

**1st Part Institutional Training
Programme for Civil Judge
(Entry Level) 2015 Batch**

from 05th December, 2015 to 04th January, 2016



READING MATERIAL

Compiled by

**CHHATTISGARH STATE JUDICIAL ACADEMY
HIGH COURT OF CHHATTISGARH, BILASPUR**

Judicial Ethics

(1) Restatement of Values of Judicial Life (1999)

On May 7, 1997, the Supreme Court of India in its Full Court unanimously adopted a Charter called the “**Restatement of Values of Judicial Life**” to serve as a guide to be observed by Judges, essential for independent, strong and respected judiciary, indispensable in the impartial administration of justice. This Resolution was preceded by a draft statement circulated to all the High Courts of the country and suitably redrafted in the light of the suggestions received. It has been described as the ‘restatement of the pre-existing and universally accepted norms guidelines and conventions’ observed by Judges. It is a complete code of the canons of judicial ethics. It reads under;

“(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people’s faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

(2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

(4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge ' is expected to let his judgments speak for themselves. He shall not give interviews to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly

available. Any doubt in this behalf must be resolved and clarified through the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but illustrative of what is expected of a Judge."

The above "restatement" was ratified and adopted by Indian Judiciary in the Chief Justices' Conference 1999. All the High Courts in the country have also adopted the same in their respective Full Court Meetings.

(ii) The Bangalore Draft Principles

The Values of judicial ethics which the Bangalore Principles crystallises are: (i) independence (ii) impartiality, (iii) integrity, (iv) propriety (v) equality and (vi) competence & diligence.

The above values have been further developed in the Bangalore Principles as under:-

i. **Judicial independence** is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

ii. **Impartiality** is essential to the proper discharge of the judicial officer. It applies not only to the decision itself but also to the process by which the decision is made.

iii. **Integrity** is essential to the proper discharge of the judicial office.

iv. **Propriety**, and the appearance of propriety, are essential to the performance of all the activities of a judge.

v. Ensuring **equality** of treatment to all before the courts is essential to the due performance of the judicial office.

vi. **Competence and diligence** are prerequisites of the due performance of judicial office.

vii. **Implementation**-By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles. If such mechanisms are not already in existence in their jurisdictions.

JUDICIAL ETHICS

{Courtesy-Justice Manju Goel(Retd.)}

In the following situations, the public may infer that the judge is corrupt or not above suspicion:

- (1) When the decision of a judge is grossly incorrect;
- (2) When the winning party has direct or indirect access to the judge;
- (3) When a judge's life style suggests that he is living beyond means;
- (4) When a judge enters into high-price deals like buying landed property, jewellery etc.
- (5) When a judge is seen seeking company of the rich and politically powerful people;
- (6) When judgments are unduly delayed;
- (7) When a judge comments one way in court and in another way in his judgment;

- (8) When a judge's behaviour in court shows undue preference/importance for one party or his advocate;
- (9) When any one (including a lawyer) holds out that he can influence a judge or that he has in the past obliged the judge in such manner that the judge may like to return the favour;
- (10) When a judge is seen socializing with a litigant;
- (11) When a judge is seen wining and dining with bar members frequently;
- (12) When a judge is seen seeking favours from members of the bar or other members of the society;
- (13) When a judge is seen accepting gifts from persons outside his family;
- (14) When a judge fails to contain corruption in his staff;
- (15) When a lawyer or a public prosecutor shows leniency towards the other side;
- (16) If a judge is actually corrupt.

The list above is not exhaustive. It does indicate that in may cases even if the judge is actually not corrupt he may be perceived as a corrupt officer.

What is Respect?

Respect is the objective, unbiased consideration and regard for the rights, values, beliefs and property of all people. It is a virtue of honoring somebody like your elders, your teachers, your peers, yours seniors etc. The word respect also means to show the attitude of friendliness and comfort to the people you know so as to make them feel at ease whenever they are there with you.

RESPECT:

Respect is a lesson that everyone should learn

Respect must be given before an expected return

Respect is something that's given for free

Respect is about us and never about me

Respect is the basis on which relationships are founded

Respect is the anchor that keeps a person well grounded

Respect builds the character and defines who we are

Respect sets the standard and raises the bar

Respect is magnanimous and helps to fulfill

Respect is the partner that sits with good will

Respect is like honey so sweet it's perceived

Respect a taste to savour for when it's received.

A Panorama View of Pre-Cognizance Remand and
Compulsive Bail

By

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Point Involved :- Grant of "bail" for not filing Charge-Sheet due to incomplete investigation within 60/90 days.

In the case of Hitendra Vishnu Thakur Vs. State of Maharashtra AIR 1994 SC 2623 Hon'ble Apex Court held that if the investigation agency fails to file charge-sheet before the expiry of 60/90 days, as the case may be, the accused in custody should be released on bail u/s 167 (2) Cr.P.C, 1973.

Point Involved :- Once an accused is released on bail u/s 167 (2) Cr.P.C. and when charge-sheet is filed, whether the bail granted under proviso (a) to section 167 (2) Cr.P.C. could be cancelled ?

Answer: No.

The Hon'ble Supreme Court, in the case of Aslam Babalal Desai V. State of Maharashtra, AIR 1993 SC 1 held that "once an accused is released on bail under Section 167(2) he cannot be taken back in the custody merely on the filing of a Charge-Sheet". Above principle is the last word to release the accused on bail u/s 167(2) Cr.P.C. if the investigation is not completed within 60/90 days as the case may be. This case is followed in the case of Uday Mohan Lal Acharya Vs. State of Maharashtra AIR 2001 SC 1910.

The detailed proposition of law laid down by the

Supreme Court in the case of Uday Mohanlal Acharya is as follows:

- i. Under Sub-Section (2) Section 167 of Cr. P.C. a Magistrate before whom an accused is produced while the Police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days on the whole.
- ii. Under proviso to Section 167(2) of Cr. P.C. the Magistrate may authorise detention of the accused otherwise than in custody of police for a total period not exceeding ninety days where the investigation relates to offence punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years, and sixty days where the investigation relates to any other offence.
- iii. On Expiry of the period of ninety days or sixty days, as the case may be, and indefeasible right accrues in favour of the accused for being released on bail on account of default of the investigating agency in the completion of investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnished the bail as directed by the Magistrate.
- iv. Where an application for bail is filed by an accused for

enforcement of his indefeasible right on account of default of the investigating agency in completion of investigation within the specified period, the Magistrate/Court must dispose of the said application forthwith on being satisfied that in fact the accused has been in custody for the period of ninety days of sixty days and no charge-sheet has been filed by the investigating agency.

- v. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of explanation I and the proviso to subSection 9- section (2) of Section 167 of Cr.P.C., the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is completed and the charge-sheet is filed then the so called indefeasible right of the accused would stand extinguished.
- vi. On expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 of Cr. P.C. if the accused files an application for bail and offers to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even through the court has not considered the said

application and has not indicated the terms and conditions of bail and the accused has not furnished the same.

