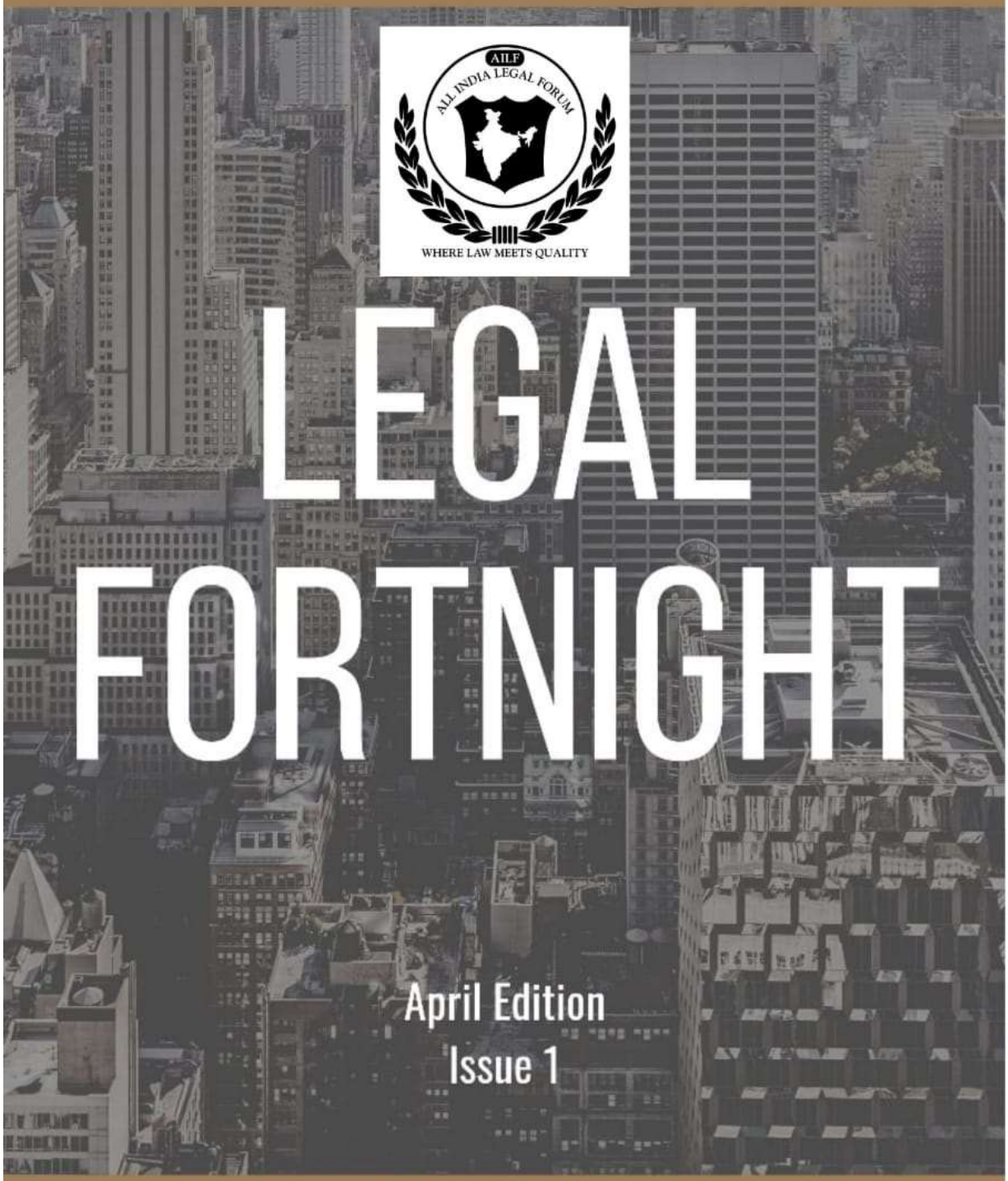
ALL INDIA LEGAL FORUM



LEGAL FORTNIGHT

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FOREWORD

More has been said about the writing of lawyers and judges than of any other group, except, of course, poets and novelists. The difference is that while the latter has usually been admired for their writing, the public has almost always damned lawyers and judges for theirs. If this state of affairs has changed in recent times, it is only in that many lawyers and judges have now joined the rest of the world is complaining about the quality of legal prose.

My best wishes to all these student contributors, for their future endeavors. My best wishes and assurance to the readers that this will add a lot to the knowledge after reading this perfect case compilation. It's not just for the legal fraternity but for anyone who has an interest in the field of law.

By

Vrinda Khanna & Nandini Mangla

PREFACE

May there be Peace in Heaven, May there be Peace in the Sky, May there be Peace in the Earth, May there be Peace in the Water, May there be Peace in the Plants, May there be Peace in the Trees, May there be Peace in the Gods in the various Worlds, May there be Peace in all the human beings, May there be Peace in All,

PEACE, PEACE, PEACE.

Our age-old culture prays for peace and happiness for one and all. Family is the first and oldest social group. It has played an important role in the stability and prosperity of the civilization. Almost everything of lasting value in humanity has its roots in the family. Peace and harmony in the family are important for the all-round development of children. This Compilation of Judgments of the Supreme Court of India and High Court of India by All India Legal Forum is aimed at bringing about desired sensitivity in all duty holders. We're glad to be a part of the All India Forum.

Here's an introduction to my team:

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SUPREME COURT'S JUDGMENT

'Frequent & Causal Summoning of High Officials by Court Cannot Be Appreciated': Supreme Court

State of UP & Ors. v. Manoj Kumar Sharma

"The frequent, causal and lackadaisical summoning of high officials by the Court cannot be appreciated," the Supreme Court observed on Wednesday in a summoning order passed by the Allahabad High Court in a contempt case. The remarks were made by a Division Bench comprising Justices Sanjay Kishan Kaul and Hemant Gupta on being informed that the High Court decided to proceed with the contempt petition and summoned the concerned Govt officers in person, even though the main order against which contempt was filed had been stayed by the Top Court. In the instant case, the Bench wondered that since the main order in a service matter had stayed, and no specific date had been fixed by the Court post the stay having been granted, what purpose was being served by calling the officers? "This is unnecessary harassment of the officers," it remarked while imposing a stay on contempt proceedings. The Apex Court also made it clear that as and when, if the occasion so arises, for restarting the contempt proceedings, the matter will be placed before a bench of other judges at the High Court.

Question of Novation of Contract Cannot Be Considered In A Petition Under Section 11 Arbitration Act: Supreme Court

Sanjiv Prakash v. Seema Kukreja

The Supreme Court observed that the question of novation of a contract containing an arbitration clause cannot be considered by the Court in a petition filed under Section 11 of the Arbitration and Conciliation Act. Detailed arguments on whether an agreement that contains an arbitration clause has or has not been novated cannot possibly be decided in the exercise of a limited prima facie review as to whether an arbitration agreement exists between the parties, the bench comprising Justices RF Nariman, BR Gavai and Hrishikesh Roy said. The court said that a Section 11 court would refer to the matter when contentions relating to non-arbitrability are arguable, or when facts are contested. The court cannot, at this stage, enter into a mini-trial or elaborate review of the facts and law which would usurp the jurisdiction of the arbitral tribunal, the bench said.

No Automatic Vacation Of Stay Under 3rd Proviso To Section 254(2A) Income Tax Act If Assessee Is Not Responsible For Delay In Hearing Appeal: Supreme Court

The Supreme Court upheld a Delhi High Court judgment which read down the third proviso to Section 254(2A) of the Income Tax Act, 1961. The third proviso to Section 254(2A) of the Income Tax Act will now be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry

of the period or periods mentioned in the Section only if the delay in disposing of the appeal is attributable to the assessee", the bench headed by Justice RF Nariman said. The judgment authored by Justice RF Nariman held that the provision was violative of Article 14 for being arbitrary and discriminatory. The automatic vacation of stay provision was termed "manifestly arbitrary", "capricious", "irrational" and "disproportionate" as far as the assessee is concerned. It was noted that the stay would become automatically vacated after the prescribed period even if the non-disposal of the appeal.

"You Are Only Telling Us Difficulties and Not Impossibilities": Supreme Court Tells Centre, Reserves Order in Plea Seeking Protection of Great Indian Bustard

Supreme Court on Tuesday reserved its order in a plea filed seeking protection for the Great Indian Bustard from transmission lines in the States of Rajasthan and Gujarat. A three-judge Bench of CJI Bobde, Justice Bopanna and Justice Ramasubramanian concluded hearing the arguments of all parties regarding undergrounding of low and high voltage transmission lines to protect Great Indian Bustards which is an endangered species. Supreme Court had in February 2020 noted that it appears that one of the hazards concerning the Great Indian Bustard bird is the existence of power lines that are said to obstruct the flight path and said to kill the said bird upon collusion. It is well known that the Great Indian Bustard bird is a large bird and finds it difficult to manoeuvre during the flight.
One of the solutions might be if the flight path of these birds in the area is determined and overhead lines are taken down and laid underground. The Court had directed the inclusion of 3 more persons in the Expert Committee already formed by the Court. The court had in 2019 taken note of the alarming extinction of both the birds and had also constituted a high-powered

committee to urgently frame an emergency response plan and implement it for the protection of these species. The Directions was issued in a plea filed by retired IAS Officer Ranjitsinh and other actual seeking protection of Great Indian Bustard and Lesser Florican whose population has been drastically declining.

Plea in Supreme Court seeks transfer of plea for Uniform Civil Code from Delhi High Court to Supreme Court

A plea has been filed before the Supreme Court seeking transfer of plea pending before the Delhi High Court for direction to the Centre to constitute a Judicial Commission or High-Level Expert Committee to prepare a draft of Uniform Civil Code, to the Apex Court.

The plea by BJP Leader and Advocate Ashwini Kumar Upadhyay has urged that the plea be transferred to Supreme Court and be decided collectively, to secure gender justice, gender equality and dignity of women in the spirit of Articles 14, 15, 21 and 44 of the Constitution and International Convention.

The petitioner has approached the top Court stating that as more PILs may be filed in other High Courts seeking 'Uniform Civil Code', to avoid multiplicity of the litigations and conflicting views on the interpretation of Constitutional Articles and judgments on gender justice and gender equality, the PIL should be transferred and be decided collectively.

The plea has alternatively sought directions to the Centre to constitute a Judicial Commission. or Expert Committee to draft Uniform Civil Code within 3 months, while considering the best practices of all personal laws, civil laws of an international convention and publish it on the website for at least 60 days for extensive public debate and feedback.

Another alternative relief sought is a direction to the Law Commission of India to draft a Uniform Civil Code within 3 months, while considering the best practices of all personal laws and civil laws of developed countries and the international conventions.

HIGH COURT JUDGEMENTS

'Cannot Be Permitted to Remain Behind Bars on The Basis of Sketchy Material': Delhi Court Grants Bail to Umar Khalid In a Delhi Riots Case

Shahrukh Pathan alias Khan v The State of NCT of Delhi (Bail App 664/2021)

A single-judge bench of Justice Suresh Kait of the Delhi High Court today rejected the bail application of a Delhi riots-accused, Shahrukh Pathan Khan, who faces charges of firing shots at a Head Constable of the Delhi Police in Jaffarabad in the Delhi Riots 2020 violence. It further said that regardless of his intention to kill the complainant or any person present in the public with his open-air pistol shots, it was "hard to believe that he did not know that his act may harm anyone present at the spot."

The court also said that the worthiness of the complainant's statement recorded under Section 161 Cr.P.C. and the Pathan's claim that he "had not aimed (the) pistol to shoot at the complainant, shall be tested at trial." Earlier, the Additional Sessions Judge Amitabh Rawat had rejected the interim bail plea of Pathan. The instant case against Pathan was registered under Sections 147, 148, 149, 216, 186, 307, 353 & 34 IPC read with Section 25 & 27 Arms Act. After the said incident near Jaffarabad Metro Station, he had absconded, however, he was arrested by the team of Delhi Police Crime Branch on Mar 3, 2020, from the Shamli Bus Stand, Uttar Pradesh based on secret information. The petition is accordingly dismissed while refraining to comment upon the merits of the prosecution case.

Gujarat Govt Figures on COVID19 Not Matching with Actual Positive Cases: Gujarat High Court

The Gujarat High Court on Thursday observed that had the Gujarat Government taken preemptive steps earlier, the present grim situation of the COVID-19 pandemic could have been avoided. "If the state had taken steps, not that the State was sleeping, but if there was a push, if all of this had been done earlier before the PIL was registered, the situation would have been better", Chief Justice Vikram Nath told Advocate General Kamal Trivedi.

On Thursday, a Bench of Chief Justice Vikram Nath and Justice Bhargav Karia of the Gujarat High Court was continuing the Court's suo motu proceedings taking stock of the surge in COVID-19 cases in the State. At the hearing today, Chief Justice Nath pointed out that there seemed to be a divergence between the numbers of those tested, as provided by the state, and the actual numbers of those infected.

The previous hearing had seen Advocate General Kamal Trivedi being called upon to submit to Court details of steps the State was proposing to take to cope with the rise in COVID-19 cases in the state. A major chunk of the day's hearing was devoted to the availability of Remdesivir, the availability of testing and hospital beds across the State and other facilities such as CT-Scans.

The Court directed the State to get CT Scan facilities as soon as possible. With a direction to the State to get more information on testing, bed availability, etc. The Chief Justice stated that the matter would be taken up again, but did not indicate a date.

"Just Because Wife Died in Matrimonial House Within Two Months of Marriage, Entire Family Cannot Be Stigmatized for Serious Offence of Murder

Sachin Ramchandra Teke v. the State of Maharashtra
A division bench comprising of Justice NR Borkar and Justice Sadhana S Jadhav set aside a Sessions Court judgment dated 29th June 2012 convicting husband and other family members for offences punishable under sec. 498-A, 302, 304-B r/w 34 of Indian Penal Code and sec. 3 and 4 of the Dowry Prohibition Act. The High Court was of the view that the marriage was hurriedly affected by the parents of the deceased wife since they found a suitable match for their daughter thereby going against her wishes and will of continuing her education. The Court also opined that the suicide was committed in a "state of stress".

Sachin and Megha got married on 28th July 2010 and resided in a joint family. In September 2010, two months after the marriage, Megha was found hanging to the rafter inside her bedroom. A report was then lodged by her father at the police station alleging that her daughter complained to him that she was subjected to ill-treatment and harassment for not getting a gold ring for Sachin and was also subjected to starvation.
Appeals are allowed; The conviction and sentence passed by the Ad hoc Additional Sessions Judge, Malshiras vide judgment and order dated 29th June 2012 in Sessions Case No.69 of 2010 stands quashed and set aside; The accused-appellants are acquitted of all the charges levelled against them; Bail bonds stand cancelled; Fine amount, if paid, be refunded. Appeals are disposed of in the above terms.

The Court also observed that "If a bride/girl commits suicide in unnatural circumstances within few days or month of her marriage, the law raises a presumption against boy's family but doesn't it also show hypersensitivity of a girl who did not give time to this pious relationship."

Kerala High Court Issues Directions on How Family Courts Are to Adjudicate Cases Involving Extra Judicial Modes of Divorce at The Instance of Wife Under Muslim Law

While upholding the validity of the extrajudicial modes of divorce for women, the Kerala High Court recently issued directions to Family Courts on the course to follow while adjudicating cases that involved these methods. Pointing out that there is no difficulty for the Family Court to endorse an extra-judicial divorce to declare the matrimonial status of a person, a bench of Justices A Muhamed Mustaque and CS Dias issued directions on the subject. The Court directed that in the matter of talaq, khula, mubaraat, talaq-e-tafweez, the Family Courts shall entertain such applications moved by either of the parties or both parties to declare the marital status of such parties. The Bench specially instructed Family Courts not to adjudicate upon extra-judicial divorce unless it was called upon to do so in an appropriate manner since the Courts were overburdened with a large number of cases.

No One Should Allege Bias, All Religious Places Should Remain Closed - Maharashtra Govt. Tells Bombay High Court in Jain Trust's Petition

A day after the Bombay High Court refused a city mosque to open up for Ramadan prayers, the Maharashtra Government opposed a petition by two Jain trusts seeking permission for devotees to collect "pious boiled food" from the trust's premises during the nine-day-long Ayambil fast. "Yesterday the Court refused the mosque to open. There should not be bias alleged on the part of the State. Our stand is clear, all religious places should remain closed." The division bench of Justices SC Gupte and Abhay Ahuja then proposed a "workable solution," asking the petitioners if they can arrange for a team of volunteers to deliver the food, like food delivery aggregators Swiggy and Zomato. The Court noted that the petitioners were not seeking opening up of the temple for prayers.

