave in accordance with Constitution of India, similarly if there is any kind of practice which is not in conformity then holistic application of doctrine can be used, not in a narrower manner and it does not mean that every public policy decided on the ground of this doctrine. It s absolutely within the constitutional paradigm, it is not an uncharted plan.

Constitution embodied with the will of the people to govern them is not an end but a means to an end i.e. Justice, Social, Economic and Political, a triune phenomenon inscribed as a pledge in the Preambular glory of Constitution of India and the adherence to "constitutional morality" and Judicial Values is inalienable in accomplishing it. Let heaven falls, but Justice shall triumph! In the presence of a Constitution of India embodying every human aspect for safeguarding the morality of individual and ensuring Judicial values, if things go wrong under the Constitution of India the reason will not be that we had a bad Constitution. What we will have to say is that Man is vile! The Constitution was made possible by a "constitutional morality" that was liberal at its core.

Not liberal in the eviscerated ideological sense, but in the deeper virtues from which it sprang: an ability to combine individuality with mutual regard, intellectualism with a democratic sensibility, conviction with a sense of fallibility, deliberation with decision, ambition with a commitment to institutions, and hope for a future with due regard for the past and present.

- Sh. Dinesh Singh Chauhan,
Advocate,
High Court of J&K, Jammu

"Law of Bails"- A Conspectus

1. Law of bails, which constitutes an important branch of procedural law, is not a static one; and in a welfare State, it can not indeed be so. It has to dovetail two conflicting

demands, namely, on one hand, the requirements of the society for being sheltered from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other the fundamental canon of Criminal Jurisprudence, viz : the presumption of innocence of an accused till he is found guilty.

2. **Bail meaning of**:

i) There is no specific definition for bail in the Code of Criminal Procedure.

ii) Law Lexicon defines bail as: 'Security for the appearance of prisoner on giving which the accused is released pending trial or investigation. Such security is called bail because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, in order that he may be safely protected from prison'.

iii) Websters New Judicial Dictionary defines bail as: “Bail is security given for due appearance of prisoner in order to obtain his release from imprisonment; a temporary release of prisoner upon security; one who provides bail”. The effect of granting bail is to release the accused from internment though the Court still retains constructive control over him through the Sureties. In case the accused is released on his own bond, such constructive control could still be exercised through the conditions of the bond secured from him.

iv) The literal meaning of the word' bail' is surety. (See 'Sunil Fulchand Shah vs Union of India', as reported in AIR 2000 SC 1023).

v) The word 'bail' means the security for a prisoner's appearance for trial. The effect of granting bail is, accordingly, not to set the prisoner free from jail or custody, but to release him from the custody of Law and to entrust him to the custody of his Surety who are bound to produce him to appear at his trial as a specified time and place. The necessary corollary is that it is open to the Surety to seize the prisoner at any time and may discharge themselves by handing him over to custody of law and the result could be that he would be then imprisoned. (See 'Rajendra Vs State', as reported in (1986) 2 Crimes 480).

vi) It thus manifests that when a person is on bail, he is not quite a free man, but there are certain restrictions imposed on him. His case can not be equated with that of a free man.

3. **Provisions as to bail and bonds**

i) Chapter XXXIII of the Code of Criminal Procedure 1973, Cr.P.C. for short hereafter, comprising of Sections 436 to 450, both inclusive, deals with the the provisions as to bail and bonds;

ii) For the purpose of granting of bail, the offences are classified into two categories: bailable and non-bailable offences. As per Section (2) (a) of Cr.P.C., “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “ non-bailable offence” means any other offence;

iii) Whilst the Section 436 provides for the granting of bail in bailable offences, Section 437 deals with grant of bail in non-bailable cases.

iv) The provisions of these two Sections, i.e. Sections 436 and 437 of Cr.P.C., provide for granting of bail to accused persons before trial and conviction. However, vide Section 31 of Act No.5 of 2009 (w.e.f. 31-12-2009), a new provision, in the shape of Section 437-A, has been added in the Code of Criminal Procedure which provides that before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court , as the case may be , shall require the accused to execute the bail bonds with Sureties to appear before the Higher Court, as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court. The Section (supra) further provides that such bail bonds remain in force for six months and if such accused fails to appear, the bond shall stand forfeited and procedure under section 446 shall apply. It is in place to add here that prior to the insertion of Section 437-A in the Code of Criminal Procedure, the only alternative for a person, who had been convicted was to approach the Court, by which he had been convicted, under Sub-section (3) of Section 389 of Cr.P.C., and satisfy the Court, that he intends to present appeal against the order of conviction and in case such person had been sentenced to imprisonment for a term not exceeding three years or where the offence of which such

person was convicted was bailable one, the said Court could order his released on bail for a period which would afford him sufficient time to present the appeal and obtain orders of the Appellate Court under Sub-sections (1); and the sentence of imprisonment, so long as he is released on bail, be deemed to be suspended. Scope and amplitude of Section 437-A is much more wider than that of Section 389 (3) of Cr.P.C.