Point Involved :- Whether order relating to issue of process can be recalled by the Magistrate ?

Answer: No.

Adalat Prasad Vs. Rooplal Jindal AIR 2004 SC 4674 which case laid down that once cognizance of the offence is taken and process is issued Magistrate has **no power to recall the order**. This case is relied on in the case of Subramaniam Vs. Sethuram – AIR 2004 SC 4711 and DCM Financial Services Ltd Vs. J.N. Sareen – AIR 2008 SC 2255 and Dhariwal Tobacco Products Ltd. Vs. State of Maharashtra- AIR 2009 SC 1032

Point Involved :- Determination of age of Juvenile offender.

The judgment of Hon'ble Supreme Court in the case of Pratap Singh Vs. State of Jharkhand AIR 2005 SC 2731 is the last word to determine the age "Juvenile Offender" it is the date on which Juvenile is in conflict with law and not the date on which such a person is produced before the competent authority.

Point Involved :- Whether after initial period of 15 days the Magistrate has jurisdiction to authorize Police Custody?

Answer: No.

The Hon'ble Apex Court examined this issue in Central Bureau of Investigation, Special Investigation New Delhi v. Anupam J. Kulkarni, AIR 1992 SC 1768. The Court laid down that in same

occurrence police custody of an accused after expiry of 15 days cannot be permitted by the Magistrate and the subsequent detention could only be in judicial custody. The Apex Court also clarified that this limitation shall not apply when the complicity of the accused is disclosed in a different occurrence.

Point Involved :- Whether Section 167 (2) Cr.P.C 1973 would be applied in a case whether a person arrested by other than a Police Officer or a person surrender before a Magistrate ?

Answer: Yes.

In the case of Directorate of Enforcement v. Deepak Mahajan and another, AIR 1994 SC 1775, the Apex Court laid down that to if a case registered against an offender arrested by the Magistrate, surrendered or brought before the Magistrate, the Magistrate can in exercise of the powers conferred upon him by Section 167(2) keep such officer under judicial custody.

Point Involved :- Whether accused has right to default bail in situation where charge-sheet has been filed after the prescribed period of 60/90 days and application has been made for release on bail u/s 167(2) Cr.P.C. after filing of charge-sheet ?

Answer: No.

In the case of Sanjay Dutt V. State through CBI, 1994 5 SCC 410, where the constitution Bench of the Hon'ble Supreme Court has held that the indefeasible right accruing to the accused is enforceable only prior to the filing of charge-sheet and it does not survive or remain enforceable on the

charge-sheet being filed, if already not availed of. Because the custody of the accused after the charge-sheet has been filed is not governed by Section 167 of the Cr.P.C.

Point Involved :- Whether accused has right to default bail in situation where after 60/90 days as the case may be charge-sheet not submitted by the Police and accused prays for the compulsive bail and then charge-sheet is submitted ?

Answer: Yes.

In *Simranjit Singh Maan v. State of Bihar* AIR 1987 SC 149 held that in such a case, the filing of the challan will not alter the situation and the order for release on bail of such a person made under the proviso to Section 167 (2) would not be defeated.

Point Involved :- Whether the period of 60/90 days (as the case may be) should be reckoned from the date of arrest or from the date of remand ?

Answer: Should be reckoned from the date of remand.

This issue examined by the Hon'ble Apex Court in the case of *Chaganti Satyanarayan and others v. State of Andhra Pradesh*, AIR 1986 SC 2130 and held very clear that total period of 90 days or 60 days begins to run only from the date of order of remand and not from the date of arrest of the accused.

Point Involved :- How to calculate the period of limitation of remand accused?

In the case of *State of M.P. V. Rustam*, 1995 SCC Supp. (3) 221 examine the issue by the Hon'ble Supreme Court that while calculating the period of limitation, the day accused was remanded to

judicial custody should be **excluded** and the day on which charge-sheet was filed in the Court should be **included**. This principle was also relied in the case of Ravi Prakash Singh @ Arvind Sing Vs. State of Bihar AIR 2015 SC 1294.

Point Involved :- Where the 60th or 90th day (as the case may be) is holiday and challan filed before the Magistrate in the next working day in such a situation whether prosecution can claim the benefit of holiday ?
Answer: No.

In the case of Ashok Sharma Vs. State of M.P., 1993 J.L.J. 1999 it was held that the prosecution cannot claim the benefit of 90th day being a holiday because challan need not be filed before the **Court** and it could be filed before the **Magistrate**. Therefore, Section 10 (2) of General Clauses Act, 1897 was inapplicable while computing the total period of 60/90 days u/s 167 (2) Cr.P.C.

Point Involved :- Whether computing the total period of 60/90 days in which period of interim or temporary bail excluded ?
Answer: Yes.

The period of interim bail or temporary bail of accused shall be excluded while computing the period of 60/90 days (as the case may be).

Point Involved :- Applicability of section 167 in special cases like NDPS Act, 1985, Chhattisgarh Excise Act, Anticorruption Act, 1988 etc.

In the case of Union of India V. Thanisharasi 1995 AIR SCW 2543, Hon'ble Apex Court made it clear that the provisions of section 167(2) Cr.P.C. are equally be applicable in special cases.

Point Involved :- Whether application for bail u/s 167(2) Cr.P.C. is necessary?

In the case of Hitendra Vishnu Thakur & others V. State of Maharashtra & others AIR 1994 SC 2623 made it clear that the accused persons desirous of availing the benefit of 167(2) is required to make an application for being released on bail.

Point Involved :- Meaning of "imprisonment for a term not less than a period of 10 years".

Examine the issue by the Hon'ble Apex Court in the case of Rajeev Choudhary V. State, AIR 2001 SC 2369 that the expression "not less than" would mean imprisonment should be 10 year or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more for the purpose of clause(i) of proviso (a) of Section 167 (2), Cr.P.C. 1973. This view also relied in the case of Bhupinder Singh & others V. Jarnail Singh & another 2006 Cr.LJ. 3621.

Point Involved :- When application filed by the accused u/s 167 (2) Cr.P.C. whether Magistrate obliged to decide the application on same day ?

Answer: Yes.

This issue was examined by the Hon'ble Apex Court in the case of Union of India through C.B.I. v. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav AIR 2014 SC 3036 held that when the charge-sheet is not filed and the right has ripened earning the status of indefeasibility, it cannot be frustrated by the prosecution on some pretext or the other. The accused can avail his liberty only by filing

application stating that the statutory period for filing of the challan has expired, the same has not yet been filed and an indefeasible right has accrued in his favour and further he is prepared to furnish the bail bond. Once such an application is filed, it is obligatory on the part of the court to verify from the records as well as from the public prosecutor whether the time has expired and the charge-sheet has been filed or not or whether an application for extension which is statutorily permissible, has been filed.

Magistrate was obliged on that day to deal with the application filed by the accused as required u/s 167(2) Cr.P.C. a Court cannot act to extinguish the right of an accused if the law so confers on him.