The court said that the prayer seemed "reasonable," and asked the State to take instructions, while also allowing the petitioner to amend the petition. Counsel for the State Jyoti Chavan said that she had taken instructions and the State was opposed to opening any religious place for devotees. The Bench has now posted the matter for hearing on Friday.

SOURCES: www.livelaw.in

Delhi High Court holds wearing of masks compulsory even while alone in a vehicle: “Mask is like a Suraksha Kavach”

A single-judge bench of Justice Prathiba M Singh today dismissed writ petitions challenging the imposition of fines by the Delhi government on persons not wearing masks while travelling alone in personal vehicles. The court held that the private vehicle occupied by a single person is a public place for COVID-19 control.

'*A person travelling in a vehicle or car even if he is alone could be exposed to the virus in various ways. The person may have visited a market, or workplace, or hospital or busy street, before entering the car or vehicle. Such a person may be required to keep windows open for ventilation. The vehicle may also be required to be stopped at a traffic signal and the person could purchase any product by rolling down the window. The person may thus be exposed to a street-side vendor. If a person is travelling in the car alone, the said status is not a permanent one. It is merely a temporary phase. There could be other occupants in the car before the said phase and post the said phase. There could be elderly family members or children who may be picked from the school or even simply friends or colleagues who may travel in the car in the immediate future. Such persons can also be exposed to the virus if the occupant was not wearing the mask. The droplets carrying the virus can infect others even after a few hours after the occupant of the car has released the same. There are several possibilities in which while sitting alone in the car one could be exposed to the outside world. Thus, it cannot be said that merely because the person is travelling alone in a car, the car would not be a public place.', the court held.*

The affidavit filed by the Delhi Government in this regard had stated that the Regulations/Directives/Guidelines are very clear cut that "any person" moving around in his personal or official vehicle must be wearing masks as a mandate. For asserting this, the government had relied on a judgment of the Supreme Court wherein it was held that when a private vehicle passes through a public road, the public has the opportunity to "approach the private vehicle" and have access to it. In light of the Delhi Government's submission, a counsel appearing in connected matters also informed the Court that the Union Ministry of Health and Family Welfare itself had stated that any person sitting in a car alone need not wear a mask.

Enrica-Lexie Case: Supreme Court to Hear Centre's Plea To Dispose Pending Applications On April 9

A three-judge Bench of CJI Bobde, Justice Bopanna and Justice Ramasubramanian made the observation after a request for urgent hearing was made by SG Tushar Mehta during the mentioning. Before the Court today, SG Mehta made a request for urgent hearing of an IA filed by the Union of India in the matter about Italian marines and shooting incidents. SG Mehta submitted that the matter is now settled. The Court had on the last occasion asked the government to contact the victims. The victims were contacted and they have been compensated.

Freedom Fighter's Widowed/Divorced Daughters Having No Income Entitled To His Pension, Blanket Exclusion Violates Art.14: Calcutta High Court.

The Calcutta High Court on Wednesday declared Clause 5.2.5 of the Guidelines for Disbursement of Central Samman Pensions followed by Authorized Public Sector Banks, issued by the Ministry of Home Affairs, as being violative of Art. 14 of the Constitution of India after observing that the "blanket exclusion of widowed/divorced daughters, including even those who do not have any personal income in lieu of maintenance or otherwise, is patent dehors Article 14 of the Constitution of India.

The observation came in a petition challenging the vires of Clause 5.2.5 of the Scheme providing for disbursement of pension to freedom fighters under the Central Samman Pension Scheme.

According to Clause 5.2.5 of the said Scheme, it has been provided that "Widowed/divorced

daughter is not eligible for Samman pension". Clause 5.2.3 stipulates that in order to transfer the pension to the spouse or daughter, a twin condition has to be fulfilled i.e. of being unmarried and having no independent source of income.

While observing that unmarried daughters have been included within the scheme but widowed/divorced daughters who stand on the same footing, having no independent source of income, have been excluded, the Court called such a classification as "worse than gender bias". The Court declared Clause 5.2.5 of the said guidelines as ultra vires by holding that Clause 5.2.3 shall also include widowed/divorced daughters as eligible for the Sainik Samman Scheme-in-question, provided they satisfy the other test of having no independent source of income.

Police Authorities Are Expected To Be Quite Sensitive In Matters Where Freedom of Speech and Expression Are At Stake: Bombay High Court

"The Police authorities are expected to be quite sensitive in such matters because what is at stake is the freedom of speech and expression", observed the Bombay High Court, bench at Goa, while quashing an FIR registered by the Goa Police under section 295A of the Indian Penal Code against members of "Dastaan LIVE", an art-rock live performance band, for using the word "OM" and clubbing it with a phrase like "Ullu Ka Pattha" thereby allegedly outraging religious feelings of Hindus.

The Goa Police hurriedly registered the FIR without perusing the complaint or the provisions of sec. 295B of IPC. Because of the said observation, the Bench opined that such conduct by

police authorities "was an unwarranted assault on creativity and freedom of speech and expression itself."

Observing that there was no allegation of deliberate or malicious intention to outrage religious feelings of any class of persons in the complaint, the Court observed that in absence of such allegations, there was no justification on the part of the Police to register the FIR.

Upholding Woman's Decisional Autonomy to Acknowledge Biological Father, Kerala High Court Restores Surrendered Child to Live-In Couple

In an important ruling, the Kerala High Court has recognised the decisional autonomy of a woman in a live-in relationship recognising the biological father of her child and the parental rights thereby flowing to him.

A Division Bench of Justices A Muhamed Mustaque and Dr Kauser Edappagath was faced with a case where a mother (Anitha) in a live-in relationship surrendered her child for adoption after her partner, the biological father (John), briefly broke the relationship. After they reunited, they approached the Court to have their child restored to them.
The Court's observations on a woman's decisional autonomy proved crucial in determining whether the biological father had a say in the procedure adopted to surrender the child for adoption.
On the woman's right to recognise the biological father- In a significant series of statements, the Bench highlighted that it is for the woman to recognize and decide on the recognition of the

fatherhood of the child.

"Where she chose to acknowledge the biological father at the time of conception, the father has every right to be recognized as a biological father", the court reasoned. It is for the woman to recognize and decide on the recognition of the fatherhood of the child.

The bench of Justices Mustaque and Edappagath emphasized that a woman in a live-in-relationship who acknowledged the biological father of the child out of such a relationship, "will have to be treated as a married woman for the purpose of Juvenile Justice."

Therefore, the Court concluded, "There is no difficulty in holding that a child born in a live-in relationship also has to be construed as a child born to a married couple."

Pushback against ODR, Virtual Courts Based on Fear of Unknown; Information Can Make the Transition Easier: Justice DY Chandrachud

"The pushback against Online Dispute Resolution and virtual courts is often based on a fear of the unknown. I am not criticising this fear, but only emphasising the importance of valuable information in making this transition into the unknown easier", said Justice DY Chandrachud on Friday.

Speaking at the launch of Niti Aayog's Online Dispute Resolution Handbook, the judge urged that one must remember that "change is nature" and that it is nature" and that it should not be avoided for too long, "lest we, particularly us in the judiciary, get left behind".

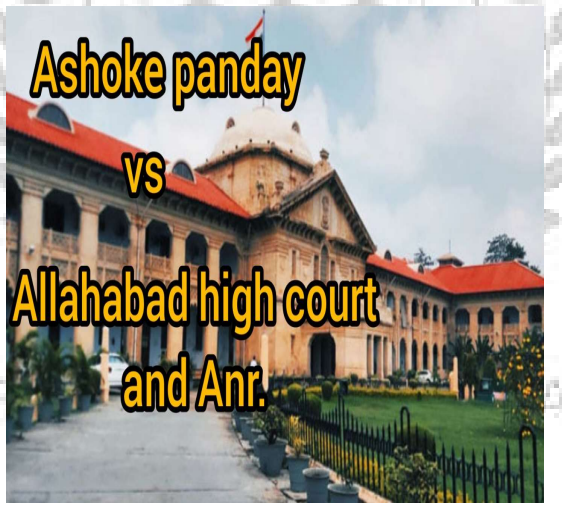
He underlined the need "to reconsider a preconceived bias to a full-fledged adoption of ODR".

Justice Chandrachud canvassed that in the last year, the sudden onset of the COVID pandemic has transformed all our lives in unimaginable ways, in which courts operated.

With necessary lockdowns, physical hearings gave way to virtual hearings. This transition was difficult for everyone- me and my colleagues in the judiciary, the advocates, the litigants, and the court staff".

He echoed that the strength of ODR is founded in the need to decentralise, the need to diversify, the need to democratise the process of justice delivery as a service, and finally, the need to disentangle justice from all its complexities. "The time for a change to ODR has come. And it is here to stay", he asserted.
Sources: www.livelaw.in

Ashok Pandey vs Allahabad High Court & Anr.



P.I.L. Civil No. - 3343 of 2021

Petitioner:- Ashok Pandey (Petitioner-In-Person)

Respondent:- Allahabad High Court, Prayagraj Thru Registrar General & Another

Counsel for Petitioner:- Ashok Pande

Counsel for Respondent :- Gaurav Mehrotra, A.S.G.

Hon'ble Govind Mathur, Chief Justice

Hon’ble Mrs. Saroj Yadav, J.

(Per: Govind Mathur, C.J.)

This writ petition, said to be filed in the public interest, is preferred to have an appropriate writ, order or direction for not giving effect to provisions contained in Chapter V Rule 9 of the Allahabad High Court Rules, 1952 prescribing appointment of Senior Judges at Allahabad and Lucknow to exercise jurisdiction at their respective places in connection with the arrangement of Benches, listing of cases and other such matters and further to amend the Rules in conformity with the law laid down by Supreme Court in the case of Ashok Pande versus Supreme Court of India [Writ Petition (Civil) No. 147 of 2018].

The argument advanced by the petitioner is that in our constitutional scheme, and also in light of the law pronounced by Supreme Court in several cases, the Chief Justice of a High Court is 'Master of Roster' and no other Judge may be allowed to interfere in the dispensation of this privileged function. 'We do not find any merit in the petition for writ which on its face appears to be fundamentally misconceived', the Bench observed. Suffice to state that no challenge is given to the Rule aforesaid and nothing has been said as to how the Rule is bad. The object of the Rule is to make the High Court more functional and efficient by delegating certain authorities of the Chief Justice to the Senior Judge in his absence. It would also be appropriate to mention that the High Court under Article 226 of the Constitution of India is not supposed to legislate the Rules and is also not supposed to direct the Law Farming Authority to legislate or amend the law being function assigned to Legislature/Law Farming Authority.

In the high court of judicature at Patna civil Writ jurisdiction [case no. 8306 of 2020]
Sunil Kumar Verma Versus:

1. The state of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna
3. The Patna high court through the registrar general Patna high court Patna.

Coram: Honourable Mr. Justice Shivaji Pandey and Mr. Justice Partha sarthy

The petitioner, a Judicial officer, has challenged letter no. 23842 dated 18.05.2020 and letter no. 24973 dated 1.6.2020 issued by the Patna high court by which a show-cause notice was issued to the petitioner in view of the judgment of Hon'ble Apex Court passed in the case of Dheeraj Mor Vs High Court of Delhi along with Prem Shankar and Ors. Vs, High court of Patna and Anr. Reported in 7 SCC 401 as to why his services from the post of Additional District and Sessions Patna High Court Judge be not terminated assigning reason that the petitioner was not a practising advocate on the date of the preliminary test, main test, interview and declaration of the final result as well as on the date of his appointment as an Additional District and Sessions Judge and, at a later stage, the petitioner file interlocutory application bearing I.A. No. 1/2020 by which he has sought amendment of the writ petition to bring new developmental fact as has been informed vide letter dated 22.9.2020 that the response/submission of the petitioner has been rejected by this Court and further i.a. no 2/2020 has been filed by which he has made a prayer for grant of interim relief that during the pendency of this writ application, no order of termination be passed against the petitioner and again I.A.No. 3/2020 has been filed by which prayer has been made for quashing the notification no. 7 dated 17.12.2020 along with a letter dated 4.1.2021 by which the petitioner has been terminated from service and communicated at his place of posting at Begusarai respectively.

The short fact of this case is that the petitioner has enrolled himself in Bar Council of Uttar Pradesh vide Enrollment No. 7938 of 07 dated 5.12.2007 and joined the State High Court Bar Association, Allahabad on 5.12.2007 and remained in practice till 15.1.2017. During that period, he appeared in various competitive examinations such as PCS-J and District Judge (Entry Level) Direct from Bar Exams in different States. This High Court had issued an advertisement for recruitment of suitable candidates to the post of District Judge (Entry Level), Direct From Bar Exam-2016 on its website dated 22.8.2016 notifying 98 vacancies as of 31.3.2017.

One of the terms and conditions was mentioned therein that the candidates must possess 7 years practice including his appearance at least in 24 cases per annum preceding three years on the last date of receipt of the application as specified in the advertisement and further condition was

provided that the candidate must have completed 35 years of age and who has not completed the 50 years as on 1.1.2016, shall be eligible for consideration. The cut-off date for consideration of eligibility of the application was fixed as of 16.9.2016. In pursuance of the advertisement, the petitioner applied for the said post on 31.8.2016 before the last date i.e. 16.9.2016. While filling up the form, he has also obtained an experience certificate from the Registrar, High Court showing his professional experience of seven years on or before the cut off date. It has to be noted that the petitioner had also applied in U.P. Judicial Services (Junior Division), where he was selected on 16.1.2017 and, accordingly, he joined the judicial services (Junior Division) in the state of Uttar Pradesh and, as per petitioner, on or before the cut off date, he was not in any service either judicial or otherwise. Further that the condition does not stipulate in the advertisement that a candidate who has joined judicial service or in any services, later on, would be made ineligible for the consideration of the said post. The petitioner succeeded in the preliminary examination as well as in the main examination. After the main examination, this Court published a notice on its website dated 9.2.2018, giving liberty to the candidates to remove defects and discrepancies in the application form. In the notice, it has been mentioned that on scrutiny of the application forms and documents uploaded by the candidates who have qualified in the main (Written) examination of District Judge (Entry Level), Direct from Bar, 2016, certain discrepancies have been found. The same has been indicated against respective candidates in the chart attached herewith. The candidates were directed to do the needful and clause-3 prescribes that the candidates in respect of whom clarification was required regarding enrollment/experience certificates, may clarify their position on the affidavit which they shall bring at the time of interview and clause-4 provides that the candidates who are judicial officers and also those who are serving in some other organization having 7 years of experience as an advocate are provisionally allowed to appear at the interview and their candidature shall be considered later on in the light of the legal position settled by the Hon'ble Supreme Court in the cases of Deepak Aggrawal vs. Keshav Kaushik and Others, Civil AppealNo. 561 of 2013 (arising out of SLP (C) No. 17463 of 2010) and Vijay Kumar Mishra & Another Vs. High Court of Judicature at Patna & Ors., Civil Appeal No. 7358 of 2016 (arising out of SLP (C) No. 17466 of 2016). In clause-7, it has been mentioned that the candidate having roll no. 15395 has been held ineligible to appear in the interview because of not having 7 years of experience as an

advocate because being in full-time corporate employment having not practised as an advocate and also given Rule 49 of the BCI Rules.

The petitioner claims that on the cut off date, he was possessing the essential qualification of 7 years of experience as an advocate and the cases mentioned in the notice does not apply to the case of the petitioner as the fact in those cases were quite different.

STATE VS AKHIL GOGOI

Case No. : Crl.A./192/2020

(THE STATE) THE NATIONAL INVESTIGATION AGENCY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, REP. BY THE

SUPERINTENDENT OF POLICE, NIA, BRANCH OFFICE, GUWAHATI, ASSAM.

VERSUS

AKHIL GOGOI

S/O- LATE BOLURAM @ BOLU GOGOI, R/O- LUKRAKHANGAON

SEINGHAT, P.S. TEOK, DIST.- JORHAT, ASSAM.

Advocate for the Petitioner: SC, NIA

Advocate for the Respondent: MS. P BORAH

BEFORE

HONOURABLE MR. JUSTICE SUMAN SHYAM

HONOURABLE MR. JUSTICE MIR ALFAZ ALI

Heard Mr D. Saikia, learned senior counsel assisted by Mr N/ satyanaratan, addl. P.P.NIA, appearing for the appellant. We have also heard Mr K.N/ Choudhury, learned senior counsel assisted by Mr S. Borthakur, learned counsel representing the sole respondent.