v) Section 438 deals with granting of bail to persons apprehending arrest in non-bailable offences (Anticipatory bail); and

vi) Section 439 (1) confers concurrent powers on High Court and the Court of Sessions to direct admission to bail or reduction of bail in all cases where bail is admissible U/Ss 436 and 437 and Sub-section (2) empowers the High Court or the Court of Sessions to direct that any person who has been released on bail under this chapter (i.e. Chapter XXXIII of Cr.P.C), be arrested and commit him to custody; and vii) The remaining provisions of the chapter deal with the issues pertaining to bonds.

4. **Bail in case of bailable-offences.**

i) As already noticed, the granting of bail in case of bailable-offences is governed by Section 436 of Cr.P.C. When a person, charged with commission of bailable-offence, is arrested or detained without warrants, there are three conditions that a person must satisfy before the question of granting bail to him is considered. The said conditions are:

(a) he has been accused of a bailable offence;

(b) he has been arrested or detained by Officer -in charge of Police Station or appears or is brought before a Court; and

(c) is prepared to give bail at any time while in custody of such officer or any stage of proceeding before the court.

ii) Provisions of Section 436 are mandatory. When the offence is bailable and the accused is prepared to furnish bail, the Police officer or the Magistrate has no discretion at all to refuse bail. In other words, a person accused of a bailable -offence is entitled to be release on bail pending his trial as a matter of right and neither the Officer in-charge of Police station nor the Court can impose any condition except demanding the security with sureties. The only discretion left to the Police officer or the Court by this Section, therefore, is that he can direct the accused person to be released on his executing a bond without securities for his appearance and not to take bail from him ; (See Talab Hazi Hussain Vs Madhukar, AIR 1958 SC 376; Ratilal Vs State, AIR 1967 SC 1639; and 1968 Criminal Law Journal 675).

iii) The Magistrate gets the jurisdiction to grant bail during course of investigation when the accused is produced before him;

iv) The word ‘appear’ means the physical appearance of the accused and can not be interpreted to mean appearing by pleader, as required under the Code of Criminal Procedure, except when his attendance has been dispensed with under specific order of the Court. The word 'appear' or 'brought before the Court' does not mean that only a person who appears before the Court in obedience to process of the Court or has been produced before the Court by authorities of police but it would include the voluntary appearance of a person with a view to surrender and place himself at the mercy of the Court. (See 'Niranjan Singh Vs Prabhakar Raja Ram Kharta', as reported in (1980)2 SCC 559) ;

v) While demanding the security, Magistrate should bear in his mind the social status of the accused and fix the amount accordingly. Care should be taken that the amount fixed is not exorbitant. Even, in appropriate cases, the accused can be released on his executing a bond without surety for his appearance, i.e on his own recognizance. Here, it is apt to notice that Section 436 contemplates two kinds of surety, namely (i) the simple recognizance of Principal and (ii) security with sureties. Where an Act provides for release on bail that means security with surety and this is the meaning which has been attached to the word in practice and procedure of the Courts as distinct from the personal recognizance;

vi) However, Section 436 (2) lays down that when a person has failed to comply with the bail bond as regard the time and place of attendance, the Court may refuse to release him on bail when on a subsequent occasion in the same case, he appears before the Court or brought in the custody;

vii) Further, the bail granted under section

436 can be cancelled in a proper case by the High Court in exercise of its inherent powers under Section 482. High Court can exercise the said power if at any subsequent stage of proceedings it is found that any person accused of bailable-offence is intimidating, bribing or tampering with the prosecution-witness or is attempting to abscond and the High Court is satisfied that the ends of the justice will be defeated unless the accused is committed to custody.