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Point Involved :- Compounding of offence u/s 320 Cr.P.C..

The law laid down by the Hon'ble Supreme Court in the case of Surendranath Mohanty Vs. State of Orrisa AIR 1999 SC 2181 is held that no offence can be compounded under the IPC if it is so stated in Section 320 of the Cr.P.C. as non-compoundable. It has also been followed in the case of Ishwar Singh Vs. State of Madhya Pradesh-AIR 2009 SC 675.

Point Involved :- Whether Benami Transactions (Prohibition) Act, 1988 have retrospective effect ?

Answer:- No.

The law laid down by the Hon'ble Apex Court in the case of R. Rajgopal Reddy Vs. Padmini Chandrashekharan AIR 1996 SC 238 is held that Section 4(1)(2) of the Benami Transactions (Prohibition) Act, 1988 which provisions came into force on 19th May, 1988 to be prospective. However, the said provisions are not retrospective. It has also been followed in the case of Canbank Financial Services Ltd. Vs. Custodian and others-AIR 2004 SC 5123.

Point Involved :- Civil and Criminal proceedings on same subject-matter before Civil and Criminal Courts.

The law laid down by the Hon'ble Supreme Court in the case of K.G. Premashankar Vs. Inspector of Police – AIR 2002 SC 3372 held that findings of Civil Court's Judgment do not supersede the findings of Criminal Court between the same parties arising out of common cause leading to civil and criminal proceedings. This case is also followed in the case of Rukmini Narvekar Vs. Vijaya Satardekar - AIR 2009 SC 1013.

Absconding of accused

Point involved- Effect if accused is abscond

Parties - Shyamal Ghosh Vs. State of West Bengal

Reported in - 2012 (4) CCSC 2222(SC)

In this case Hon'ble apex court held that "Absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards them."

Offence By company

Point involved - Whether Director of Company is liable if company is not prosecuted?

Parties- Aneeta Hada Vs. Godfather Travels tours pvt. Ltd.

Reported in- 2012 (3) CCSC 1471 (SC)

In this case Hon'ble apex court held that "Director of Company could not have been held liable if company itself not prosecuted."

Point involved - Difference between informant and complainant

Parties- Ganesh Vs. Sharanappa & another

Reported in- 2015 (2) CCSC 758 (SC)

In this case Hon'ble apex court held that "In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, inter alia, provides for giving a copy of the information to the 'informant' and not to the 'complainant', However, the complainant is the person who lodges the complaint. The word 'complaint' is defined under Section 2 (d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant. Which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint-case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information, which leads to lodging of the report under Section 154 of the Code is

the informant and the person who files the complaint is the complainant." (Para 12)

Point involved - Appreciation of Evidence

Parties- Dilawar Singh & Others Vs. State of Haryana

Reported in- 2015 (2) CCSC 985 (SC)

In this case Hon'ble apex court held that "While Appreciating the evidence of a witness the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed it is necessary for the court to scrutinize the evidence, to find out whether It is against the general tenor of the prosecution case." (Para 24)

Point involved :- Appropriate Sentence

Parties- Tukaram Dnyaneshwar Patil Vs. State of Maharashtra & Others

Reported in- 2015 (2) CCSC 1128 (SC)

In this case Hon'ble apex court held that "Sentencing is an important task in the matters of crime. One of the prime-objectives of the criminal law is imposition of appropriate. Adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. With reference to sentencing by courts, this Court in the decision in State of U.P. Vs. Shri Kishan, (2005) 10 SCC 420 made these weighty observations:

"5 Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc.

.....

7. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing

appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

8. any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

9. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the Society's cry for justice against the criminal." (Para 11)

Parties- State of Punjab Vs. Bawa Singh

Reported in - 2015 (2) CCSC 797 (SC)

In this case Hon'ble apex court held "We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the

society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of the Society.” (Para 17)

“ Recently, in the cases of State of Madhya Pradesh V. Bablu, (2014) 9 SCC 281 and State of Madhya Pradesh V. Surendra Singh, 2014 (12) Scale 672, after considering and following the earlier decision, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers.” (Para 18)

Parties- State of M.P. Vs. Mehtaab

Reported in - 2015 (1) CCSC 420 (SC)

In this case Hon'ble apex court held that “ It is the duty of the court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Unfortunately, these factors are missing in the impugned order. No cogent reason has been assigned for imposing only 10 days sentence when an innocent life has been lost. Award of unreasonable

compensation has also not been considered. Apart from the sentence and fine/ compensation to be paid by the accused, the court has to award compensation by the State under Section 357 A. When the accused is not in a position to pay fair compensation as laid down by this Court in Criminal Appeal No. 420 of 2012, Suresh V. state of Haryana, decided on 28th November, 2014. This Court held :

"14. We are of the view that it is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief . On being satisfied on an application or on its own motion, the court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given irrespective of the application by the victim. At the state of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all

Judicial officers in the country can be imparted requisite training to make the provision operative and meaningful." (Para 8)

Parties- Shanti Lal Meena Vs. State of N.C.T. of Delhi C.B.I.

Reported In - 2015(2) CCSC 792(SC)

In this case Hon'ble apex court held that "In determining the quantum of sentence, the kind of forbidden conduct, the kind of social condemnation, the sanction prescribed in law, the object of punishment, the nature of crime, the status of the criminal, etc., are some of the relevant factors to be considered by the courts." (Para 7)

Point involved - Whether Notice to The Company Directors U/s 138 NIA mandatory ?

Parties- Krishna Texport and Capital Markets Ltd. Vs. Ila A. Agrawal and others

Reported in- 2015 (3) CCSC 1689 (SC)

In this case Hon'ble apex court held that "The question, therefore, is whether notice under Section 138 of the Act is mandatorily required to be sent to the directors of a Company before a complaint could be filed against such directors alongwith the Company, At the outset we must consider whether the decision of this Court in N.K. Wahi (Supra) had considered and concluded that it is obligatory to issue separate notices to the Directors in addition to the Company, before initiating any proceedings against them. We have perused the decision and find that no such issue had arisen for consideration in that case, We therefore, proceed to consider the question. (Para 9)

"In our view, Section 138 of the Act does not admit of any necessity or scope for reading into it the requirement that the directors of the Company in question must also be issued individual notices under Section 138 of the Act. Such directors who are in charge of affairs of the Company and responsible for the affairs of the Company would be aware of the receipt of notice by the Company

under Section 138. Therefore neither on literal construction nor on the touch stone of purposive construction such requirement could or ought to be read into Section 138 of the Act." (Para 16)

FIR

Point involved - Non Mention of Witness Name in F.I.R.