2. This appeal, filed by the National Investigation Agency (NIA) under Section 21(4) of the National Investigation Agency Act, 2008, is directed against the judgment and order dated 01.10.2020 passed by the Judge, Special Court, NIA, Assam, Guwahati, in Misc. Case(NIA) No.22/2020 arising out of Special NIA Case No.03/2020, allowing the respondent to go on bail after submission of charge-sheet by the

Investigating Agency.

3. The facts of the case, in a nutshell, are as under:-

On 10.12.2019, Sri Tulumoni Duwarah, Sub-Inspector of Police, Chabua Police Station, in the district of Dibrugarh, had lodged an ejahar inter-alia stating that on 09.12.2019, while he was on law and order duty in Chabua Town, a 6000 persons strong crowd, led by the respondent, had caused economic blockade and had pelted stones, one of which had hit him on his face causing grievous injury. In the FIR, it has also been alleged that the mob led by the respondent had tried to murder police personnel on duty. Based on the ejahar dated 10.12.2019, Chabua P.S. Case No.289/2019 was registered under Sections 120(B)/147/148/149/336/ 307/383/326 of the I.P.C. and the matter was taken up for investigation. Subsequently, Sections 15(1) (a)/16 of the Unlawful Assemblies (Prevention) Act, 1967 [hereinafter referred to as "the Act of 1967"] was added.

4. While the matter was under investigation by the State Police, by the order dated 14.12.2019 passed by the Ministry of Home Affairs, Government of India, investigation in the aforesaid police case was entrusted to the appellant (NIA) whereafter, the case was re-registered as RC-01/2020/NIA-GUW. Upon completion of an investigation, charge-sheet was laid on 26.06.2020 against the four accused persons including the respondent herein, viz., Sri Akhil Gogoi as accused No.1 (A-1), Sri Jogjit Mohan as accused No.2 (A-2), Sri Bhaskar Phukan as accused No.3 (A-3) and Sri Bhupen Gogoi as accused No.4 (A-4). The respondent (A-1) was already in

police custody in connection with another case bearing No.RC-03/19/NIA-GUW and therefore, he was shown arrested in connection with the present case on 01.04.2020.

5. The respondent (A-1) had filed Misc. Case No.NIA/22/2020 seeking his release on bail. By the impugned judgement and order dated 01.10.2020, the learned Judge, Special Court, NIA had allowed the respondent to go on bail on furnishing a bond of Rs.30,000/- with one surety of like amount to the satisfaction of the Court. The order dated 01.10.2020 is under challenge in this appeal.

6. It appears that the Accused No.2 Jogjit Mohon was granted bail in connection with Chabua P.S. Case No 289/2019 during the stage of the investigation conducted by the police. However, the bail application jointly filed by the accused Nos.3 and 4 (A-3 and A-4) was rejected by the learned Special Court, NIA by the judgment and order dated 08.07.2020 passed in Misc. Case No.10/2020. The judgment and order dated 08.07.2020 was assailed by the A-3 and A-4 by filing Criminal Appeal No.171/2020 before this Court. However, the said appeal was dismissed by a Division Bench of this Court by the judgment and order dated 05.02.2021, thereby upholding the order of the learned Court below.

7. By inviting the attention of this Court to the materials available on record, Mr. Saikia, learned senior counsel, appearing for the appellant submits that the respondent (A-1) had led the entire movement which had turned into a violent protest, whereby, a Railway Station and a police vehicle was burnt down besides spreading sporadic incidents of violence and stone-pelting upon the police personnel. It has also been submitted that at the instance of the respondent, a conspiracy was hatched by the accused persons to attack a particular community of that locality to disturb the unity and integrity of the country. The accused Nos.3 and 4 (A-3 and A-4) had carried out the instructions of the respondent (A-1) to such effect.

8. Mr. Saikia has further submitted that the learned court below had recorded categorical finding, based on the materials placed before it, that the respondent was responsible for making provocative speeches whereafter, the crowd had turned violent and pelted stones leading to the injury of the Officer-in-Charge of Chabua Police Station and had also vandalised public property. Notwithstanding the same, the respondent was allowed to go on bail while rejecting

the bail prayers made by the two similarly situated co-accused (A-3 and A-4) on the same set of facts.

9. By placing reliance on the judgment and order dated 05.02.2021 passed in Criminal Appeal No.171/2020 Mr Saikia has further argued that the materials available against the A-1 i.e. the respondent herein was found to be equally incriminating as in the case of A-3 and A-4. By taking note of such incriminating materials available on record another Division Bench of this court has found that such materials prima facie disclosed culpability of the appellants. The aforesaid observation, having been based on the same set of facts and materials available on record. The observations made in the order dated 05.02.2021 would be applicable in the present cases as well. According to Mr Sakia, the learned trial court had erroneously ignored the incriminating materials available on record demonstrating the strong likelihood of conviction of the respondent(A-1) and had employed a completely different standard while considering the bail application moved by the respondent. As such, submits Mr Sakia, the impugned judgment is order is hit by perversity and therefore, the same is liable to be set aside by this Court on such count alone.

CASE: KT JALEEL Vs. VK MUHAMMED SHAFI

K T Jaleel, Kerala's Minister for Higher Education and Minority Welfare has moved the Kerala High Court against the report of the Kerala Lok Ayukta charging him with nepotism, abuse of power and favouritism in giving government appointment to his second cousin by altering norms. Specifically under challenge is Paragraph 54 of the said Report, wherein the Lok Ayukta comprising Justices Cyriac Joseph (former Supreme Court judge) and Harun-Ul-Rashid (former

High Court judge) held that that Jaleel should not continue as a Member of the Council of Ministers on account of the charges against him.

Filing his petition through Advocate PC Sasidharan, the Minister alleges that the Lok Ayukta finalised its Report solely based on the oral arguments of the parties before it. Among other prayers, the Minister seeks a declaration by the Court that the Lokayukta finding that the petitioner has committed an act of abuse of power, favouritism, nepotism and violation of Oath of Office is not based on any material evidence or after any investigation and one liable to be set aside. On February 5, the Lok Ayukta had issued an order stating that as part of preliminary investigation notice before admission may be issued to respondents, returnable on March 30, the petition points out. "No investigation either preliminary or regular was conducted", the petition avers, referring to the Order of the Kerala Lok Ayukta dated February. Charging the final report as one having been made without following any procedure mandated under law to arrive at a finding, Jaleel's plea asserts that the same is violative of natural justice as well as the statutory provisions of the Kerala Lok Ayukta Act, and therefore one liable to be interfered with by the Court.

Additionally, the plea argues that the subject matter of the proceedings, specifically, the prescription of qualification and appointment to the State Minority Development Finance Corporation, are excluded from the purview of the investigation under the Lok Ayukta Act. The petition contends that the matters in dispute in the proceedings before the Lok Ayukta were previously presented before the High Court as well as the Governor and both refused to entertain the issue.

With these prayers, the Minister seeks,

- A quash of the Lok Ayukta's Report
-
- A declaration that the procedure adopted for submitting the report under Section 12(3) of the Kerala Lok Ayukta Act, 1999 was a violation of the principles of natural justice and violative of the statutory mandate of law contained in the Lok Ayukta Act.

- A declaration that the report and declaration that Paragraph 54 of the Report is non-est in the eye of the law since it was not prepared in terms of the statutory mandate and a direction that the competent authority shall not proceed further with the matter.

In the Interim, the petitioner seeks a stay of all further proceedings and declaration made in Paragraph 54. The Kerala Lok Ayukta recently found K T Jaleel, Minister for Higher Education and Minority Welfare, guilty of nepotism, abuse of power and favouritism and held that he violated his oath of office by giving government appointment to his second cousin by altering norms. Significantly, the Lok Ayukta made a declaration under Section 12(3) of the Kerala Lok Ayukta Act that Jaleel should not continue as a Member of the Council of Ministers. Such a declaration has to be accepted by the Chief Minister under Section 14 of the Act. On acceptance by the Chief Minister, the Minister has to resign from the office as per Section 14(2)(i) of the Act.

The Kerala High Court will consider his petition on April 13.

Source: www.Livelaw.com

"Petitioners should wait for a response after making representation to authorities before filing PILs"- Orissa High Court

Noting that in a large number of Public Interest Litigation matters. The petitioners are filing writ petitions soon after making a response, the Orissa High Court disposed of a Writ Petition asking the petitioner to at least give two months to the Opposite Parties to decide on his representation. The Bench of Chief Justice S. Muralidhar and Justice B. P. Routray was hearing the plea of a petitioner who made a representation on 5th February 2021, to the Opposite Parties, however,

he filed the present writ petition on 9th February 2021, i.e. four days thereafter. The Petitioner was objecting to the construction of a building over forest land in Pallahara, District-Angul. According to him, none of the present members of Bana Surakhya Samiti of Saharagurujang is supporting him and thus, he made a representation to Collector, Angul. Importantly, the Court referred to Rule 8 of the Orissa High Court Public Interest Litigation Rules, 2010 (2010 Rules), which reads thus: "8. Before filing a PIL, the Petitioner must send a representation to the authorities concerned for taking remedial action, akin to what is postulated in Section 80 CPC. Details of such representation and reply, if any, from the authority concerned along with copies thereof must be filed with the petition. However, in urgent cases where making of representation and waiting for response would cause irreparable injury or damage, the petition can be filed straightway by giving prior notice of filing to the authorities concerned and/or their counsel if any." In view of Rule 8, the Court observed that if the representation (made to authorities) is "akin to what is postulated in Section 80 CPC", the Petitioner should at least give two months to the Opposite Parties to take a decision thereon.

Further, the Court stressed that as per rule 8 of 2010 Rules states, only in very urgent cases where the making of a representation and waiting for a response "would cause irreparable injury or damage, a petition can be filed straightway by giving prior notice".However, the Court did add that if the matter is serious, then the Petitioner should send at least one reminder within the said two months.

Illegal Extraction of Mines and minerals mounts to theft under section 279 IPC

Kerala High Court- The Kerala High Court has held that illegal extraction of mines and minerals without a requisite permit or in violation of the permit conditions, will amount to theft under Section 379 of the Indian Penal Code. Based on a recent Supreme Court judgement in Jayant vs. Madhya Pradesh, Advocate C. Dheeraj Rajan, who appeared for the petitioner, contended that illegal extraction/exploitation of natural resources will amount to theft, punishable under section 379 of the Indian penal Code. The advocate also referred to Kanwal pal Singh v State of Uttar Pradesh, in which the Supreme Court rejected that sand being an

immovable property as per Section 3(26) of the General clauses Act, its excavation will not constitute the offence of theft.

The Court directed the police to consider the complaint and take appropriate action thereon within two weeks.

No reason to detain adult as she left with lover voluntarily- Bombay High Court

The Aurangabad bench of the Bombay High Court refused to detain an adult girl who had eloped with a 20-year-old man after she appeared before the court under a habeas corpus petition filed by her father. The bench was constituted by Justice Ravindra V. Ghuge and Justice Bhalchandra U. Debadwar.

The petitioner, C.D Dhavan contended that his daughter eloped with the man in December 2020 and had been missing since. On 31st March, the missing girl appeared before the Court on her own and the Court verified her identity and ascertained that she was 18 years and 6 months old. She submitted that she has been living with the boy who was born in April 2000. She also submitted that the couple is planning to get married after the respondent attains marriageable age of 21 years. She also requested protection as she feared that her father would physically harm her. The court deemed it appropriate to direct that the father should not commit any act of offence against the petitioner and held that since the missing girl is an adult, and respondent no.

5 is also an adult, though not of marriageable age, they have no reason to detain the missing girl, considering the specific replies given by her.

Conviction of accused only based on a presumption under the POCSO act would offend Article 20(3), 21 of the Constitution- Tripura High Court

The Tripura High Court held that the conviction of an accused only based on a presumption under section 29 and 30 of the POCSO act violates Article 20(3) of the Constitution which says that, 'no person accused of any offence shall be compelled to be a witness against himself. The division bench comprising of Chief Justice Akil Kureshi and Justice Arindam Lodh observed: " Upon meticulous reading of Section 29 and 430 of the POCSO Act, according to us, the prosecution will commence the trial with an additional advantage that there will be a presumption of guilt against the accused person, but, in our considered view, such presumption cannot form the basis of conviction, if that be so, it would offend Article 20(3) and 21 of the Constitution of India."

The court further observed that. " Presumption of innocence is a human right and cannot per se be equated with the fundamental right under Article 21 of the Constitution of India. The Supreme Court in various decisions has held that provisions imposing reverse burden must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the statute".

Present generation taking conception of marriage very lightly, they apply for divorce on unimaginable trivial issues- Madras High Court

The Madras High Court recently observed that the concept of marriage in the present generation is taken very lightly and even for trivial issues, they file a divorce, and marriage is broken. The Bench of Justice V. Bhavani Subbaroyan specifically remarked, "The Family Courts increase in numbers to cater to the demand of intolerant couples, who are unmindful of the institution of marriage, break the relationship on unimaginable trivial reasons." The respondent/husband filed an Original Petition before the Family Court against the petitioner/wife seeking a declaration of the marriage solemnized in July 2018 as null and void.

It was alleged that the wife was suffering from Polycystic Ovarian Syndrome (for brevity 'PSOS') and the respondent/wife was not fit for cohabitation or giving birth to a child.
At the outset, the Court remarked that the issue of 'PSOS' is now commonly prevailing among the present generation of women and that the term 'PSOS' by itself cannot be termed as 'impotence.

"Impotency is different and unable to give birth to the child is different, owing to various physical and mental reasons", noted the Court.
The Court also observed that the husband did not plead that the wife's inability to give birth to a child is 'Impotency', however, he did seek for annulment of a marriage on the reason that there was no cohabitation and the wife could not bear a child.
The Court also noted that he claimed that his wife/ petitioner could not bear a child for two reasons, viz., firstly, there is no cohabitation, secondly, the wife is suffering from 'PSOS' due to which the said wife suffers an improper menstrual cycle.

Significantly, the Court opined, " It is a legitimate expectation of the husband to live with his wife and have cohabitation and bear children and if the same is not achieved owing to any

physical and mental problem among the partners, it is quite logical that either of the parties will approach the court for seeking divorce on such allegations."

Turning to the facts of the Case, the Court observed that the Wife could not show that there was no cause of action disclosed by the averments made in the petition filed by the husband or that the cause of action disclosed by the averments made in the petition was not natural, but illusive.

Consequently, the Court ruled that the Wife did not make out any grounds seeking for the intervention of this Court under Article 227 of the Constitution of India to strike off the petition and accordingly, the Civil Revision Petition was dismissed at the threshold.

Voters should be able to see names, photographs, and symbols of candidates with sufficient clarity, essential for free and fair election: Kerala High Court.

While disposing of a petition relating to the visibility of a party's symbol on Electronic Voting Machines (EVMs), the Kerala High Court emphasized the importance of being able to see the name, photograph, and symbol with clarity. Underscoring the need for clear symbols/photographs in the election process, a Bench of Justice N Nagaresh remarked, "It is important and essential that citizens, who are to caste (cast) vote, are able to see the name, photograph and symbol of all candidates with sufficient clarity. This is essential for any free and fair election." The Court was hearing a petition by Twenty20, a registered unrecognised political party. The party claimed that the name, photograph, and symbol of its candidates in the Kothamangalam, Thrikkakara and Vypin Assembly Constituencies were not clear and visible in the EVMs slated to be used during the Kerala Legislative Assembly polls on April 6, 2021.

Asserting that every citizen had a valuable constitutional right to make a valid choice of candidate after properly seeing and understanding the candidate, name and symbol, the party's

counsel Advocate Blaze K Jose claimed that their candidates and symbols were not given as much prominence as those of other parties.

"Therefore, there is no question of giving any direction to the respondents to make any substitution at this stage", the Court said.

In the circumstances, the Court stated that it was disposing of the petition directing the Commission to "ensure that the name, photograph and symbol of the candidates belonging to the petitioner-Party are sufficiently clear so that voters can make an easy and informed choice."

Such tactics need to be nipped in the bud: Gujarat HC criticizes police for misusing PASA act to Settle Disputes between Parties

The Gujarat High Court recently took note of the rampant misuse of the Gujarat Prevention of Antisocial Activities Act, 1985 (PASA Act) by the Police authorities to settle scores between private parties. While dealing with an application filed by the Petitioner apprehending his detention under PASA Act in connection to the offence of kidnapping/ extortion, a Single Bench of Justice Paresh Upadhyay observed, "This is one of such examples, where it is the police authorities who take upon such responsibility to settle the financial transaction/disputes between the parties, with the aid/threat of PASA." In the said case titled Dimple v. The State Of Gujarat, the High Court had observed, "the detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public order. The distinction between 'the law and order' as 'the public order' needs to be kept in mind."