5.(1) **Bail in case of non-bailable-offences.**

i) The grant of bail in non-bailable offences is generally a matter of discretion of the Court. Section 437 of Cr.P.C. deals with granting of bail in non-bailable cases. The Section gives a discretion to the court (particularly the Magistrate) to order release on bail even in case of non-bailable offences but this discretion, to some extent, is controlled by two restrictions. Firstly, Clause (i) of Sub-section (1) provides that when there appear reasonable grounds for believing that the accused is guilty of an offence punishable with 'death' or 'imprisonment for life' then he should not be released on bail; and Secondly, as per clause (ii), it is provided that an accused shall not be released on bail if the offence with the purported commission of which he has been booked is cognizable and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for 7 years or more; or if he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than 7 years. Be it noticed that bail shall not be granted to an accused if his case falls in either of the aforesaid two conditions. Further, no person who is alleged to have committed an offence punishable with death, imprisonment for life or imprisonment for 7 years or more, shall be released on bail by the Court under Sub-section (1) of Section 437 of Cr.P.C without giving an opportunity of hearing to the Public Prosecutor;

ii) However, the Sub-section (1) of Section 437 itself carves out some exceptions to the aforesaid restrictions (supra) by providing that if the accused happens to be under the age of 16 years or a woman or sick or infirm, then he may be released on bail; and further, the Court may also refer to in clause (ii) be released on bail if it is satisfied that it is just and proper to do so for any other special reason;

iii) Sub-sections 2, 6 and 7 provide that in the contingencies mentioned in them, the accused shall be released on bail;

iv) Sub-section (2) lays down that where it appears that there are not reasonable grounds for believing that the accused has committed a non-bailable offences, but further inquiry is still considered necessary, then the accused shall be released on bail;

v) Sub-section (6) lays down that where the trial of a person accused of a non-bailable offence is not concluded with a period of 60 days from the first day fixed for taking evidence in the case, such person shall, if he is in custody during the whole of said period, be released on bail unless for reason to be recorded in writing, the Magistrate otherwise directs;

vi) Sub-section (7) lays down that where the court is of opinion, after the conclusion of a trial, that there are reasonable grounds for believing that the accused is not guilty of any non-bailable offence, he shall be released on bail till the delivery of judgment.

vii) In all other cases, the Officer- in charge of Police Station and the Magistrate are free to exercise their discretion having regard to all the circumstances of the case.

5.(2). **Court**

i) The 'Court', in sections 436 and 437 of Cr.P.C., means a Court competent to take cognizance of the case . It does not mean a Court which has only power of remand. The expression 'Court' has to be understood in the light of provisions of section 56 of the Code which means that the production of the accused should be before a magistrate who has jurisdiction in the case. The 'jurisdiction' would mean 'territorial jurisdiction'.

ii) The Magistrate can grant bail even if the offence is exclusively triable by the Court of Sessions. However, section 437 (1) draws a distinction between non-bailable offences which are punishable with 'death sentence or imprisonment for life' and other non-bailable

offences. In the former case, the Magistrate's powers for granting bail are restricted, but it is not so in later clause of cases. In other words, the embargo laid in section 437(1) of Cr.P.C. for grant of bail in non-bailable offences is attracted only when the offence with the purported commission of which the accused stands charge sheeted is punishable with 'death sentence' or exclusively with 'imprisonment for life'. However, the embargo (supra) is not attracted when the offence is punishable either with 'imprisonment for life' or in the alternative with imprisonment for a lesser term . To illustrate: the offence under section 307 of IPC is punishable with 'imprisonment for life' or imprisonment up to 10 years. The question arises whether the embargo (supra) laid in section 437(1) applies equally to such cases?. The answer to the said question has to be in the affirmative for the object of law in providing an alternative punishment seems to be to leave some room for the Court to impose a lesser punishment than imprisonment for life, where in its opinion there are some extenuating circumstances which lessen the gravity of offence. It must, therefore, follow that the restriction imposed in section 437(1) is not intended to cover a case involving an offence punishable with imprisonment for life and in the alternative imprisonment for a lesser term if there are extenuating circumstances which lessen the gravity of offence. (See 'Jawahar Barua Vs State of J&K', 1973 JKLR 74 and 'Mohinder Singh Vs State' 1987 KLJ 237.)

5.(3). **Principles governing granting of bail.**

i) As already noticed that whilst bail can be sought as a matter of right in case of bailable offences, it is the discretion of the Court in case of non-bailable. However, the discretion is to be exercised judiciously, and not arbitrarily, in accordance with the established legal position as evolved and laid down by the Hon'ble Supreme Court of India and various High Courts of the country;

ii) Broadly speaking, the settled legal position is that grant of bail is a rule and refusal thereof is an exception (See 'State of Rajasthan Vs Balchand', as reported in AIR 1977 SC 2447);

iii) However, whilst the personal liberty of an individual is of utmost significance, the Investigating Authority should also be permitted to investigate the case to the hilt. Therefore, in appropriate cases, where the custodial interrogation of the accused is imperative , the plea for grant of bail can be refused to enable the Investigating Authority to unravel the whole gamut of facts leading to the commission of offence;