Parties- Kunwarpal @ Surajpal and others Vs. State of Uttarakhand and another

Reported in- 2015 (1) CCSC 457 (SC)

In this case Hon'ble apex court held that " There is no requirement of law for mentioning the names of all the witnesses in the F.I.R. the object of which is only to set the criminal law in motion." (Para 12)

Parties- Kanchanben Purshottambhai Bhanderi Vs. State of Gujarat

Reported In- 2015 (1) CCSC 12 (SC)

In this case Hon'ble apex court held that " It is well established in law that F.I.R. should contain the essential features of the prosecution case but it can not be expected to be an encyclopedia of whole prosecution case. (Para 12)

Investigation

Point involved - Invalidity of Investigation

Parties- Union of India etc. rep. Through Superintendent of Police Vs. T. Nathamuni

Reported in- 2015 (1) CCSC 6 (SC)

In this case Hon'ble apex court held that "The matter of investigation by an officer not authorized by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by Sub-Inspector, C.B.I. who, after completion of investigation, submitted charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting Sub-Inspector, C.B.I. to investigate is without jurisdiction. Consequently, the investigation conducted by the officer

is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of Justice has been caused. It is well- settled that invalidity of investigation does not vitiate the result unless a miscarriage of justice has been caused thereby. (Para 13)

Complaint Filed by Power of Attorney Holder

Point involved - Can a Complaint filed by power of attorney holder under section 138 NI Act 1881

Parties- Smt. Vanita S. Rao V. Essen Corporate Services Pvt. Ltd. And another

Reported in- 2015 (1) CCSC 112 (SC)

In this case Hon'ble apex court held that " It is clear that the complaint under Section 138 of the N.I. Act can be filed through the power of attorney holder. (Para 19)

Violence against women is an issue that cannot wait... No country, no culture, no woman young or old is immune to this scourge.... And we know that when we work to eradicate violence against women, we empower our greatest resource for development.....

(Ban Ki-Moon, UN Secretary-General, remarks to the Commission on the Status of Women, launch of the UniTE Campaign to End Violence against Women, New York, 25 February 2008)

शास्त्रों में यह कहा गया है कि- "यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः" इसका अर्थ लगभग सभी जानते हैं कि जहां नारी की पूजा होती है वहां देवता निवास करते हैं। उपनिषदों में भी कहा गया है कि- "एकम् सत् विप्रः बहुदा वदन्ति" जिसका अर्थ है कि संसार में एक ही सच है जिसे कई तरीकों से बताया गया है। 'पुरुष' एवं 'महिला' एक ही सर्वोच्च शक्ति की दो पृथक अभिव्यक्ति हैं। वे रूप एवं कार्यों में भिन्न हैं परंतु मजबूती एवं शक्ति में एक समान हैं। इस अद्भुत संबंध को ही भारतीय दर्शन में "शिव एवं शक्ति" कहा गया है। हमारी सांस्कृतिक विरासत ने हमें यह सिखाया है कि हमें महिलाओं का आदर एवं सम्मान करना चाहिए। परंतु हम इस सच्चाई से मुंह नहीं मोड़ सकते कि स्वतंत्रता प्राप्ति के छः दशकों से भी अधिक समय के बाद महिलाओं के प्रति क्रूरता एवं अत्याचारों तथा उनके शोषण में वह कमी नहीं हुई है जो अपेक्षित है।

हम कह सकते हैं कि हमने हर क्षेत्र में प्रगति की है। परंतु महिलाओं को आज भी समाज का "वल्नरेबल ग्रुप (कमजोर वर्ग)" माना जाता है जो स्पष्ट करता है कि हमारी सोच लिंग-भेद के प्रति हमारी मान्यताओं को परिवर्तित करने में सफल नहीं हुई है। सर्वोच्च न्यायालय ने मधु किश्वर प्रति बिहार राज्य (1996) 5 एस.सी.सी. 125 वाले मामले में यह कहा कि- भारत की जनसंख्या का आधा हिस्सा महिलाएं हैं। महिलाओं के प्रति हमेशा विभेद किया गया है और उन्होंने इस विभेद को मौन रहकर सहा है और सहती आ रहीं हैं। आत्म-बलिदान एवं आत्मोत्सर्ग उनकी विशेषता एवं श्रेष्ठता है बावजूद इसके वे हर तरह की असाम्यता, असमान्यता, विभेद एवं तिरस्कार के अधीन हैं।

Therefore, we cannot ignore our duties or take casually our duties regarding dispensation of justice. We have to work till justice reaches upto the last person of the society by our sincere efforts. It will be relevant to quote one of the note of Father of the Nation, Mahatma Gandhi-

"I will give you a talisman (ताबीज/मंत्र). Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man (woman) whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him (her), will he (she) gain anything by it? Will it restore him other works, will it lead to swraj (freedom) for the hungry and spiritually starving millions?"

Then you will find your doubts and your self melt away"

Vishaka and Others v. State of Rajasthan (1977) 6 SCC 241

- A. Constitution of India-Arts 14,19 & 21 and 15 (1), (3), 42, 51-A(a),(e) and 32 & 141-Rights of working women against sexual harassment in workplaces Held, they have rights to gender equality, to work with dignity and to a working environment safe and protected from sexual harassment or abuse-In absence of suitable legislation in this sphere, international conventions and norms, so far as they are consistent with the constitutional spirit, can be relied on - Accordingly, guidelines and norms prescribed by the Supreme Court, with the assistance of Solicitor General appearing for Union of India and other counsel, for protection and enforcement of these rights of the women at their workplaces-These guidelines and norms must be strictly observed in all working places by treating them as law declared under Art. 141.

(The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject-matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.)

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality.

In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is **further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.**

The guidelines and norms prescribed herein are as under:

Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993.

Taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

- I. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These Writ Petitions are disposed of, accordingly.

{Deputy Inspector General of Police and another v. S. Samuthiram (2013) 1 Supreme Court Cases 598}.

A. Constitution of India- Arts. 21, 15, 14 and 51-A(e)-Eve-teasing –Malady, held is against constitutional mandate-Art, 21 is violated because dignity of women is not respected-Art.15 and 14 are violated because eve-teasing is a sex-based discrimination against womanhood-Absence of effective law-Social evil requiring urgent attention-Judicial intervention due to legislative inadequacy-Ss.294 and 509, IPC reviewed but provisions not found effective enough to tackle problem .

B. Constitution of India-Arts. 136, 141, 142, 32 and 226- Executive and legislative inaction and gaps-Directions issued-Social problem warranting urgent remedial action without waiting for legislature to step in-Cognizance taken of problem in a collateral matter-While considering validity of departmental enquiry against a police employee alleged to have misbehaved with a woman at a public place, general problem of eve-teasing also considered and remedial directions issued by Supreme Court.

Eve teasing today has become pernicious, horrid and disgusting practice. The Indian Journal of Criminology and Criminalistics (January- June 1995 Edn.) has categorized eve teasing into five heads viz. (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects. In Vishaka and Others v. State of Rajasthan; (1977) 6 SCC 241, this Court has laid down certain guidelines on sexual harassments. In Rupan Deol Bajaj and Another v. K.P.S. Gill; (1995) 6 SCC 194, this Court has explained the meaning of 'modesty' in relation to women. More and more girl students, women etc. go to educational institutions, work places etc. and their protection is of extreme importance to a civilized and cultured society. The experiences of women and girl children in over-crowded buses, metros, trains etc. are horrendous and a painful ordeal.