The instant case, the Bench said, is certainly not the case where the petitioner could be termed as a dangerous person within the meaning of Section 2(c) of the PASA. It observed,

"The filing of such FIR and the readiness of the police to register the FIR itself is an aspect, which need not be gone into in this case, however, suffice it to hold that it is more an arm-twisting by the complainant with the aid of local police authorities. Such tactics need to be nipped in the bud."

Not a case of forceful Sexual Assault: Delhi HC grants anticipatory Bail to Doctor accused of raping a woman on the pretext of false promise

The Delhi High Court has recently granted anticipatory bail to a Delhi based Doctor accused of raping a woman on the pretext of the false promise of marriage, after observing that there was "no forceful sexual assault" done in the case. The Court further observed that there was nothing on record to indicate that he promised to marry her and therefore the question of whether such consent by the prosecutrix to have a physical relationship with him was free consent or not needs to be decided in the trial.

A single-judge bench comprising of Justice Subramonium Prasad observed this:
"The petitioner is a doctor working in Safdarjung Hospital and it cannot be said that he would be in a position to terrorise the prosecutrix or tamper with evidence. The evidence has been collected, the mobile phone of the petitioner is with the Police. In view of the above, this Court finds it just and expedient to grant bail to the petitioner in the event of arrest in FIR No.44/2021 dated 28.01.2021 registered in Police Station Hauz Khas for offences punishable under Section 376 and 328 IPC." At the outset, the High Court while granting anticipatory bail to the petitioner doctor reasoned thus: "The prosecutrix is a make-up artist and is a resident of Delhi. It

cannot be said that she is a naive lady. This is not a case of forceful sexual assault. At this juncture, there is nothing on record that would indicate that the petitioner had promised marriage to the prosecutrix and therefore the consent given by the prosecutrix to have a physical relationship was a free consent or not will be decided only in the trial." The bail was granted to the petitioner subject to the furnishing of a personal bond of Rs. 50,000 and one surety of like amount being a relative.

TOP LAWYERS MOVE BOMBAY HIGH COURT SINKING POLICY FOR DOOR TO DOOR COVID VACCINATION FOR SENIOR CITIZENS, SPECIALLY ABLED AND MEDICALLY CHALLENGED

A plea has been held before the Bombay High Court seeking directions to the Central Government to set up a policy on an urgent basis to provide Covid Vaccine to advanced age Senior Citizens, Specially Abled and Medically Challenged citizens etc by offering door to door vaccination services at the earliest. Two lawyers from Maharashtra Dhruti Kapadia and Kunal Tiwari have sought direction from the authorities to provide a helpline number for advanced age senior citizens to book an appointment for a home visit of a Doctor to Covid Vaccine with the medical facilities.

The plea has further sought directions for the arrangement of ambulances for pick up drop services for advanced age Senior Citizens, Specially Abled and Medically Challenged people who need such services to move out of their house to get vaccinated. The plea has urged the Court to waive off the compulsory adhaar card or pan card number entry details to book online appointments for the vaccine. The petition has stated that while the Respondents, including the Central and State government, are doing extraordinary work by helping the citizen to get vaccinated, individuals who are completely bedridden and are not in a position to move out to centre nearby to get vaccinated have not taken into consideration

According to the petitioners, some people are medically sick but have been advised to take vaccine but yet cannot get vaccinated due to their incapacity to go to the centre to take such a vaccine. While appreciating the tremendous work done by the government in creating awareness about the vaccine and providing the best service to the citizens, the petitioners have

argued that the government should have provided door to door facility to ensure such citizens who are of advanced age above 75 years or physically challenged or bedridden and are unable to out of their houses, got vaccinated conveniently.

The Petitioners, who are also social workers have stated that they have received calls from the senior citizens regarding the following issues that they have been facing:

• Senior citizens who completely are bedridden are unable to reach out to the vaccine centre due to age and health issues but wish to get vaccinated.

• Senior citizens at the advanced age of above 75 + age who have no strength to go Covid-19 vaccine centre.

• Some senior citizens don't even know how to register online and are unable to book appointments independently.

• Citizens who are medically sick and of too don't advanced age and don't have adhaar cards nor pan cards and are unable to register and book appointments without those mandatory documents

• Long queues at the Covid-19 centre and the long wait for 4 to 5 hours for the turn.

According to the petitioners, if the respondents are unable to provide every citizen vaccine who are of advanced age and not in a position to go to the centres for vaccines then they will be violating such people's right to life and good health under article 21 of the constitution. The petitioners have suggested that with the consultation of medical experts and medical technology use there can be a way out for such vaccines to be facilitated to such exceptional cases who are

finding it impossible to go to the centre for vaccination. They have also suggested that for door to door vaccines, a fixed charge of around Rs. 500/- can be charged by the government for special service of vaccination.

https://www.livelaw.in/top-stories/bombay-high-court-door-to-door-covdi-vaccination-for-senior-citizens-specially-abled-and-medically-challenged-citizens-172046

"ONLY SPECIAL BENCHES SHALL HOLD COURT SITTING TILL 9": ALLAHABAD HC ISSUES "MODALITIES AND ARRANGEMENT" FOR FUNCTION OF HC DURING COVID

Because of the recent spike in COVID-19 cases, the Allahabad High Court on Friday (02nd April) issued the Modalities & Arrangement (related to the functioning of High Court during COVID-19) which would be effective w.e.f. 03rd April 2021 to 09th April 2021.

The High Court has notified that it would function with minimum strength and till further orders, **only the special Benches constituted shall remain operational (both at Lucknow and Prayagraj) and regular Courts won't be sitting from April 5 to April 9.**

General directions

The wearing of a face mask will be mandatory for entry in the High Court Premises and the Hon'ble Judges and their supporting staff (Private Secretary, Bench Secretary, Peon, etc.) in the minimum required number will attend the High Court.

The Advocates (w.e.f. 03rd April 2021) will have to file their Cases/Documents/Petitions/Applications in E-mode or physical form, in the Stamp Reporting Section and the Application Section.

Significantly, the parties are not required to file an Urgency Application concerning the matters pertaining to Criminal Misc. Bail Applications, Anticipatory Bail, Criminal Appeal U/s 14 A (2) S.C. / S.T., Habeas Corpus Writ Petition, Writ Matters about Arrest / Stay of Arrest either in fresh cases or filed cases as these cases shall be placed before the Hon'ble Court as usual.

However, in all other matters \(fresh as well as filed), an Urgency Application will have to be filed and these matters shall be placed before the Hon'ble Court **only after the Urgency Application is allowed by the Special Benches constituted**.

Further, only those listed matters shall be listed in Hon'ble Courts, **for which Urgency Applications filed through e-mail / physical mode are allowed by the Hon'ble Court** and such matters shall be listed only in the Additional Cause List.

Also, in all such matters where a petition has been filed in hard copies, and an application, Counter Affidavit etc. is required to be applications/objections **etc. can be filed in the e-filing module (link available on Allahabad HC's website).**

The Stamp Reporting Section, till further order, **will not withhold any fresh file due to any defect and will place that before the Hon'ble Court concerned for appropriate orders.**

Directions related to advocates

Importantly, the Chambers of Advocates in the High Court Premises will not be opened and the Robes prescribed for the Hon'ble Judges and the Learned Lawyers **shall remain suspended till further orders.**

The Advocates appearing in the Court will have to wear face masks and have been directed to adhere to all necessary conditions prescribed for social and physical distancing.

Further, the Advocates not more than 6 (Six) in number will be permitted to remain in the CourtRoom at any given time.

The Advocates and Employees coming from outside Allahabad have been directed to furnish written information of the same in the office of the Registrar General with the declaration that he/she is not suffering from COVID-19 symptoms.

Directions related to litigants

The Litigant-In-Person would be permitted to physically appear before the Court only after due permission from the Hon'ble Court, however, the Clerks to the Advocates will not be permitted entry in the High Court Premises and no Litigants will be permitted entry in the High Court.

Spitting in the premises of the High Court has been prohibited and will attract punishment and the Chief Medical & Health Officer, Prayagraj, and Lucknow have been directed to arrange all necessary medical assistance and attendance in the High Court campus at Allahabad and

Lucknow to meet any urgent medical eventuality.

https://www.livelaw.in/top-stories/allahabad-hc-issues-modalities-arrangement-for-functioning-of-hc-during-covid-special-bench-172044

BOMBAY HIGH COURT TO PRONOUNCE ORDER ON PARAM BILL SINGH'S PIL SEEKING PROBE AGAINST ANIL DESHMUKH, ON MONDAY

The Bombay High Court will pronounce its order, on Monday, on a criminal PIL by shunted out Mumbai Commissioner – Param Bir Singh- seeking a CBI probe for alleged malpractices against Maharashtra's Home Minister Anil Deshmukh. A division bench of Chief Justice Dipankar Datta and Justice GS Kulkarni reserved its order on Singh's plea, on Wednesday, along with three other petitions following arguments on the admission of the matter, the State's preliminary objection on maintainability of the petition and prayers for interim reliefs.

During the marathon hearing, which lasted over six hours, the bench expressed its dilemma over passing an order for an investigation in the absence of an FIR. "An FIR is the first step into setting the criminal law in motion," CJ Datta observed.

Justice Datta frowned at the practice of approaching the Courts seeking directions for an independent probe, without even approaching the police to register an FIR. The bench observed that just writing letters to the CM (as Param Bir had done), wasn't enough. "You (Param Bir Singh) are a police officer. If you find an offence has been committed you are duty-bound to file an FIR. Why did you not do it? You are failing in your duty if you don't file an FIR when you know an offence has been committed. Simply writing letters to the CM won't do."

The Advocate General raised a preliminary objection of maintainability of Singh's PIL stating that the latter is "vitally interested" in both the prayers in the PIL. In his PIL, Singh has sought an "immediate, unbiased, uninfluenced impartial and fair investigation on the various corrupt malpractices of Anil Deshmukh before shreds of evidence are destroyed." And further sought a direction to the state government that police officials are not transferred for any pecuniary

benefits to any politicians or in contravention of the guidelines issued in Prakash Singh & others vs Union of India.

Senior Advocate Vikram Nankani, appearing for Param Bir Singh insisted that the allegations have been levelled by a person who occupied the "highest police post" and it is something that needs to be looked into by an independent investigating agency. Nankani said he was only seeking an independent inquiry by the CBI if an investigation was not possible.

The other pleas were filed by Vinod Dubey, advocates Jaishri Patil and Ghanshyam Upadhyay and CA Mohan Bhide. However, only Patil had approached the Malabar Hill Police for registration of an FIR. On an enquiry made by the court, it was revealed that the Malabar Hill Police had not even recorded Patil's complaint in their station diary.

The court also heard Additional Solicitor General Anil Singh for CBI, who did not object to taking over the probe.

Param Bir Singh was represented by Senior Advocates Vikram Nankani, Birendra Saraf and

Sharan Jagtiani along with advocate Subodh Desai, Sunny Punamia and Akshay Bafna.

https://www.livelaw.in/top-stories/bombay-high-court-param-bir-singh-alleged-malpractices-anil-deshmukh-172041

Bombay High Court Refuses To Allow Ramadan Prayers In Juma Masjid Mosque

Case-

Juma Masjid of Bombay Trust … Petitioner

Versus

State of Maharashtra and Ors. … Respondents

WRIT PETITION (L) NO. 10152 OF 2021

Source of the picture- https://www.livelaw.in/h-upload/2021/03/03/390026-bombay-high-court-01.jpg

Facts in Brief-

This case was of a writ petition of Mandamus to direct the respondents i.e. the State of Maharashtra to allow 5 times of prayer and Taraweeh to Muslims in the Juma Masjid Mosque till the end of the month of Ramadan.

Ramadan is a holy month for Muslims in which they offer prayers 5 times a day in mosques. But, due to the recent surge in cases of Covid, the state has ordered the religious places to be closed from 14th April to 1st May, dated 13th April 2021.

Petitioners argument-

It was argued by the petitioner, that the mosque is spread over an area of 1 acre and on a usual day 7000 people can read the prayers. But they are only asking for 50 people in order to maintain the necessary guidelines of social distance and to follow the Standard of Procedure(SOP). Petitioner also invoked article 25 of the Indian Constitution.

Petitioner also argued that with limited persons marriages are allowed, so there shouldn't be any problem in opening the mosque. He further quoted the Delhi High Court in Writ Petition (CRL) No. 421 of 2021 in the case of Delhi Waqf Board v/s.Government of NCT of Delhi and Anr.

and submitted that Delhi High Court permitted the petitioners to offer prayers in the mosque for the month of Ramadan on following precautions and safeguards.

Respondents arguments-

Mrs. Chavan, the Assistant Government Pleader for the State of Maharashtra, submitted that the number of cases as on that day were more than 65000 out of which Mumbai amounts to more than 11000 cases. To tackle this situation, the government passed the order "break the chain", dated 13th April, which was quoted by the petitioners.

Respondent submitted that there is no case to invoke Article 25 of The Constitution. A perusal of the order indicates that the State of Maharashtra has already enforced night curfew under section 144 of IPC and only necessary activities are allowed therein.

Respondent quoted a judgment of the present Bombay High Court, delivered on 27th November 2020 in the case of Dhananjay Mohan Deshmukh and Ors. v/s. The SubDivisional Officer, Igatpuri-Trimbakeshwar Sub-Division, Nashik and Ors. in Writ Petition (Stamp) No. 96664 of 2020 in which a petition seeking to carry out Rath Yatra of Lord Trimbakeshwar on the occasion of Tripurari Pournima Rath Yatra. The petitioner of that case was requesting to permit only two priests to pull the bullock cart even by imposing sealing of the entire locality for 24 hours before the date. After which this Court by observing various orders of this court and Supreme Court dismissed that petition observing that Article 25 of the Constitution of India though permits all persons equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion, the same is subject to public order, morality and health. This Court held that such a congregation which is apprehended by the State if such permission is granted is likely to seriously affect public order and health. If such permission is granted, it would violate the condition imposed under Article 25 of the Constitution of India.

Respondents also mentioned cases of Bombay High Court in which permission to carry out Ashadhi Ekadashi Yatra was followed continuously for 800 years.

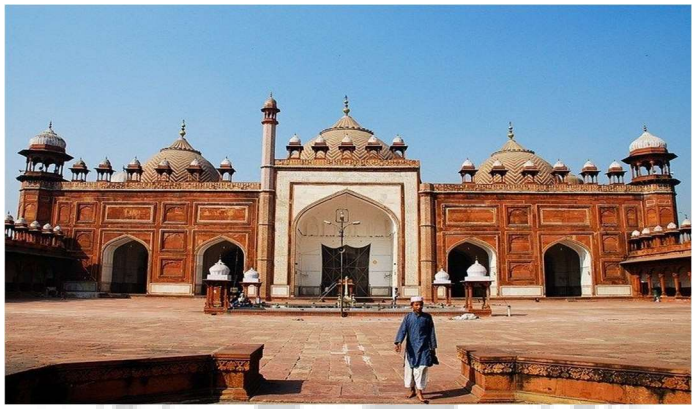
Observation of The Court-

The court observed after carefully reading into the case of Delhi High Court cited by the petitioner and stated clearly that the Union of India had agreed to let the Muslims offer prayer subject to the pandemic guidelines. Judges further stated that, in their view, the submission of

the respondent is correct that the order passed by Delhi High Court cannot be concerned as a precedent in this case. Considering the situation in Maharashtra, petitioners cannot be permitted to offer prayers in violation of the order dated 13th April which was passed to ensure the public safety of all residents of Maharashtra.

Therefore, the petition was dismissed by the vacation bench comprising Justices RD Dhanuka and VG Bisht.

Krishna Janmabhoomi Case: ASI Examination Of Agra Jama Masjid Sought For Idols From Mathura Temple



Agra Jama Masjid

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An application is filed on 14th April seeking a ground radiology test by the Archeological Survey of India (ASI) at the Jahanara mosque at Agra(popularly known as Jama Masjid Agra) to ascertain if the idols of Lord Krishna are buried beneath it.

The applicant believes that Aurangzeb, the Mughal emperor, after destroying the Mathura Janmasthan Temple, took the idols of Lord Krishna from Mathura to bury them under the Jahanara Mosque in Agra. Hence, the application.

This application is filed in furtherance of a civil suit that was filed earlier on behalf of the deity Bhagwan Shri Krishna Virajman which was instituted to seek the possession of the place of Shahi Idgah at Mathura.

According to the applicant, the issue revolves around the encroachment of Shri Krishna Janambhoomi by the ruler Aurangzeb. So to gather a big picture, it is important to look for the idols under the Jahanara mosque.

The applicant referred to an order which was passed by Varanasi court allowing the Archeological Survey of India to survey Gyanvapi mosque, located in Varanasi, to look if it is built on Kashi Vishwanath Temple.