iv) Another aspect of crucial significance which should always the kept in mind is that bail can not be refused either as a preventative or punitive measure;

v) Without being exhaustive, the considerations which normally weigh with the Court in granting bail in non-bailable offences, are: the nature and seriousness of the offences; the character of evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of the witnesses being tampered with and the larger interest of the public or State; prima facie satisfaction of the Court in support of the charge and other similar factors which may be relevant in the facts and circumstances of the case (See' State vs Captain Jagjit Singh' , as reported in AIR 1962 SC 523; ' Gurcharan Singh Vs State (Delhi Admn.)', as reported in AIR 1978 SC 179 and Gudikanti Narasimuhlu Vs Public Prosecutor, AIR 1978 SC 527);

vi) The illustrious guidelines (supra) enunciated by the Apex Court have attained a cult status in the field governing the law of bail and the same still hold good. This settled legal position been consistently followed and reiterated in numerous cases by the Hon'ble Supreme Court of India whilst adjudicating the question of grant/refusal of bail in non-bailable offences including those involving offences as heinous as 'murder' etc. A bail-plea can be granted or refused in a particular case after considering the whole gamut of facts and circumstances by making applicable the aforesaid legal position. Some of the important rulings which may be noticed here, in the said context, are, as under :

a) 'Jayendra Saraswathi Swamigal Vs State

of Tamil Nadu' as reported in AIR 2005 S.C. 716 ;

b) 'State of UP Vs Amarmani Tirpathi' 2005 (8) SCC 21;

c) 'Sanjay Chandra Vs CBI', AIR 2012 SC 830;

d) ' Neeru Yadav Vs State of UP and anr', as reported in (2016) 15 SCC 423;

e) 'Virupakshappa-Gouda and anr vs State of Karnataka and anr', as reported in AIR 2017 SC 1685;

f) 'Lt. Col. Prasad Shrikant Purohit Vs State of Maharashtra', as reported in (2018)11 SCC 458;

g) 'Shri P. Chidambaram Vs Central Bureau of Investigation', as reported in AIR 2019 SC 5272; and

h) 'Shri P. Chidambaram Vs Directorate Enforcement', decided by Hon'ble Supreme Court on 4-12-2019, as reported in 2019 (STPL) 13922 SC.

5.(4). **Imposition of conditions while granting bail.**

i) As already noticed here before, the Court has discretion to enlarge an accused in non-bailable cases on bail or refuse to do so. The Court may even, therefore, impose conditions other than the fixing of the bail for attendance of the accused. Sub-section (3) of Section 437 now specifically empowers the Court to impose such conditions , being prescribed. The Court shall impose the conditions :

a) accused shall attend in accordance with the conditions of the bond executed;

b) he shall not commit an offence similar to the one of which he is accused or suspected;

c) that he shall not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts of the Court to any police officer or tamper with the evidence; and

d) the Court may also impose , in the interest of justice, such other conditions as it considers necessary with the only rider being that the condition/s should not be unreasonable or onerous. In other words, such conditions can not be arbitrary or extend beyond the ends of the provision. (See 'Munish Bhasin and ors Vs State (Government of NCT of Delhi) and anr', as reported in AIR 2009 SC 2072; and 'Kunal Kumar Tiwari Vs State of Bihar and anr', as reported in AIR 2017 SC 5416).

5.(5). **Order granting bail should be a 'reasoned order'**

As per Sub-section (4) of 437, any officer or Court releasing any person on bail under Sub -section (1) or Sub-section (2), shall record in writing his or its reasons or special reasons for doing so. However, while passing orders on bail applications, the Court should avoid making detailed examination of the evidence and elaborate discussion on the merits of the case. The Court is supposed to pass a reasoned order indicating reasons for concluding why the bail was being granted particularly where an accused was charged of having committed a serious offence. Only a prima facie case is needed for the Court to be satisfied but it is not the same as an exhaustive exploration of the merits in the order itself. The discretion in such cases has to be exercised with great care and not casually. No party should have the impression that his case has been prejudiced. (See 'Niranjan Singh and anr Vs Prabhakar Raja Ram Kharte and ors', as reported in AIR 1980 SC 785; 'Afzal Khan@ Babu Murehuzakhan Pathan V/s State of Gujrat', as reported in AIR 2007 SC 2111 and 'Haji Mohammad Jaffar and another V. State of J&K', as reported in 2014 (1) SLJ 361(HC)).

- Sh. Jatinder Singh Jamwal,
Additional Distt. & Sessions Judge,
Kathua

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