32. The Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, we are therefore inclined to give the following directions:

- 1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship etc. so as to monitor and supervise incidents of eve-teasing.
- 2) There will be a further direction to the State Government and Union Territories to install CCTV in strategic positions which itself would be a deterrent and if detected, the offender could be caught.
- 3) Persons in-charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.
- 4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.
- 5) State Governments and Union Territories are directed to establish Women' Helpline in various cities and towns, so as to curb eve-teasing within three months.
- 6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus stands, railway stations, cinema theatres, parties, beaches, public service vehicles, places of worship etc.
- 7) Responsibility is also on the passers-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

8) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the concerned authorities including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing

{Guria, Swayam Sevi Santhan v. State of Uttar Pradesh and Other (2009) 15 Supreme Court Cases 75}.

Immoral Traffic (Prevention) Act. 1956-

Held:

The immoral Traffic (Prevention) Act was enacted for the prevention of immoral traffic. However, it is unfortunate that the investigation officers and the courts ordinarily fail to bear in mind a distinction between the rescued children including girls, on the one hand, and the persons who have been organising such immoral traffic in a systematic manner and have otherwise been aiding and abetting the commission of offences thereunder. The legislature as also the executive have also failed to draw a well-thought out plan for rehabilitation of the rescued children in the society by bringing in suitable legislations or schemes.

The victims of immoral trafficking, most of whom are minor or young girls, are let off on bail. They again in most of the cases are forced to go back to the brothels from where they have been recovered and are subjected to prostitution again at the instance of the same persons. Bails are also granted to other accused who are arrested from the brothels without bearing any distinction in mind as to whether they work from behind or may be held to be guilty of the offences of higher magnitude. The question as regards grant of bail, therefore, should be considered having regard to the gravity of the offence wherewith the accused had been charged.

{U. Suvetha v. State by Inspector of Police and another (2009)6 Supreme Court Cases 757}.

A. Penal Code, 1860-S.498-A-Persons who may commit offence under "Relative of the husband" in S. 498-A, whether includes "girlfriend" or "concubine"-Held, status of a relative is conferred only by blood or marriage or adoption-"Girlfriend" or "concubine" being not connected by blood or marriage is not a relative of the husband as per S.498-A-IPC-Meaning of "relative" depends upon the nature of statute-Persons who can commit an offence under S.498-A are husband and his relatives only, girlfriend (appellant herein) being not a relative cannot be charged under S. 498-A.

10. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It Principally includes a person related by blood, marriage or adoption.

B. Penal Code, 1860-S.498-A Expln.-Ingredients of, explained/interpreted- "Cruelty", meaning of-Husband living with another woman, whether commits "cruelty" under S.498-A-Held, living with another woman may be an act of cruelty for the purpose of judicial separation or dissolution of marriage but it cannot be stretched to amount to "cruelty".

{D. Velusamy v. D. Patchalammal (2010) 10 Supreme Court Cases 469}.

A. Human and Civil Rights-protection of Women from Domestic Violence Act, 2005- Ss. 2 (f), 2(s),3(a) and 3(iv)(a)-"Relationship in the nature of marriage"-Essential conditions constituting such relationship-Live-in relationship as recognized in some jurisdictions in USA-Scope of its applicability in India-"Keep"-Whether relationship with her is in the nature of marriage-"Relationship in the nature of marriage", held, is akin to a common law marriage which inter alia requires that the parties must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time-The parties should also have a "shared household" as defined in S. 2 (s)- Merely spending weekends or one night together does not constitute "domestic relationship" under S. 2(f)-Further held, not all live-in relationships form a relationship in the nature of marriage because several parameters have to be satisfied in order to constitute relationship in the nature of marriage-Lastly, held, relationship with "Keep" whom a man uses for sexual purposes and/or as a servant, does not constitute relationship in the nature of marriage

In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:

- (a) The couple must hold themselves out to society as being akin to spouses.
 - (b) They must be of legal age to marry.
 - (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
 - (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
- (see 'Common Law Marriage' in Wikipedia on Google)

In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

B. Criminal Procedure Code, 1973-S. 125(a), Expln.(b)-"Wife" in S.125(a), held, means legally wedded wife-S.125(1) does not protect a woman who unwittingly marries a man who is already married-As against this, S.2(f) of 2005 Act, embraces a wider concept by affording protection not only to legally wedded wife but also to a woman who is having domestic relationship which may not strictly be marriage but is "in the nature of marriage"- This is a recognition of live-in relationship (subject to conditions laid down herein)-Conventional family law in India provides for alimony only when a legally wedded wife is deserted but 2005 Act expands the scope by providing protection in the case of live-in relationship also.

- C. Interpretation of Statutes-Basic rules-Plain meaning-Held, the court in the gab of interpretation, cannot change language of a statute, nor can court legislate or amend law.
- D. Family and personal Laws-Marriage-Marital status-claim to-Held, a person who is not married cannot be divorced-Respondent claiming to be appellant's wife-appellant however claiming that he was having a prior marriage out of which a son was also born and therefore respondent was not his legally wedded wife-Held, in the face of appellant's assertion, respondent could not claim to be appellant's wife unless it was proved that appellant was not already married-Hindu Marriage Act, 1955, Ss. 11 and 13 (Para 13).
- E. Family and Personal Laws-Marriage-Marital status-Determination of-Natural justice-Notice to affected party-Held on facts, woman whose status as legally wedded wife of appellant was affected, ought to have been put to notice before declaring that respondent was entitled to maintenance under S.125, CrPC

{Ajitsingh Hamamsingh Gujral v. State of Maharashtra (2011) 14 Supreme Court Cases 401}.

In India Many women accept the bad treatment of their husbands and continue living with them because a girl at the time of marriage is told by her parents that after marriage her place is with her husband and she has to accept whatever treatment she gets from her husband and in-laws. She has to "nibhao" all treatment after marriage. Hence she continues living with him even if her husband is a brutish, nasty and loathsome person.

(A). Criminal Trial-Circumstantial evidence-motive-Relevant but not a sine qua non for conviction-Held, court has no means to enter into mind of a person to find out motive-In some cases only speculation may be possible-Case where there is no discernible motive but facts and circumstances overwhelmingly point to accused's guilt-Conviction, held, sustainable.

Held:

Motive is important in cases of circumstantial evidence but that does not mean that in all cases of circumstantial evidence, if the prosecution has been unable to satisfactorily prove a motive its case must fail. It all depends on the facts and circumstances of the case. Men may lie but circumstances do not. As to what motivated the appellant to commit this gruesome and ghastly act is impossible for the court to say because the court cannot enter into the mind of a human being and find out his motive. The Court can only speculate.