This application is supposed to be heard on May 10.

The manager of Shahi Eidgah, UP Sunni Central Waqf Board is the first defendant.

It is important to note that Mathura Civil Court dismissed a suit similar to this last year as it was not filed through the *shebait* and was filed by a devotee. Observing-

"If each and every devotee is allowed to institute such suits, it would Jeopardize the Judicial and Social System"

Allahabad High Court Observed Externment Order Is A Serious Inroad On Citizen's Liberty, Innate Declaration Of Externing Man As Goonda Irreversibly Ruinous To His Reputation

Source of the image- https://www.livelaw.in/h-upload/2020/12/29/386490-allahabad-high-court.jpg

Title of the Case- Pawan v. State of UP & Ors.

Case- CRIMINAL MISC. WRIT PETITION No. - 16202 of 2019

According to the petitioner, who was a businessman by profession, submitted that a solitary case was registered against him under sec. 364A(Kidnapping for ransom), 302(Punishment for

murder), 404(Dishonest misappropriation of property possessed by deceased person at the time of his death), 201(Causing disappearance of evidence of the offence, or giving false information to screen offender) and 120B(Punishment of criminal conspiracy) of IPC on 24th August 2016 thereafter there was a consequential implication in another case under sec. 2 and 3 of The Uttar Pradesh Gangsters and Anti-social Activities (Prevention) Act, 1986, which petitioner stated was not a substantive offence. After that police implicated him in a third case based on a beat report in 2017.

According to the petitioner, respondents did not carry "general nature of material allegations" against him thereby making the entire proceedings vitiated because he was not a goonda in section 2(b) of the before mentioned act.

The Court placed its reliance on an important judgment of Subramanian Swamy v. Union of India, Ministry of Law & Others (2016) 7 SCC 221 in which the Right to Reputation was regarded as concomitant to the Right to Life granted under Article 21 as a Fundamental Right. High Court observed-

“Every person is presumed to be an honourable and respectable man unless that presumption is dislodged in accordance with the law. Therefore, dubbing some citizen as a goonda and externing him under the Act of 1970, is an act that would afford a cause of action to the person who suffers that order, which endures beyond its physical consequences. In the opinion of this Court, it would not be a sound legal proposition to say that a man may suffer the slur of being called a goonda, because he could not bring the order of externment passed against him to test within the term of its life. In the opinion of this Court, the petitioner is entitled to question the externment order, notwithstanding that order outrunning its life.”

The Court further observed that if the harm is compared to abridgement of liberty via externment order is nothing compared to the harm done to that individual’s reputation.

After considering the facts of the case, the Court stated that respondents being satisfied only by the fact that a case is registered against the petitioner “renders the conclusions no more than an ipse dixit of the Officers writing the orders impugned”.

Court noticed that post mention of the fact that the person put under notice has indulged in acts or done something which attracts Clauses (a), (b) and (c) of sub-Section 3, is not sufficient compliance of informing that person of “general nature of material allegations”. Particulars of

the allegations are not required under Section 3(1) of the Goonda Act of 1970, like date, time or specific place but some substance of it must be mentioned.

With the above observations, the Court allowed the petition and quashed the impugned orders of the District Magistrate and appellate order by the Commissioner, Agra Division, Agra.

LEGAL NEWS

New Delhi HC set aside an order passed by Rajasthan HC due to unreasonable ground.

A Special Leave Petition was filed before the New Delhi High Court challenging the decision of Rajasthan High Court of quashing the FIR filed by the appellant.

This appeal was filed challenging the order of the Rajasthan HC whereby the First Information Report (FIR) lodged by the appellant against the respondent under Sections 332 and 353 of the Indian Penal Code (IPC) was quashed in a petition under Section 482 of the Criminal Procedure Code (CrPC.) filed by the respondents no. 2 and 3.

Challenging the order of the Rajasthan HC, the appellant filed this Special Leave Petition in the New Delhi HC.

Facts of the Case:

The Appellant, who was a Police Constable, along with a sub-inspector and another constable, were checking the vehicles passing by on the road in the evening when around 9 PM, one motorcycle was stopped. When the driver, Deepak Gupta, was asked about the papers of the vehicle, instead of showing papers, he pretended to talk over the phone and fled away.

He then returned about after 20 minutes along with two ladies in a car, respondent no. 2- Usha Gupta, and respondent no. 3- Ratna Gupta, who was herself an Inspector in Rajasthan Police. She alighted from the car and uttered caste-related abuses to the appellant and asked what power did he have to stop the motorcycle despite her name having been taken. She caught hold of his collar, slapped, and beat him and thereafter fled away from the place. An FIR of the said incident was lodged by the appellant on the same night.

Cross FIR was filed the next day by Deepak Gupta alleging that he was stopped by the appellant the previous night and the appellant asked for Rs. 100 and when the same was not given, the appellant assaulted Deepak Gupta. It was also alleged that the appellant behaved indecently with respondent no. 2, Ms. Usha Gupta, who was along with him on the motorcycle and tore her clothes.

The contention of the Parties:

Shri Rishi Matoliya learned Advocate appeared on behalf of the Appellant and Dr. Manish Singhvi, learned Senior Advocate appeared for the State-respondent no.1, Deepak Gupta. Respondents no. 2 and 3 appeared in person. By an earlier order, the court recorded that respondent no. 3 was not in a position to make her submissions properly and therefore, Shri Vijay Hansaria, learned Senior Advocate was appointed as Amicus Curiae.

Court's Observation and Judgment:

From the record and submissions made by the learned counsel for the parties and also the Amicus Curiae, the court was of the opinion that in the facts of the present case, the finding recorded by the Rajasthan HC that the report of the respondent no. 2 and 3 were not registered immediately, and cannot be justified because the matter was under investigation.

Also, it was not for the HC to have substituted its opinion in this regard by holding that the FIR was filed as a counter blast, especially when it was registered a day earlier. Thus, quashing the FIR solely on this ground was wholly unreasonable and could not be justified in law.

It was also noted that while deciding the matter, the HC did not consider the Injury Report of the appellant- Ram Kishan which was submitted by the Medical Officer of the Medical and Health Department of the Government of Rajasthan, nor were the submissions advanced on behalf of the appellant, though recorded, considered in quashing the FIR.

Thus, the New Delhi HC set aside the order passed by Rajasthan HC in SB Criminal Miscellaneous Petition and directed the police to submit its report under Section 173 of CrPC after carrying out a complete and proper investigation relating to the FIR. Thus, the appeal of a special leave petition was allowed.

Ram Kishan vs State of Rajasthan and Others:

Citation: Criminal Appeal No. 393 of 2021 [@Special Leave Petition [CRL] No. 3705 of 2015]

Appellant: Ram Kishan

Respondent: State of Rajasthan and Others

Bench: S.A. Bobde CJI., L. Nageswara Rao J., Vineet Saran J.

"SHOCKING THAT GIRL WHO WAS ALLEGEDLY SEXUALLY ASSAULTED WAS LEFT ON A RAILWAY PLATFORMS AND RAVAGED": BOMBAY HC CALLS FOR CORRECTIVE MEASURES

Expressing its shock over the incident wherein a girl who was allegedly sexually assaulted and ravaged was left on a railway platform, the Bombay high court directed the investigating officer to take corrective measures and trace the victim girl.

Reminding the state of its duty to take preventive measures to stop youth exploitation the bench of justice Bharati Dangre remarked

Some legislations mandate the state in consonance with the imperative mandate contained in the directive principle of state policy to ensure that the youth is not exploited

FACTS IN BRIEF

The court was hearing the bail application where the applicants were arraigned as accused under section 354 363 and 376 of the IPC and section 8 of the POCSO act. the FIR was lodged by a passer-by who, in June 2018 noticed an auto-rickshaw with black curtains on all sides and could overhear the cry of a girl

When inquired the auto-rickshaw driver responded by saying that his vehicle was having passenger however as the cries of the girl continued

As alleged by the complainant, he pulled out the curtain of the auto-rickshaw and noticed that one man was forcing himself upon a girl, noticing and when he refused, he pulled him out

At that time the traffic police reached there and said the person was apprehended and the person who was alleged apprehended is then instant bail applicant

GIRL'S STATEMENT

The statement of the victim girl was recorded wherein she submitted that she was 16 years however the court noted that not a single document was filed to establish that the girl is of 16 years and the investing officer did not conduct any ossification test

She referred to the entire incident in great details and stated that she knew the auto-rickshaw driver for 5 to 6 months and another person to whom she referred to as the person who committed the sexual on her was alleged to be the brother of the auto-rickshaw driver

She admitted that she was given beer to drink and some food was also derived and she relished the food drink and was in a drunken state

When asked about the victim and her present status it was submitted that she continued to dwell on platform no 1 of Andheri railways station

The court also observed that the investigating officer wasn't aware of any of the provisions of law that would have ensured the girl to be taken to some rehabilitation home or correction home

The court also observed that the investigating officer wasn't aware of any of the provisions of the law which would have ensured the girl was taken to some rehabilitation home or correction home.

The court said that she has been subjected to ossification if no document is available with her as proof of her age

The FIR came to be lodged by the complainants who happened to be a passerby. on the dates of the incident, on 25/06/2018 at 10.15 pm when he was stranded at a signal on his bike he noticed an auto-rickshaw with blank curtains on all sides and could overhear the frantic cry of a girl when inquired the auto-rickshaw driver responded by saying that his vehicle is having passenger as the cries of the girl continued it is the version of the complainant that he pulled out the curtain of the auto-rickshaw and noticed that one man forcing himself upon a girl. Noticing this he asked the person to come out of the auto-rickshaw and when he refused he pulled him out at that time traffic police reached there and the said person was apprehended. the person who is alleged to have been apprehended is the person applicant

Learned counsel for the applicant has drawn my attention to the conduct of the girl victim particularly when she refused to undergo the medical examination the papers placed on record reveal that the girl was admitted to DR RN COOPER MUNICIPAL GENERAL HOSPITAL.

CHALLENGES FOR NEW CJI RAMANA: FILL VACANCIES, TACKLE HUGE PENDENCY IN SC

With just a few days left for incumbent chief justice of India SA Bobde to demit office the biggest challenge for his successor, Justice N.V RAMANA, is to tackle the huge pendency and vacancies in the supreme court.

CJI Bobde will demit office on April 23 bringing down the number of apex court judges to just 28 against the sanctioned to the top court since September 2019.

The main reason for the high pendency is the restricted physical hearing and shifting of the whole judicial work online

In the beginning, only important cases were taken up for hearing but gradually miscellaneous cases too were taken up.

Urgent e- filing protocols were drafted and implemented. despite the initial glitches to the judiciary credits the system improved and evolved quite literally with each passing day

As per the economic survey 2017-18, pendency hampers dispute resolution, contracts enforcement discourages investment, stall projects, hamper tax collection and escalate legal cost which leads to increased cost of doing business Due to the backlog, most of India prison population are detainees awaiting trial and are in turn overcrowding the prisons. The main challenge is to immediately focus on how to make the virtual court user friendly.

COMPOUND INTEREST WAIVER: SC ORDER MAY COST PSU BANKS TO TAKE BURDEN OF RS- 2000 CRORE

Public sector banks may have to bear a burden of Rs 1800-2000 crore arising due to a recent supreme court judgement on the waiver of compound interest on all loan accounts which opted for moderation during March-August 2020 sources.

The judgement covers loans above Rs 2 crore as loans below this got blanket interest on interest waiver in November last year. A compound interest support scheme for loan moratorium cost the government Rs- 5500 crores during 2020-21 and the scheme covered all borrowers including the prompt one who did not avail moratorium.

As further, the bank would provide a compound interest waiver for the period a borrower had availed moratorium of three months, the waiver would be for that period.

Sources added that the apex court order this time is only limited to those who availed moratorium so the liability of the public sector bank should be less than Rs 2000 crore as per rough calculations besides, they said the order does not specify a timeframe for the settlement of compound interest unlike last so the bank can devise a mechanism of adjusting or settling it in a staggered manner.

The bench also said that interest waiver would affect depositors along with this court also rejected pleas for further relief in the matter.

Participate: CCLG's Contemporary Constitutionalism Paper Presentation

- **News:-** The centre for constitutional Law and Governance (CCLG), RGNUL is collaborated with Think India, presents the 1st CCLG Contemporary constitutional paper presentation competition.
- **About (cclg):-** The CCLG is an interdisciplinary centre, established with a vision to contribute to the study, research and understanding of constitutional law and governance. The centre facilities the students to participate in events and engages them in free and meaningful debates in the field of constitutional law and governance.
- **About The Competition:-** The paper presentation competition is a two-day event organised by the (CCLG), a legal research committee functioning under RGNUL in collaboration with Think India to be held on 30th April 2021
- **Eligibility Criteria**:- The submission is open to all students, research scholars, teachers and professionals.

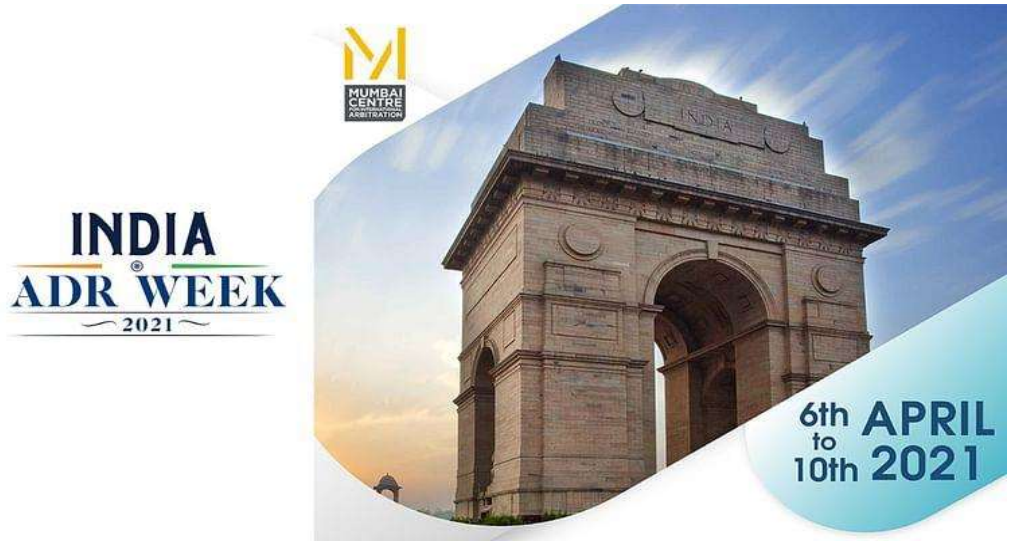
Co-authorship shall be permitted to the extent of the co-authors.

Gujarat High Court Chief Justice Vikram Nath inaugurates new website for Gujarat State Legal Services Authority

- The Chief Justice of Gujarat High Court Justice Vikram Nath launched the new website for the Gujarat State Legal Services Authority on the 28th March.
- In March in the presence of Dr Justice Vineet Kothari Judge, High Court of Gujarat, Justice RM Chhaya Judge of High Court and Gujarat State Legal Service Authority all were present.

- Previously, the State Legal Service Authority website was earlier part of the website of the High Court.
- Now, a separate website has been developed with the aim to fulfil the objective of the legal service authority of Gujarat all legal and social news related to Gujarat published there only.
- The new website aims to visitors in learning about the authority services by allowing them to browse through the information.

Mumbai Centre for International Arbitration's India ADR Week, 2021 to start from April 6



- The Mumbai Centre for International Arbitration will be organising the India ADR Week, 2021 from April(6-10) 2021.
- The five-day event will comprise 4 sessions each day on various themes concerning Arbitration law and practice.

Photographs Lifted From Instagram Posted on Porn Website: Delhi HC Orders Immediate Removal Of Content

- On Tuesday 6th April 2021 Delhi High Court held that photographs taken from social media like Facebook and Instagram account uploaded on pornographic websites without consent amounts to an offence under section **67 of the IT Act.**
- And whichever intent to do these type of action even if the photographs are not in itself absence of offensive without the consent of the party is an amount to breach person's privacy
- And they are charged under IPC harming the reputation of a person.
- While making a foresaid observation this decision was taken by a Single Judge Bench comprising Justice **Anup Jairam Bhambhani**.
- **About IT ACT**:- It is an act under which a person shall be liable/ Punished for publishing or transmitting obscene material in electronic form.
- It is enacted by the Parliament Of India and It is Enacted on 9th June 2000 and Commenced on 17th October 2000.