(H) Criminal Trial-Circumstantial evidence-Injuries on victim-Explanation for-Burden whether on accused or prosecution-Held, ordinarily injury on accused requires explanation-If at all injury on victim required any explanation, it was for appellant to do so because he was supposed to be present at the time of occurrence (Para 39).

(I) Criminal Procedure Code, 1973- S.313- Explanation of accused of circumstances appearing against him- Adverse circumstances not put to him for his explanation-Held, cannot be used against him-On facts however found that as many as 168 questions had been put to appellant on all relevant circumstances His conviction could not therefore be faulted on ground that his examination under S.313 was not proper (Para 40).

{ Shivdev Kaur (D) By LRs. And Ors. V. R.S. Grewal. AIR 2013 Supreme Court 1620: (2013)4SCC636 }

Property - Absolute Right - Section 14 of Hindu Succession Act, 1956 - Held, where a woman succeeded some property on strength of a Will, she could not claim any right in those properties over and above what was given to her under that Will - Further, life estate given to her under Will would not become an absolute estate under provisions of Act 1956 and, thus, such a Hindu female could not claim any title to suit property on basis of Will executed in her favour - However, if a Hindu female had been given only a "life interest", through Will or gift or any other document referred to in Section 14 of Act - Thus, said rights would not stand crystallized into absolute ownership as interpreting provisions to effect that she would acquire absolute ownership/title into property by virtue of provisions of Section 14(1) of Act - Moreover, Section 14(2) of Act carved out an exception to rule provided in Sub-section (1), which clearly provided that if a property had been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain same even after commencement of Act, and such a Hindu female could not acquire absolute title.

Ratio-Decidendi

"Where a woman succeeded some property on the strength of a Will, she cannot claim any right in those properties over and above what is given to her under that Will."

{M/s. Bagai Construction Thr. Its Proprietor Latit Bagai v. M/s Gupta Building Material Store. AIR 2013 Supreme Court 1849}.

- (A) Civil P.C. (5 of 1908), O.7, R.3, O.18, R. 17- Production of Additional document and recall of witness-Permission for-Suit for recovery of money-Plaintiff supplier of building material to defendant-Bills sought to be produced though mentioned in statement of account and in exclusive possession of plaintiff not placed on record- Not even placed on record during trial- Application to produce bills made after conclusion of evidence and final arguments-Is in fact an endeavour to overcome lacunae in plaint, pleadings and evidence-Cannot be allowed- Application cannot also be allowed under S.151.
- (B) Civil P.C. (5 of 1908), O. 18, Rr.4, 17, O.17, R. 1 - Constitution of India, Art. 21- Civil suit-Recording of evidence-Ought to be continuous-Followed by arguments and decision-Adjournments, reopening and recalling of witnesses-To be allowed only in compelling circumstances.

12. After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence.

It is not the case of the plaintiff that it was not given adequate opportunity, In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151, CPC

**MOHAMMED AJMAL MOHAMMAD AMIR KASAB ALLAS ABU
MUJAHID Vs. STATE OF MAHARASHTRA**

(2012) 9 SCC 1

B. Evidence Act, 1872- Ss. 60, 45,35,65-B,3,5,7,24 and 27-Best evidence-Reliable ocular evidence/eyewitness testimony-Primacy of-Large number of eyewitnesses deposed-Huge amount of other evidence on record, such as articles recovered, medical and forensic reports, CCTV recordings, phone call records, station diary entries, police logs, etc.-Accused also confessed in entirety before Magistrate under S.164 CrPC- Since facts confessed to by accused were fully proved and corroborated by ocular testimony, not necessary to refer to other evidence.

C. Criminal Trial - Identification - Identification of accused- Identification of dead body in morgue and identification of photograph in fake identity card worn by accused who was killed, in court, by persons who had encountered said accused before he was killed, relied upon as corroborative evidence- Evidence Act, 1872, S.9

P. Constitution of India-Arts. 21, 22 (1) and 39-A- Right to Free legal aid- scope of - Legal representation/counsel at pre-trial/investigation stage- Entitlement to, if any-Confession made to Magistrate when accused has no legal counsel-If vitiated trial-Need to show material prejudice

-Therefore, true test is not what effect a lawyer's presence and advice would have had over confession of accused under S.161 or S. 164 CrPC- True test is whether confession is voluntary or not-Any failure to provide legal aid to accused at the beginning of investigation or before his confession is recorded under S. 164 CrPC held, would not invariably render the trial illegal- Unless it is shown that failure to provide a lawyer at pre-trial stage has resulted in some material prejudice to accused in course of trial it would not vitiate the trial, and this has to be judged from the facts of each case.

Q. Constitution of India-Arts, 21, 20 (3), 22 (1) and 39-A Right to free legal aid, right to consult and be defended by a lawyer-Legal representation/counsel at pre-trial/investigation stage-Scope and purpose of, in Indian context as found in Indian statutes, clarified and distinguished from scope and purpose of right against self-incrimination principles as laid down by US Supreme Court in Miranda, (1966) 16 L ED 2d 694- Sufficiency of Indian statutory protection against self-incrimination principles as laid down by Indian statutory protection against self-incrimination even in absence of a lawyer at pre-trial/investigation stage, pointed out.

- Right to consult and be defended by a lawyer in Indian context, held, does not mean that absence of lawyer during pre-trial investigation by police would always vitiate trial because there is ample statutory protection in Indian statutes (i.e. Ss. 161 to 164 CrPC r/w provisions of Evidence Act) against self-incrimination-Further clarified, that right to consult and be defended by a lawyer in Indian context cannot be construed as permitting presence of a lawyer during police investigation-

The role of a lawyer is mainly focused on court proceedings like demanding bail or resisting police/judicial custody-Accused would need a lawyer at stage of framing of charges against him and he would, of course, need a lawyer to defend him in trial, etc.- The lawyer also can advise accused, for example he can advise about legal consequences of making a confession under S. 164 CrPC-But under Indian statutory scheme, a Magistrate also has a compulsory obligation to advise accused regarding legal consequences of making a confession under S. 164 CrPC-As statutory safeguards under Indian Constitution and statutory scheme against self-incrimination are adequate, principles laid down in Miranda case are not applicable in Indian context.

W. Criminal Trial-Defence-Generally-Whether sufficient time was allowed for preparation of case-Court allowed 8 Days' time during which there were brief hearings on issues relating to juvenility of accused-Defence lawyer (though not a non-complaining type) not complaining about not being given sufficient time-A chart showing day-to-day development in trial and hours of court proceedings on each day indicating that defence lawyer was given ample time for preparation-When defence lawyer had asked for adjournment for cross-examination of important witnesses, court accommodating him on most occasions-Held, it cannot be held that defence lawyer was not allowed sufficient time for preparation of case and that trial was vitiated by denial of sufficient time.

ZS. Constitution of India-Arts. 19(1)(a) & (2) and 21-Mumbai Terrorist Attack case-Media role-Reckless media coverage-irresponsibility of media, strongly deprecated-Collaborators of ten terrorists carrying out attack in Mumbai, who were sitting in Pakistan were watching full show on TV reports-Collaborators were watching every movement of security forces being broadcast live on Indian TV-Based on this live coverage collaborators alerting holed-up terrorists to plan/movement of security forces, thus significantly thwarting efforts of security forces and endangering them-Reckless TV coverage just for profit sake (without any consideration for national security) simply to raise the viewer ratings of respective TV channels, deprecated-This is a case against argument that regulatory mechanism for media must come from within and not from Government-Press and Media Laws-Ethics-Reckless media coverage without regard to national security concerns- Strongly deprecated.

ANJU CHAUDHARY Vs. STATE OF UTTAR PRADSH AND ANOTHER
(2013)6 SCC 384

A. Criminal Procedure Code, 1973-Ss. 154,162,200,202,204,156(3) an 220- More than one FIR- Registration of, when permissible-Is a mixed question of law and fact-Test of "sameness" is to be applied-Common FIR-Is warranted for one series of acts so connected together as to form the same transaction- Whether different offences committed in course of same transaction- "Same transaction"- Meaning- Determining factors-To be gathered from circumstances of the case- Further information becoming available or investigation-Status of- Second FIR in respect of same offence or incident forming part of same transaction as contained in first FIR, reiterated, is not permissible- Second FIR, for an unrelated incident and for offence of such magnitude which does not fall within ambit of first FIR, is permissible-First FIR lodged by a shopkeeper in respect of a particular incident/crime i.e. burning of his shop by some unknown persons without alleging any provocation conspiracy or pre-meditated attempt-Second FIR lodged by another person alleging instigation of communal hatred under a conspiracy by named persons in a public condolence meeting held on same day and consequent communal riots in the city-Held, two incidents alleged in two FIRs not same and second FIR called for a larger investigation-Hence, held, registration of second FIR was permissible-Words and Phrases-"Same transaction".

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B. Criminal Procedure Code, 1973- Ss. 154 and 173- More than one FIR- Fresh/De novo investigation or reinvestigation-Permissibility-Registration of second FIR in respect of same offence/incident forming part of same transaction as contained in first FIR by investigation agency of its own accord- Commencement of reinvestigation after completion of previous investigation pursuant to first FIR and filing of report based on such reinvestigation before court-Held, the same are not permissible.

C. Criminal Procedure Code, 1973-S.154-FIR-Police officer is duty-bound to register FIR, but not second FIR in respect of same offence/incident forming part of same transaction as contained in first FIR-Inbuilt safeguards provided under CrPC are principles akin to double jeopardy, fair investigation and prevention of abuse of power by investigation agency.

SHANKAR KISANRAO KHADE Vs. STATE OF MAHARASHTRA (2013) 5
SCC 546.

L. Protection of Children from Sexual Offences Act, 2012-Ss. 19 to 23 and 43-Reporting of offences of sexual abuse against children-Effective implementation-Directions to stakeholders and approach to be adopted by various person/institutions, issued (paras 77.1 to 77.9)- Held, an approach that is in the best interest of child should be adopted-Though penal laws are concerned with commission of offences, preventive measures should be taken by all concerned with commission of offences, preventive measures should be taken by all concerned so that children do not become victim of sexual assault by unstable and immoral adults-Various stakeholders like persons in charge where children are housed (especially institutions which house children with intellectual disability), directed to report cases of sexual assault on children with utmost secrecy to the nearest SJPU or local police-Media personnel, persons in charge of hotels, lodges, hospitals, clubs, studios and photograph facilities directed to comply with S. 20, 2013 Act- The manner in which various child welfare organization and NGOs should deal with complaints of sexual assault on children, clarified-State and Central Government directed to constitute SJPUs in all districts if not already constituted and give wide publicity to provisions of 2012 Act. (Paras 72 to 77)

77. In my opinion, the case in hand calls for issuing the following directions to various stake-holders for due compliance:

(1) The persons in-charge of the schools/educational institutions, special homes, children homes, shelter homes, hostels, remand homes, jails etc. or wherever children are housed, if they come across instances of sexual abuse or assault on a minor child which they believe to have committed or come to know that they are being sexually molested or assaulted are directed to report those facts keeping utmost secrecy to the nearest S.J.P.U. or local police, and they, depending upon the gravity of the complaint and its genuineness, take appropriate follow up action casting no stigma to the child or to the family members.

(2) Media personals, persons in charge of Hotel, lodge, hospital, clubs, studios, photograph facilities have to duly comply with the provision of Section 20 of the Act 32 of 2012 and provide information to the S.J.P.U., or local police. Media has to strictly comply with Section 23 of the Act as well.

(3) Children with intellectual disability are more vulnerable to physical, sexual and emotional abuse. Institutions which house them or persons in care and protection, come across any act of sexual abuse, have a duty to bring to the notice of the J.J. Board/S.J.P.U. or local police and they in turn be in touch with the competent authority and take appropriate action.

(4) Further, it is made clear that if the perpetrator of the crime is a family member himself, then utmost care be taken and further action be taken in consultation with the mother or other female members of the family of the child, bearing in mind the fact that best interest of the child is of paramount consideration.

(5) Hospitals, whether Government or privately owned or medical institutions where children are being treated come to know that children admitted are subjected to sexual abuse, the same will immediately be reported to the nearest J.J. Board/SJPU and the JJ Board, in consultation with SJPU, should take appropriate steps in accordance with the law safeguarding the interest of child.

(6) The non-reporting of the crime by anybody, after having come to know that a minor child below the age of 18 years was subjected to any sexual assault, is a serious crime and by not reporting they are screening offenders from legal punishment and hence be held liable under the ordinary criminal law and prompt action be taken against them, in accordance with law.

(7) Complaints, if any, received by NCPDR, S.C.P.C.R. Child Welfare Committee (CWC) and Child Helpline, NGO's or Women's Organizations etc., they may take further follow up action in consultation with the nearest J.J. Board, S.J.P.U. or local police in accordance with law.

(8) The Central Government and the State Governments are directed to constitute SJPU's in all the Districts, if not already constituted and they have to take prompt and effective action in consultation with J. J. Board to take care of child and protect the child and also take appropriate steps against the perpetrator of the crime.

(9) The Central Government and every State Government should take all measures as provided under Section 43 of the Act 32/2012 to give wide publicity of the provisions of the Act through media including television, radio and print media, at regular intervals, to make the general public, children as well as their parents and guardians, aware of the provisions of the Act.

SELVI AND OTHERS Vs. STATE OF KARNATAKA (2010) 7 SCC 263

A. Criminal Trial- Investigation-Narcoanalysis, polygraph test (Lie-detector test) and BEAP (Brain Electrical Activation Profile) test conducted against will of person subjected to such test (the 'test subject')

- Whether legally permissible-Voluntary undertaking of tests by test subject and extent of their admissibility in evidence-Held, tests when conducted under compulsion violate right against self-incrimination protected under Art. 20(3) and right to personal liberty protected under Art. 21- Test also violate the right to remain silent under S.161(2) CrPC

- Though conducting of certain medical tests on accused is permissible under Expln. (a) to S. 53, Ss. 53-A and 54 CrPC, yet narcoanalysis, polygraph and BEAP test are not included in those tests- General expression "such other tests" in Expln. (a) cannot be construed as covering these three tests because they are not of the same category to which tests specified in Expln. (a) belong- Interpretational rule of *ejusdem generis* does not permit their inclusion- Moreover, legislative intent is clear from the fact that Parliament which amending the said Expln. (a) in 2005 did not include these test despite the fact that these tests were in existence at that time.