Salman Khan Blackbuck poaching case: Rajasthan High Court Extends Stay In Hearing Of Appeals till April 27th

The Rajasthan High Court bench at Jodhpur, on Friday, extended till April 27 stay in hearing the appeals in relation to the Blackbuck Poaching case which is under consideration before a District Court in Jodhpur.

3 years back, a Jodhpur court on April 8, 2018, had sentenced Salman Khan to five years of imprisonment in the blackbuck poaching case while his co-actors Saif Ali Khan, Tabu, Sonali Bendre and Neelam were acquitted.

Three appeals, pending before a District and Sessions Court in Jodhpur, have been preferred on different considerations challenging the judgement of the Jodhpur Court. In no particular order:

1. The first appeal is made by the State Government against the acquittal of Salman Khan in the Arms Act case.

2. The second appeal is preferred by Salman Khan challenging his 5-year imprisonment in the Blackbuck Poaching case.
3. The last appeal is against the acquittal of other co-accused persons including actresses Neelam, Tabu, Sonali and Actor Saif Ali Khan in the same case.
In the hearing dated 9th April, the High Court extended the interim order till 27th April 2021.
"Notices of the respondent Nos.3 to 7shall be served on the counsel representing these respondents in the court below and shall be provided to Dasti to the counsel for the petitioner. It shall be the responsibility of the counsel representing the petitioner to get the notices of respondent Nos.3 to 7 server failing which the interim order shall not be extended beyond the next date of hearing. List on 27.04.2021. Interim order shall continue till the next date of hearing." The Court ordered.

Additional District judge has a jurisdiction to entertain a petition filed under section 34 of the Arbitration and Conciliation Act: Kerala high Court

The Kerala High Court held that an Additional District Judge has jurisdiction to entertain a petition filed under Section 34 of the Arbitration and Conciliation Act.
Principal District Judge can only be considered first among equals and the Additional District Judge is in no way considered to be inferior to the Principal District Judge, the bench comprising Justices CT Ravikumar and K. Haripal observed.
The court observed this while dismissing an Arbitration Appeal. One of the contentions raised in this Appeal was that an Additional District Judge lacks authority to entertain a petition under Section 34 of the Act. According to the appellant, the matter ought to have been considered by the Principal Civil Court of original jurisdiction of the District, which is the Principal District Court. Referring to Section 2(e) of the Act, he submitted that 'court' means only the principal civil court of original jurisdiction in a district.

Orissa High Court dismisses plea proposing Red Ant Chutney as COVID-19 Cure

The Orissa High Court on Friday (09th April) dismissed a plea which claimed that 'Kaai (Kukuti) Chutney (paste)' which is prepared using red ants, can prevent infection through the COVID-19 virus. Dismissing the plea, the bench of Chief Justice S. Muralidhar and Justice B. P. Routray said that the use of red ant chutney or soup by the tribal communities for medicinal and therapeutic purposes is based on their traditional knowledge systems which the Court is hardly equipped to comment upon. The Petitioner before the Court is working as Assistant Engineer (Civil), Takatpur, R & B Section, Baripada, DistrictMayurbhanj and he belongs to the Bathudi Tribal Adivasi community.
In his plea, he claimed that 'Kaai (Kukuti) Chutney (paste)' which is prepared using red ants, mixed with green chilly (Dhanua Lanka) is a potent medicine that can boost the immune system

and thus, could prevent infection through the COVID-19 virus. Earlier when the petitioner's representations to the Council of Scientific & Industrial Research (CSIR) and the Indian Council of Medical Research (ICMR) were not considered, the Petitioner had filed a plea, which was disposed of by the Court with a direction to the ICMR and CSIR to decide on his representation.

In its communication, CSIR said that it currently does not have the required expertise in the domain of entomophagy and therefore would not be able to pursue any action in the matter.

As regards the Central Council for Research in Ayurvedic Sciences, it noted that it could not find any reference from the classical books of Ayurveda mentioned in the First Schedule of the Drugs and Cosmetics Act, 1940 on the internal use of red ant chutney as claimed by the Petitioner to validate it as Ayurvedic medicine.

Therefore, it was stated that the use of red ant chutney or soup for the beneficial use by the COVID-19 patient is "out of the purview of Ayurveda drugs as per regulatory provisions of Drugs and Cosmetics Act, 1940 and Rules, 1945."

Significantly, the Court said

" The Court does not possess the requisite expertise to sit in appeal over the decision of the aforementioned expert bodies who, for reasons stated by them, are not inclined to recommend their universal application for therapeutic or medicinal purposes."

The Kerala High Court held that an Additional District Judge has jurisdiction to entertain a petition filed under Section 34 of the Arbitration and Conciliation Act.

A child born in a live-in relationship to be construed as a child born to a married couple: Kerala high Court

In a momentous ruling, the Kerala High Court has recognised that a child born in a live-in relationship would have to be treated as a child born to a married couple to surrender a child for adoption. The High Court, through a Bench of Justices A Muhamed Mustaque and Dr Kauser Edappagath, was faced with a petition moved by a couple in a live-in relationship to reclaim their child who had been surrendered for adoption by the woman. Pointing out that the woman had acknowledged her live-in partner as the biological father of their child, the Bench ruled that the procedure employed by the Child Welfare Committee while giving the child up for adoption was legally unsustainable. In its judgment, the Bench found that the procedure applicable to an unwed mother alone was followed.

"That is legally unsustainable as the child has to be treated as born to a married couple", Justices Mustaque and Edappagath hold in their judgment. The Court pointed out,

"In the matter of married couple, the procedure ensures that both the parents execute a deed of surrender and; if the child born to a married couple and surrendered by one of the biological parents, and whereabouts of the other parent are not known, the child shall be treated as an

abandoned child and procedure under Regulation 6 (of the Adoption Regulations) will have to be followed. This procedure mandates an inquiry to trace out the biological parents or the legal guardians."

Holding that the Act primarily sought to protect the welfare of the child, the Bench underscored that the prime aim of the law is restoration and protection of the child in need of care and protection. The first right of restoration was with parents, then adoptive parents, foster parents, guardians and finally fit persons.
Finding that a live-in couple had the right of restoration, the Bench ruled that the parental right of biological parents is a natural right not preconditioned by the institutionalization of legal marriage.
The Bench explained,
"Marriage as a social institution depends upon personal law or secular law like the Special Marriage Act. It has no bearing on the concept of Juvenile Justice. In a live-in relationship, a couple acknowledges mutual rights and obligations. It is more of a contract. Offspring in such a relationship is acknowledging biological parental rights of both."

Therefore the Court concluded,

"There is no difficulty in holding that a child born in a live-in relationship also has to be construed as a child born to a married couple."

Mehbooba Mufti's Plea for issuance of passport

The Jammu and Kashmir High Court on Friday (09th April) disposed of former Chief Minister of J&K & Peoples Democratic Party (PDP) president Mehbooba Mufti's appeal directed against Single Bench ruling, dismissing her writ petition seeking directions to concerned authorities to issue a passport to her.

The bench of Justice Javed Iqbal Wani and Justice Tashi Rabstan, however, gave her the liberty to approach the appropriate authority for remedy available regarding her passport application. It was contended that Mufti had submitted an application for issuance of a passport in her favour before respondent No.4 i.e., the Passport Officer, Regional Passport Office, Srinagar.

However, despite a lapse of several months, the request of the appellant was not acceded to by the aforesaid passport authority, which forced the appellant to file a writ petition before the Single Bench, which was, however, dismissed.

Challenging the same, she filed an appeal before the Division Bench questioning order impugned dated 29th of March, 2021 on the strength of the grounds taken therein. In view of the stand taken by learned counsel for the parties and with their consensus, the Court disposed of the appeal by providing her with the liberty to approach the appropriate authority to avail the proper remedy available to her under the Scheme.

The Court also directed,

" On receipt of the appeal, the authority concerned shall consider and decide the same on its merits, strictly under rules, regulations and the provisions of the Act, that too un-influenced by the observations made in the judgment impugned dated 29th of March, 2021. Needless to state that this Court has not expressed any opinion on the merits of the case."

Arnab Goswami exempted from personal appearance in Anvay Naik Suicide Case in Alibaug Court

The Bombay High Court, on Friday, extended the ad-interim relief granted to Republic TV's Editor-in-Chief Arnab Goswami and exempted him from personal appearance before the Chief Judicial Magistrate's Court, in Alibaug, in the abetment of suicide case against him.
A division bench of Justices SS Shinde and Manish Pitale was hearing an amended plea by Goswami, seeking to quash the 2018 FIR and charge sheet against him in the interior designer Anvay Naik's suicide. Goswami has sought exemption from personal appearance till his petition was decided, citing apprehension of false implication and illegal detention in a known/unknown case. The Bench first granted the relief on March 5 till April 16. Goswami's represented by Senior Advocate Sanjog Parab and advocate Malvika Trivedi, instructed by Phoenix Legal, approached the HC as April 15, 16 and 17 have been declared as holidays, owing to the pandemic.

"Desist from exploiting the situation by overcharging affected persons"- MP High Court to IMA members

The Madhya Pradesh High Court on Wednesday (07th April) asked the Indian Medical Association (IMA) and MP Nursing Home Association members to desist from "exploiting" the coronavirus situation by overcharging the affected persons in the wake of the second wave of the pandemic.
The Bench of Chief Justice Mohammad Rafiq and Justice Sanjay Dwivedi was hearing two Interlocutory Applications filed by the amicus curiae in WP-8914-2020 seeking appropriate directions because of the second wave of COVID-19
The Amicus curiae submitted before the Court that the District Administration, Jabalpur had orally directed all the private labs and hospitals to stop conducting COVID-19 tests from 25th March 2021.

In the second IA, the Amicus curiae prayed that in view of the second wave of COVID-19, all the District Administrations of the State of Madhya Pradesh be directed to ensure strict compliance with the directions of the State Government issued on 25th March 2021
Appreciating the stand taken by both the Indian Medical Association and the Madhya Pradesh Nursing Home Association, the Court remarked,

"In the time of the current crisis faced by the country following the second wave of COVID-19 should desist from exploiting the situation by overcharging the affected persons."
Further, the Court also directed the Government to give wide publicity to the orders which the Government had issued with regard to prescription of the rates for RT-PCR Test, Rapid Antigen Test and Chest CT/HRCT Scan from COVID-19 suspects/patients throughout the State.

The State has been directed that it should give publicity by all the available modes i.e. print and electronic media and by any other means as possible, so that all the persons may be made aware of such rates/charges.

The Court further directed the respondents/State Government to empanel all such Private Hospitals and Private Nursing Homes in the State who fulfil the relevant criterion prescribed by the Central Government for treatment of COVID-19 suspects/patients under the Yojana to increase the reach of the beneficial scheme to the maximum number of people in the State, who are eligible for treatment under the said Yojana.

POCSO- "Right Of Minor Victims To Participate In The Judicial Process"- Bombay High Court Issues Guidelines

The Bombay High Court on Thursday issued guidelines for the effective implementation of the Protection of Children from Sexual Offences Act (POCSO Act) and To ensure the right of a child victim to participate in the Judicial process is protected.

A Bench of Chief Justice Dipankar Datta and Justice GS Kulkarni, among other instructions, directed the Special Juvenile Police Unit (SJPU) to give the court reasons in writing if the victim's family, guardian or legal counsel could not be put to notice regarding the court's proceedings.

When an application is made on behalf of the prosecution, it would be the duty of the office of the public prosecutor to issue a notice of hearing of such application to the child's family or as the case may be, the guardian, and where a legal counsel on behalf of the child is already on record, to such legal counsel, along with all relevant documents and the record necessary for effective participation in the proceedings.
The Bench held that before such an application is heard, the trial court must ascertain the status of service of notice, and if it so found that the not been issued, the court may make such reasoned order as it may deem fit to secure ends of justice taking into account any emergent situations that warrant dealing with the application in the absence of the victim. The Court held that if the victim's family does not appear despite effective notice, the court may proceed to hear the matter.

The Bench passed the order on a PIL filed by Arjun Malge, who works with child victims of sexual abuse and their families, across Mumbai. He also acts as a Support Person in child sexual abuse cases as per the orders of the Child Welfare Committee in view of Rule 4(7) of POCSO Rules.

Advocate Somasekhar Sundaresan had submitted that none of the following provisions is practised- Section 40 of the POCSO Act, Rule 4 sub-rule 13 of POCSO Act, Rule 4 sub-rule 13 of POCSO Rule 2020 and Section 439(1-A) of CrPC.

Section 40 of the POCSO Act states that the victim has a right to be represented/assisted by a legal aid lawyer. Rule 4 (13) of POCSO Rule 2020 states that the Police should inform the victim about court proceedings including bail applications moved, the next date of the court proceedings etc. Section 439 (1-A) CrPC was an amendment introduced in 2018, which requires the victim to be notified in case a bail application is moved by the accused in certain categories of rape cases.

The Protection of Children from Sexual Offences Act (2012) was enacted to protect children from sexual abuse and to ensure speedy justice to the minor victim of sexual assault. Section 40 r/w Rule 4 of the POCSO Act, 2012 envisages the right of the minor victims to participate in the justice dispensing process reasonably and thereby requires that a victim be informed about every court proceeding," the petition stated.

Moreover, "The Criminal Law (Amendment) Act, 2018 was brought into effect whereby Section 439 (1-A) of the Criminal Procedure Code, mandates the presence of the informant or any person authorized by him at the time of hearing of the application for bail moved by the accused implicated under sub-section (3) of section 376 or section 376AB or section 376DA or

section 376DB of the Indian Penal Code."

The Bench gave directions for a copy of the judgment to be circulated to all presiding officers of all Sessions Courts in Maharashtra, the Director-General and Superintendent of Maharashtra Police, Director of Prosecution, State of Maharashtra and Maharashtra State Legal Services Authorities.

Kerala High Court Issues Notice On Plea Alleging Lack Of Transparency in Recruitment Of Personal Staff of Ministers, Leader of Opposition, Chief Whip

The Kerala High Court today took up a PIL petition filed by an NGO against the lack of transparency in the recruitment/selection of appointment of the personal staff of Ministers, Leader of Opposition and Government Chief Whip forming part of Kerala Secretariat Service, Kerala Secretariat Subordinate Service and Kerala Last Grade Service without following any transparent or legal recruitment/ selection process.

A Bench of Justices CT Ravikumar and Murali Purshothaman admitted the petition today, issuing notice to T. Velayudhan and CM Raveendran, personal staff. The Government Pleader and Standing Counsel for the State Public Services Commission PC Sasidharan took notice for the State and the Public Services Commission respectivel

The petition seeks a declaration that appointments be made after calling for applications and with proper notification and selection process giving equal opportunity to all qualified. The first petitioner, Anti-Corruption Peoples' Movement, challenges the lack of transparency in the selection process and alleges that appointments to personal staff are made on unguided and unbridled exercise of discretionary power by the Minister, Leader of Opposition, and Government Chief Whip.

The second and third petitioners, members of the 1st petitioner organisation describe themselves as personally aggrieved by the fact that opportunities which rightfully must be open to all are being filled without a proper procedure and without any process of law.

Additionally, it is the petitioners' case that a huge amount of money is spent on such appointees as salary, gratuity and pension resulting in the distribution of State Largesse without equality of opportunity and just procedure.

Arguing that the selection process without inviting applications is arbitrary, unjust, and discriminatory, the petition reads,

When the power to select the candidates for appointment is conferred on any individual it must be presumed that the rule demands the said power to be exercised in a fair, reasonable and just manner. It is submitted that any other interpretation of the rule would render it void and unconstitutional. An interpretation which would further the constitutionality of the rule ought to be adopted and all the guidelines necessary for the exercise of the said power in a fair, just and

transparent"

Referring to the dictum in State of Karnataka v. Uma Devi, it is stated,

Selection and appointments without following a proper procedure ought to be treated as null and void as inconsistent with the statutory provisions"

High court sets aside death penalty, acquits accused (Rape and death of minor)

In this case, the FIR was registered on 12th May 2012 based on an oral statement made by Jagdish Mandal stating that her daughter (13-year-old) did not return home after attending school.

Later it was revealed that an identified dead body of a girl was found lying in the maize field which was later identified by the father and the other relatives.

At the time of recording a boy aged 10-year-old told the magistrate that the accused Prashant Kumar Mehta, the teacher of the deceased promised to marry her and after that the other two accused came and took her to the field it was also disclosed that he had seen the incident where all the three accused attack the deceased and killed her.

It was also alleged (said without proof) that the accused person threatened to kill the boy if he disclosed the entire set of facts to anyone.

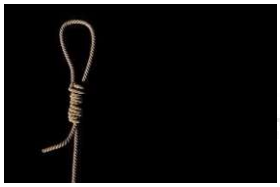
It was however from the side of the appellant from the alleged which is considered as evidence. It was concluded that the whole case was based on accusation and opinion on incomplete information.