-These tests cannot also be accorded same treatment as is given to collection of specimen signatures and handwriting samples for the reason that specimen signatures and handwriting samples are not used as testimony

against test subject but are used for identification or corroboration of facts already known to investigators.

-Arts. 20 (3) & 21 of the Constitution and S. 161(2) CrPC are violated by narcoanalysis, polygraph and BEAP test because of following reasons:

-Art. 20(3) and S. 161(2)CrPC-These provisions protect accused, suspects and witnesses from being compelled to make self-incriminating statements-Testimonial compulsion is prohibited by law-Person concerned has right to remain silent on question which may incriminate him-This protection is lost in case of narcoanalysis because test subject under the influence of drug (sodium pentothal) injected into his body loses control over his verbal responses and therefore cannot decide consciously about the questions which he should not answer-In polygraph test, physiological responses like blood pressure, respiratory flow, pulse rate, galvanic skin resistance, etc. are measured after putting certain questions to test subject-He has no conscious control over these response-Similar is the case with BEAP test wherein electrical waves emanating from test subject's brain are studied in response to probes-All these techniques involve testimonial compulsion-Thus, test subject's right not to reveal any information which may incriminate him, is violated.

-Art 21- Mental privacy which is an aspect of personal liberty under Art. 21, is intruded upon because common feature of these tests is that test subject's verbal or physiological responses are extracted in a manner that he has no conscious control over them-Such involuntary disclosure of information is also cruel, inhuman and degrading treatment to an individual, which is again a violation of Art. 21-Impugned tests also violate right to fair trial because access to legal advice, which is a component of Art. 21, becomes meaningless when test subject is made to reveal information without having conscious control over it.

-Voluntary undertaking of test by test subject and extend of their admissibility in evidence-Held, is permissible provided certain safeguards like the one recommended by National Human Rights Commission (NHRC) in case of polygraph test are observed-Similar safeguards directed to be devised for narcoanalysis and BEAP test also-But even such test-result are not admissible

in evidence except that they can be put to use for a limited purpose as indicated in S. 27, Evidence Act, 1872.

-Constitution of India-Arts. (20)3 and 21- Criminal Procedure Code, 1973- Ss.2(g), 53 Expln. (a), 53-A, 54 and 154 to 176 [particularly S. 161(2)]- Evidence Act, 1872-Ss. 24 to 27- Human and Civil Rights-Protection of Human Rights Act, 193-S.12(d)-Employee polygraph Protection Act, 1988(USA)-Federal Rules of Evidence, 1975 (USA)-R.702- Rules of Evidence (New Mexico, USA)- Art. 707- Interpretation of Statutes-Subsidiary rules (Paras 262 to 265)

In this case, legality of three scientific tests, namely, narcoanalysis, polygraph test (lie-detector test) and Brain Electrical Activation Profile (BEAP) test, was challenged inter alia on the ground that these test violate the test subject's rights under Articles 20(3) and 21 of the Constitution and under Section 161(2) of the Criminal Procedure Code, 1973.

In narcoanalysis, intravenous injection of sodium pentothal is given to test subject due to which the test subject enters into hypnotic trance, and answers questions put to him without having conscious control over the replies which may be incriminating to him. He may reveal information which he may otherwise conceal in a state of full consciousness.

In polygraph test, instruments like cardiographs, pneumographs, cardio-cuffs, sensitive electrodes, etc. are attached to test subject's body. Physiological responses like respiration, blood-pressure, blood flow, pulse rate, galvanic skin resistance, etc. in his body are measured after putting certain questions to him. Theory behind polygraph test is that when a person is giving false reply to an incriminating question put to him, he would produce physiological responses which are different from the responses given in normal course.

In BEAP test (which is also known as "P 300 waves test"), electrical waves emitted from test subject's brain are recorded by attaching electrodes to hum scalp. This test subject is exposed to auditory or visual stimuli (words, sounds, pictures, videos) that are relevant to the facts being investigated (Known as material probes), alongside other irrelevant words and pictures (Known as neutral probes). The underlying theory is that in case of guilty suspects, exposure to material probes will lead to emission of P300 wave components.

By examining records of these wave components, the examiner can make inferences about test subject's familiarity with information related to crime.

Holding all three tests to be impermissible, the Supreme Court held as above.

Q. Constitution of India-Art. 21- Right to fair trial-Facets of-Held, right is violated in compulsory administration of narcoanalysis, polygraph and BEAP test on account of following reasons,

-(i) access to legal advice, which is an essential component of right to fair trial, is rendered meaningless because test subject has no control over his verbal or physiological responses,

-(ii) test subject may not be able to defend himself effectively because results of test may be used against him but may not be communicated to him in time,

-(iii) reliability of these test is questionable and therefore proof beyond reasonable doubt, which is an essential feature of criminal trial, may not be possible through these tests,

-(iv) credibility of so-called experts who administer these tests, is also doubtful,

-(v) trial Judge who presides at evidentiary as well trial phases, may be prejudiced by results of these tests even if tests may not be admitted in evidence,

-(vi) test result, in some cases have resulted in public pressure, particularly when test results are inculpatory, which is not desirable in the interest of fair trial,

-(vii) tests disturb parity of procedural safeguards between prosecution and defence; if prosecution is to be allowed to conduct these test, similar demand from accused or witnesses has also to be conceded,

-(viii) tests have potential of increasing frivolous litigation by demanding fresh proceedings and conducting of tests- Criminal Trial- Media trial- Misuse of forensic test results.

(Paras 247 to 253)

SALIL BALI Vs. UNION OF INDIA**AIR 2013 Supreme Court 3743****WRIT PETITION (C) NO. 10 OF 2013 DECIDED ON JULY 17, 2013**

41. It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time.

44. The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing, of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, is assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, where in the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/child including criminal offences.

45. In any event, in the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament.

It may not be out of place to mention that in the Juvenile Justice Act, 1986, male children above the age of sixteen years were considered to be adults, whereas girl children were treated as adults on attaining the age of eighteen years. In the Juvenile Justice (care and Protection of Children) Act, 2000, a conscious decision was taken by Parliament to raise the age of male juveniles/children to eighteen years.

46. In recent years, there has been a spurt in criminal activities by adults, but not so by juveniles, as the materials produced before us show. The age limit which was raised from sixteen to eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, is a decision which was taken by the Government, which is strongly in favour of retaining Sections 2 (k) and 2(l) in the manner in which it exists in the Statute Book.