According to the council appearing for appellants, it was submitted that the act is done by the appellant cannot be e-waste on the conviction of suspicion how so ever grave it may be and that the motives in the case are based on circumstantial evidence.

After going through all the front of prosecution witnesses and submission made by the amicus curiae (friend of the court).it came to a conclusion that

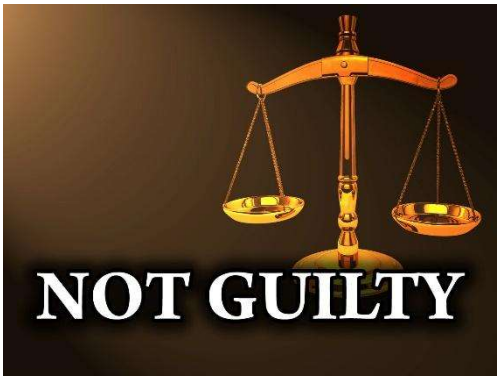
“The trial court has held the appellants guilty for the offences under section 120 B of the Indian penal code. We have seen that there is no eye witness to the occurrence. None had seen the appellants committing any act leading to the death of the deceased. No witness has come forward to even suggest that the appellants were seen either with the deceased on a fateful day or were seen in and around the maize field of Satyanarayan Mandal where the dead body was recovered either before or after the occurrence. Nothing that there were no eyewitnesses in the case who came forward to suggest the appellants seen with the deceased so the court observed thus:

"The only link of criminal conspiracy against the appellants is the allegation that they committed offence together and, on that basis, a criminal conspiracy to commit the act has been erroneously presumed to be proved by the trial court. The aforesaid discussion leads us to conclude that the entire bucket of evidence is either inadmissible or unbelievable and untrustworthy."



The appellants were held guilty by the session court for the offence under section 302 to read with section 34, 376 (2)(g) and 120B of the IPC and were awarded the death penalty but 820 judgement it was a challenge in High court the high court then heard the appellants and concluded that-

"On consideration of the entire evidence, we reiterate that the prosecution has miserably failed to prove each of the links in the chain of circumstance beyond reasonable doubt against the accused-appellants. No doubt that the offence committed was gruesome and revolts the conscience but that alone could not have been a ground to convict the accused-appellants in absence of legal evidence against them."



The high court acquitted them of the charges.

Accused being a poor man or sole bread earner cannot be mitigating(extenuating) factor while awarding punishment under NDPS Act: SC.

The accused was found with a stock of 1 kg heroin which is four times more than the minimum commercial quantity. He was accused under section 21 of the act and sentenced to 15 years of rigorous imprisonment and to pay a fine of rupees 200000 and in default of payment of fine to undergo one year of rigorous imprisonment by the special court as his appeal was dismissed by High court so approach the apex court.

The supreme court observed that the quantity of narcotics that was recovered by the accused is far more than the permitted amount which can be a factor that can be taken into account for imposing higher than the minimum punishment under the NDPS act.

Further, it was submitted that the accused is a poor man and only breadwinner of the family but the supreme court dismissed this appeal and said that:

"it should be borne in mind that in a murder case, the accused commits the murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to the number of innocent young victims who are vulnerable; it causes deleterious effect and deadly impact on the society; they are a hazard to the society. Organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on society as a whole. Therefore, while awarding the sentence/punishment in the case of the NDPS Act, the interest of society as a whole is also required to be taken into consideration. Therefore, while striking a balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always tilt in favour of the suitable higher punishment. Therefore, merely because the accused is a poor man and/or a carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of the NDPS Act. Even otherwise, in the present case, the Special Court, as observed herein has taken into consideration the submission on behalf of the accused that he is a poor person; that he is sole bread earner, that it 17 is his first offence, while not imposing the maximum punishment of 20 years R. I and imposing the punishment of 15 years R.I. only."

Two judges have been appointed for the pending case of coal scam by the supreme court.

The Supreme Court on Monday directed a special court to look before the case related to the coal scam which has a pending trial with the Patiala House session court in Delhi.

Arun Bhardwaj and Sanjay Bansal have been appointed to hear the pending case; the two judicial officers have been appointed in order of their seniority.

Special public prosecutor Rs Seema recommended the supreme court to assign special quotes instead of 1 which is currently handling 41 pending trials. Cheema will also act as a special public prosecutor.

The deadline for the disposal of the case is 2 years. This time can also be extended up to 4 times by a period of six months each.

Money laundering case; MP KD Singh granted bail by Delhi court.

Various FIRs were registered in Kolkata claiming that MP KD Singh with few others is involved in the criminal conspiracy in cheating investors by fraudulently collecting money and promising them a high return on maturity which is never given to them.

You also committed cheating by forcing people to invest in different schemes and after maturity did not return the amount. It was then revealed that around 444.67 crores where are raised from investors by issuing redeemable preference share buy Alchemist holding limited from 2005 by assuring them with a high rate of interest on their investment after maturity but these funds are not used for the purpose it was taken instead it was diverted.

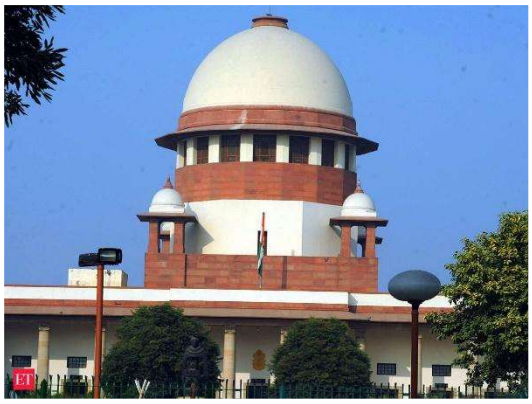
The bail application was filed under section 439 of CrPC saying that the action was violative of his fundamental right to life and liberty. (Art 21) of the constitution.

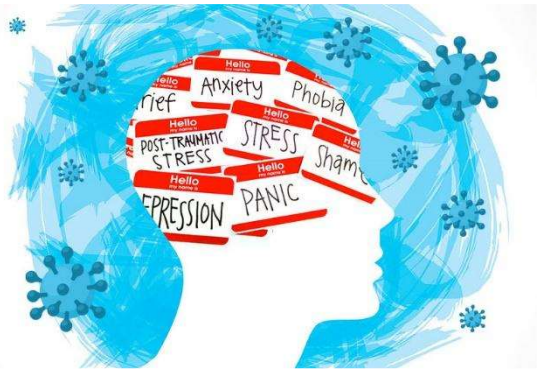
The court observed that Singh has appeared before ED several times and all his statements have been recorded and the trial will take time to prove that he is guilty or not.

As the complaint is recorded the statement of the witnesses are also recorded. If any such act deviates the investigation will be taken by the accused then and the bail may lead to

cancellation. On considering the other factors and circumstances the applicant KD Singh spermatid Bail by furnishing personal bond in the sum of rupees 5 lakh with two securities of the like amount.

The plea seeking direction to remove phobia of covid-19 pandemic dismissed by supreme court.





Supreme court on Monday dismissed a plea where the centre should be directed to take effective measure to remove the phobia of covid-19 are the numerous which are going on in the society supreme court shade it is the responsibility of the authority to take proper measures for controlling the pandemic

The warning of the panda makes which the people get through their mobile phones is also not to be entertained anymore

As previously the apex court told the Central to take proper measure against the falls thread of the pandemic which is being created by some group of people which are giving rise to different opinions and causing threat to others.

The plea also stated to remove the warning we get before making a call so that the person can use the instrument to make a call whenever they are required instead of first listening to the message in a time of need.

Delhi riot victim's plea for rupees 5,00,000 damages for shop looted and burnt: Delhi High court issues notice.

In the Delhi riot, there were a lot of shops that were burned or looted by the assembly. The plea cited the government assistance scheme for the help of Delhi riot victims according to which the petitioner claimed to be qualifying for Rs 5,00,000 as permanent compensation and 50,000 as interim compensation to uplift the families who are affected by the riot.

It is seen that instead of making efforts for the rehabilitation of the victim the respondent is giving them more grief and distress. The government is also not taking CVR steps to uplift the victim in less time.

The plea was filed by the people as they got to know that their shop has been set on fire by a group of people and even, they were not allowed to enter the area because of the communal riots. The petitioner has also asked the court to modify the present government assistance scheme and to make into consideration the looting, theft and vandalism (deliberate destruction) of residential and commercial places during the riot.

Britannia's plea against ITC's sunfeast digestive biscuits of infringement of trademark policy struck down by Delhi High court.

The Britannia claimed that they have registered a trademark of Tata Ji of their Nutri choice digestive biscuit on September 11 2020 and they are using the same packaging since 2014 but recently sunfeast change their packaging of farm lite digestive biscuit and that packaging resembles the same which Britannia have because of which Britannia filed a case against sunfeast under section 29 (1) and 29 (2) of the trademark acts.

But on 6th April 2021, judge Justice C Hari Shankar of Delhi High court dismissed this petition by saying that they were not people with average intelligence and will be confused between their packaging.

There were even a lot of dissimilarities in the packaging of these two items.

Virtual mode to give justice: Patna High court will be completely functioning virtually till April 17. Due to rise in COVID-19 cases. g Of Court Exclusively Through Virtual Mode Till April 17

Due to the guideline issued by the government of India and the state government and the increasing number of corona positive patients the high court authorities have decided to perform all its activity virtually from 6 April to 17th April.

No one will be allowed to go inside the premises of the High court till further orders, and all the different high courts are planning to have a virtual hearing to protect their staff and other members in the court after seeing an enormous rise in the number of covid patients.

Kerala High court gets 5 additional judges on the recommendation of the supreme court collegium.

Name of the judges are:

Justice Conrad S. Dias

Justice PV Kunhikrishnan

Justice TR Ravi

Justice Bechu Kurian Thomas

Justice Gopinath P.

- 10 judges have also been appointed as a permanent name of Bombay High court and by the supreme court collegium.

Karnataka high court coaxes the judicial officer above the age of 45 to take covid vaccine.

The chief justice of Karnataka High court justice Abhay Oka gave instructions to the session court and the lower courts to prepare a list of all the judicial staff or the staff of BAR council above the age of 45 so that they can vaccinate them, as even during the pandemic the judiciary of Karnataka was making best efforts to continue its functioning when compared to the other courts in the country. The covid-19 cases are increasing every day the cases are reaching a new height so in order to protect the staff from being infected the High court has taken the decision of vaccinating the staff immediately who are above the age of 45. The lower courts of Karnataka are also requested to submit the report in which there should be the names of staff who have already taken the vaccine and they have to be submitted before 16th April, to show that the vaccination can start as early as possible.

Consumer Forum Holds Railway Officials Liable For Failing to Inform Commuters About Reasons For Delay Of Train

A District Consumer Disputes Redressal Forum at Thrissur has allowed three railway commuters compensation after their train from Wadakkanchery to Payyanur was delayed by six hours without any alternatives being provided by the Railway station authorities.

The complainants, one MM Babu, PS George, and KM Joy approached the Consumer Forum through Advocate Benny AD in 2013 after a train they were scheduled to travel by was delayed. Despite their entreaties, the Opposite Parties were unable to provide any additional details about the tentative arrival of the train or alternatives available to them.

After someone else informed the complainants that they could board a train for their destination Payyanur from the Railway Station at Shornur, the complainants travelled to Shornur Station and boarded a train for Payyanur. Their requests for a refund/cancellation at Waddakanchery Station were also denied on the contention that the ticket had to be surrendered the Ticket Deposit Receipt and that the train had to be late "at least for three hours' '.

Aggrieved that the opposite party railway officials were not equipped to provide information concerning the arrival and departure of trains, the complainants approached the District Forum under the erstwhile Consumer Protection Act, 1986

Framing two questions, the Forum queried whether service was deficient and if yes, what would be the reliefs available to the complainants.

Stating that the complainants were 'in the dark' without any information as to alternative travel arrangements or redressal, the Forum reasoned that such actionable wrongs afforded the

consumers an effective remedy under the Consumer Protection Act.

Mumbai Sessions Court Dismisses Defamation Complaint Against Arnab Goswami By Mumbai DCP

A Sessions Court in Mumbai has excused a criticism grumbling documented by Dy. An official of Police of Mumbai Abhishek Trimukh against Republic TV's Editor in Chief Arnab Goswami, his better half Samyabrata Ray Goswami and ARG Outlier Media Pvt. Ltd. The grumbling was recorded under Section 199(2) of the Code of Criminal Procedure against certain assertions made by Arnab in regard to the part of the Mumbai Police in the examination concerning the passing of one Sushant Singh Rajput.

The court saw that consolidated pursuits of Sub ¬Section¬2 and Sub¬ Section 6 of Section 199 of the Cr. P. C. clarifies that the complainant has basically to be the public examiner as it were. It noticed that the grumbling, in the end, is endorsed by the public examiner for Greater Mumbai.

In the current protest, the complainant isn't the public investigator. He just has documented the grumbling of Shri. Trimukhe, precisely like what the examiners do while recording Appeals, Revisions and different procedures in the interest of the State/Prosecution. The public examiner

hence is just a medium to document this grievance. This unquestionably isn't in consistency with what Section 199(2) of the Cr. P. C. orders.

In the current case, the complainant and the individual against whom the offence is asserted to have been submitted are very much the same. This again isn't in similarity with the compulsory necessity of Section 199(2) of the Cr. P. C. 13. It isn't that the oppressed community worker or the individual against whom the said offence is asserted to have been submitted has no discussion to take his complaints to. He has the solution to submit a question before the skilled officer. His documenting the grievance even through the public examiner, in any case, would not present any locale on this Court to take perception of the supposed offence.

Lok Ayukta Declares Kerala Higher Education Minister KT Jaleel Guilty Of Nepotism, Unfit To Continue As Minister

The Kerala Lok Ayukta has discovered K T Jaleel, Minister for Higher Education and Minority Welfare, liable of nepotism, maltreatment of force and preference and held that he abused his pledge of office by giving government arrangement to his second cousin by modifying standards.

The matter was identified with the arrangement of Jaleel's cousin KT Adeeb as General Manager in the Kerala State Minorities Development Finance Corporation Limited.

The Lok Ayukta found that Jaleel accepted a choice as a Minister to change the capabilities for the post to add "B. Tech with PGDBA " to make his relative qualified. This choice was with no proposition or idea from the Corporation. However, for this difference in capability, Adeeb would not have been qualified to apply for the post.

Fundamentally, the LokAyukta made an assertion under Section 12(3) of the Kerala Lok Ayukta Act that Jaleel ought not to proceed as a Member of the Council of Ministers. Such a revelation must be acknowledged by the Chief Minister under Section 14 of the Act. On acknowledgement by the Chief Minister, the Minister needs to leave the workplace according to Section 14(2)(i) of the Act.

Uttarakhand High Court Directs States To Grant Extraordinary Pension To Widow Of Police Officer Who Lost His Life While On Duty

The Uttarakhand High Court guided the State to authorize and concede exceptional annuity for the widow of a cop who lost his life while on the job.

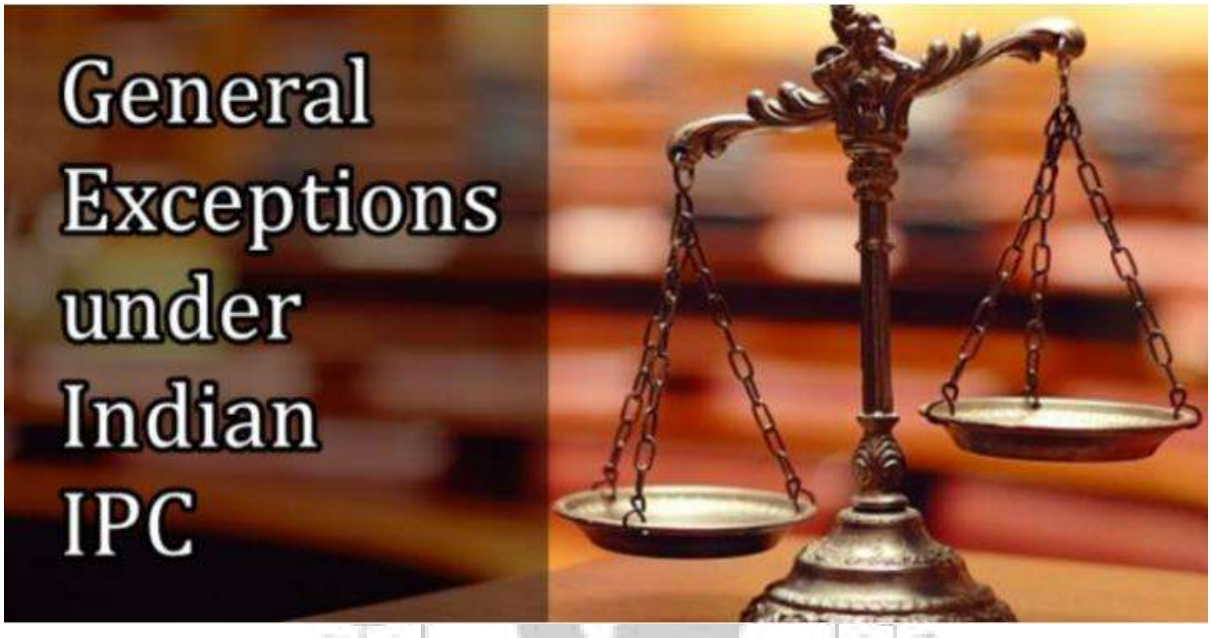
Ramesh Chand Rajwar was a Sub Inspector (Civil Police) in the Police Department. In the year 2013, he was posted at Police Station Dharchula and was responsible for the Special Operation Group for controlling common violations like backwoods carrying, and poaching. On 25.09.2013 at 8:15 P.M., the Police Station was informed that backwoods runners had entered the timberland, and were carrying on their terrible exercises. Hence, he went to the location of

crime in Tawaghat Tapovan. While he was getting back from the location of the crime, his vehicle got caught in an avalanche brought about by the weighty downpours. A stone struck his head; he passed on the spot. Because of the passing of her better half, the Department conceded the family benefits to his significant other. Be that as it may, the extraordinary pension was denied.

As indicated by the Department, Rule 3 of the Rules is pertinent to just those police staff that are locked in against the dacoits, or equipped wrongdoer, or unfamiliar interlopers or "during commitment in different exercises". The single bench permitted the writ request documented by his better half testing this and guided the state to allow exceptional benefits.

LEGAL ARTICLES

GENERAL EXCEPTIONS UNDER INDIAN PENAL CODE, 1860



When the crime is done by an accused means an illegal act is done, then the court gives punishment to prove own innocence to the defence of criminal liability.

njGeneral exceptions of the Indian penal code comes under section 76 to section 106 from any criminal liability. Even if an accused does not file a petition for defence but it is clear by the evidence that any of them are applicable. Then, the court will apply "suo motu" to his case.

General exception are divided into seven categories that are as follows:-

1) MISTAKE OF FACT (it includes section 76 and section 79)
2) JURIDICAL ACTS (it includes section 77 and section 78)
3) ACCIDENT (it include only section 80)
4) ABSENCE OF CRIMINAL INTENT (it includes section 81-86 and section 92-94)
5) CONSENT (it includes section 87 – 91)
6) TRIFLES (section 95)
7) PRIVATE DEFENCE OF PERSON OR PROPERTY (it includes section 96-106)

MISTAKE OF FACT:-

Section 76:- it states that nothing is an offence that is done by a person under mistake of fact and not because of a mistake of law in good faith believes himself to be bound by law to do it. Now, a question arises here:

what do you understand by “mistake of fact”? So, we can say that the mistake of fact is a misconception of existence or nonexistence of fact in someone’s mind.

The act of a higher officer is protected under this section.

EXAMPLE:- Suppose, the district magistrate of Patna ordered his assistant to shoot “A”. If “A” is not a criminal or does not do any crime but due to higher command PA shoots “A”. Then, these cases come under the exception of mistakes of fact.

CASE:- M.H. GEORGE VS. STATE OF MAHARASHTRA

FACTS:- M.H.George was not an Indian citizen [foreigner] and he was trying to smuggle gold through India, at that time India recently passed a law prohibiting the carrying of unlimited amounts of gold through India. But M.H. George was hiding 34kgs of gold in his jacket. So, in this case, one thing clears that intention was not true.

JUDGEMENT:- After seeing these matters Supreme court gives a decision that if M.H. George didn’t know Indian law related to smuggling, it is no excuse. The Supreme Court also says that he is supposed to know it is ignorance of the law and for this case, there is no excuse and he was liable under the relevant provision.

SECTION 79:- Under section 79 of IPC, nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, by doing it.

CASE:- STATE OF ANDHRA PRADESH VS. VENU GOPAL

FACT:- Police sub-inspector arrested a person based on suspicion that he has received some stolen property and he is involved in house breaking. Later, the person was found dead with injuries in his body. The police do an unlawful act, wrongful confinement and torture against an arrested person.

JUDGEMENT:- High court gives the suggestion that is a defence of section – 79 whatever policeman do during the investigation is justified by law. But after some time, the Supreme court said that the decision of the High court is fully wrong in the eyes of laws that means beating and torturing have no relation to the process of investigation.

JUDICIAL ACTS:-

SECTION 77:- According to section 77 of IPC, nothing is an offence which is done by a judge when he acts judicially with a power which is in good faith he believes to be given to him by law.

According to section 77 of IPC:-

1) The judge must be acting judicially.
2) The act must be within his jurisdiction.
3) The act must be performed in good faith.

SECTION 78:- According to section 78 of IPC, nothing is an offence which is done in the pursuance of, or which is warranted by the judgement or order of a court of justice, if done whilst such judgement remains in force.

ACCIDENT:-

Section 80 of Indian penal code 1860 defines accident, as we know that to constitute any crime there will be two major elements first is “Mens Rea” which means guilty intent and the second is “Actus Reus” which means guilty act. But in some cases there will be exceptions where the intention is in good faith means no “Mens Rea” such as defamation, sedition, strict liability.

An accident is an event that is not expected or foreseen. For the defence of section 80, the act which is done without any criminal intention or knowledge done in the lawful act:-

1) By lawful manner
2) By lawful means
3) With proper care and caution

CASE:- JAGESHAR VS. EMPEROR

EXAMPLE:- Suppose, A does work with hatch. Suddenly, hatches harm a person. In this case for deciding liability, firstly we see that A does his work in proper caution or not. If A does his work in proper caution. Then, this act isn't called an offence.

ABSENCE OF CRIMINAL INTENT:-

NECESSITY:- It comes under section 81 of IPC if any person having two situations in which it is necessary to choose any one situation. The person chooses less dangerous work. Then, he will use the defence of section 81 to decrease criminal liability.

Necessity defined in two legal maxims:-

1) "just necessitates"
2) "Necessitas non-habet legem"

ESSENTIALS OF DEFENCE OF NECESSITY:-

1) The act must be done in good faith.
2) There must be no "Mens Rea".

CASE:- R VS. DUDLEY AND STEPHENS

INFANCY:- It is discussed under section 82 and 83 of IPC.

Section 82 and 83 saves minors from criminal liability.

Section 82 talks about under 7 years of children (minor). It says that if any act was done by under 7years children they get a complete exemption because they have not mental maturity to understand any matter what is wrong and what is right.

Maxims of section 82:- "Doli Incapable of committing an offence.

Section 83 talks about 7-12years old children. It says 7-12years old children do not get a complete exemption. In this case, it seems that children having the capacity to create an intention or not, they were mentality matured or not.

EXAMPLE:-If 11years old boy goes to a neighbour's house and steals a mobile phone. Then, immediately he goes to the market and sells it. It is called that the child was mentally mature having the ability to create intention and he will be liable for a criminal offence.

INSANITY:- Insanity comes under section 84. Insanity means a person of unsound mind, suffers from a mental abnormality. If an insane person or an unsound mind person commits a crime. Then, he found exemption from criminal liability.

ESSENTIALS OF SECTION 84:-

1) The act must be done by a person of an unsound mind.
2) Such a person must be incapable of knowing the nature of the act.
3) Such incapacity must be because of unsoundness of mind.
4) Incapacity should exist at the time of doing the act.

DRUNKNESS OR INTOXICATED:- It is defined under section 85 and section 86 of IPC. If a person is drunk then, he will be incapable of having a mental element or we can say that he is incapable of creating "Mens Rea".

Intoxication is divided into two parts:-

Voluntary and involuntary

1) Voluntary:- If you have knowledge of intoxication and then you commit a crime. By using section 86 you can get defence from criminal liability but you may get less defence.
2) Involuntary:- If you didn't know intoxication and then, you commit a crime. By using section 85 you can get defence from criminal liability.

SECTION 92:- Section 92 talks about acts done in good faith for the benefit of a person without consent. It means that nothing is an offence that is done in good faith not to harm any person, anything, not malafide intention. If circumstances are such that that person can't signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit.

EXCEPTION:- 1) Intensional causing of death and attempting to cause death shall not come under the exception.

2)If a person doing it knows to be grievously hurt, death, then this shall not come under the exception.
3)Voluntary causing of hurt shall not come under exception.
4)Abetment of any offence, shall not come under exception.

SECTION 93:- Communication made in good faith.

EXAMPLE:- If a doctor says to a patient that you are suffering from cancer. A patient died due to a heart attack. Then, the doctor will not be liable.

SECTION 94:- Act to which a person is compelled by threats means A says to B that you beg otherwise I kill you. Then, it does not a case of murder. But if A says to B to shoot C and do illegal activities against the state. Then, A will be liable for a criminal offence.

CONSENT (it comes under section 87-91) :-

SECTION 87:- Volenti Non-Fit injuria means voluntary you give consent for any act then, you should not take action against the act.

EXAMPLE:- If you go to play kabaddi and your leg fractures. Then, you can't sue.

ROLE:- 1) Acts should be legal in nature.

2)Objective of acts should not be death.

SECTION 88:- Acts did in good faith.

EXAMPLE:- [To protect doctor and surgeons] Doctor and surgeon takes patient consent for doing surgical operation and that time the patient died. Then, doctors and surgeons are not liable for criminal offences.

SECTION 89:- Acts did in benefit of the child and unsound mind person. After the consent of the guardian. Those acts are protected under section 89.

SECTION 90:- Consent known to be given under fear or misconception.

1) It means such consent which is given by a person under fear of injury or misconception of fact, and if the person doing the act knows, or has reason to believe.
2) Consent of Insane person:- It means consent is given by an unsound mind person or a drunk person is unable to understand the consequence of that which he gives his consent.
3) Consent of child:- it means consent is given by a child who is under 12years old.
IN THESE CASES GENERAL EXCEPTION WILL BE APPLIED.

SECTION 91:- Under section 91 it will discuss that if you do illegal work then, you will be liable otherwise if you don't do illegal work. Then, you are not liable.

EXAMPLE:- If a pregnant woman goes to the hospital and told to the doctor for abortion and the doctor does it without any justification and that time woman died. Then, the doctor will be

liable for a criminal offence because abortion is illegal /unlawful act if it does not do with proper justification. In this case, there will be no exception.

But if abortion does in rape cases and the girl died at the time of the abortion. The doctor will not be liable.

TRIFLES :- (section – 95)

ACT CAUSING SLIGHT HARM.

It means nothing is an offence if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

LATIN MAXIM USED FOR TRIFLES IS “De minimis non-curat Lex” which means trifles are not to be treated as a crime.

EXAMPLE:- If A goes to B’s house and steals B’s copy. Then, B filed a case of theft against A. It is called trifles.

RIGHT TO PRIVATE DEFENCE OF PERSON OR PROPERTY (section 96-106):-

SECTION 96-97:- It means nothing is an offence that is done in the exercise of the right of private defence. Now, a question arises here: Defence is available against whom.

Defence is available against one's own body and another person’s body.

Defence is also available against the movable and immovable property of one's own or others.

CASE:- ARJAN VS. STATE OF MAHARASHTRA

There was a person A that person sitting on a wheel chair and that person could not work. He had a knife in his hand, he took out a knife pointed the knife towards B and told him I will kill you in return B takes out the gun and shoots A. Now, in this case, B is liable for murder because

A doesn't injury to B only told and also B knows that he could not work, he sitting in one place. Therefore, B can not take the plea of the right of private defence.

But if A was in a wheelchair and he was standing rarely close to B. He was not in a wheelchair. He rarely goes close to B and says, `` I will kill you. In that case, he has the right to defend himself.

SECTION 98:- Under section 98 there are some points which you must keep in mind that in these cases there is no provision of private defence:-

1) By the reason of the youth.
2) The want of maturity of understanding.
3) The unsoundness of mind.
4) The intoxication of the person doing that act.
5) By reason of any misconception on the part of that person.

EXAMPLE:- Z is under the influence of madness. He attempts to kill Y. Then, Z is guilty of no offence. But Y has the right of private defence which he would have if Z were sane.

SECTION 99:- NO RIGHT OF PRIVATE DEFENCE.

Under section 99 if a public servant acts in good faith and along with this there is no intention of grievous hurt or death in that case the right of private defence is not available. Though that act may not be strictly justifiable by law.

EXAMPLE:- There is a police officer who was acting in good faith under the colour of his office. So, as to bring out the truth of the mouth of the accused, he slaps the accused. Now, slapping the accused is not strictly justifiable and it does not create grievous hurt. So, in this case, the accused have no right to private defence.

SECTION 100:- EXTENDS TO CAUSING DEATH.

It says why you are defending yourself, if you caused the death of a person. It is justifiable, but it is justifiable only if comes under these seven conditions:-

1) If the assault is caused death.
2) If assault caused grievous hurt.
3) If assault caused kidnapping.
4) If assault is done with committing rape.
5) When an assault is used to gratify unnatural lust.
6) If you wrongfully confine a person.
7) If you throw or administer acid.

SECTION 101:- Section 101 says the right to cause death if it is not protected under a plea of right of private defence. Now, they are saying if the offence is not in the description which has been given here the offence does not fall with these seven descriptions which are discussed in section 100. So, the right of private defence of the body does not extend to voluntarily causing the death of the other person. In that case, you can't cause the death of another person and take the plea of the right to private defence.

SECTION 102:- It says that when this right of private defence it commends and till what point, it continues. Now, they are saying this right of private defence body commends as soon as you have been apprehension, then they will be a danger to your body. Now, this apprehension could have been started from an attempt or threat to commit a crime.

SECTION 103:- It is similar to section 100. Section 100 almost talks about when the right of private defence of the body extends to cause death. Section 103 says when the right of private defence of property extends to cause death. So, we will talk about the human body and in 103 talks about the property.

Four conditions are justifiable for the death of another person but essentially that defends should fall under these four conditions.

1) Robbery
2) House breaking by night
3) Mischief by fire
4) House trespass

SECTION 106:- It says that if in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender is so situated that he can not effectively exercise that his right of private defence extends to the running of that risk.

SHREYA

The Formation of a Contract

What is a Contract?

Section 2 (h) of the Indian Contract Act, 1872 defines a contract as an agreement enforceable by law.

A contract consists of two essential elements:

1. An Agreement and
2. Enforceability by law

1. Agreement:

Section 2 (e) of the Indian Contract Act, 1872 states that every promise and every set of promises, forming the consideration for each other, is an agreement. Thus, a promise is an agreement.

Promise:

Section 2 (b) of the Indian Contract Act, 1872 states that when the person, to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.

An agreement, therefore, comes into existence when one party makes a proposal or offer to the other party and that other party signifies his assent thereto.

2. Enforceability by Law:

An agreement, to become a contract, must give rise to a legal obligation which means a duty enforceable by law.

Essentials of a Valid Contract:

Section 10 of the Indian Contract Act, 1872 provides that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

- The essential elements of a valid contract are as follows:

An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement —consensus-ad-idem.

- An intention to create legal relations or intent to have legal consequences.
- The agreement is supported by lawful consideration.
- The parties to the contract are legally capable of contracting.
- Genuine consent between the parties.
- The object and consideration of the contract are legal and is not opposed to public policy.
- The terms of the contract are certain.

Therefore, to form a valid contract there must be (i) an agreement (ii) based on the genuine consent of the parties, (iii) supported by a lawful consideration, (iv) made for a lawful object, and (v) between the competent parties.

1. Offer and Acceptance

The first essential element of a valid contract is that there must be an offer and its acceptance.

Such an offer and acceptance should create legal obligations between parties. This should result in a moral duty on the person who promises or offers to do something. Similarly, this should also give a right to the promisee to claim its fulfilment.

2. The capacity of the parties

The second essential elements of a valid contract are the capacity of the parties to make a valid contract.

The capacity or incapacity of a person could be decided only after calculating various factors. Section 11 of the Indian Contract Act 1872 elaborates on the issue by providing that a person who:

- Law prohibits
- Minors
- persons of unsound mind [excluding the lucid intervals]
- a person who is otherwise disqualified like an alien enemy, insolvents, convicts etc from entering into any contract.

3. Consideration

Consideration is one of the essential elements of a valid contract. Section 2(d) of the Indian Contract Act, 1872 defines 'Consideration' would generally mean 'compensation' for doing or omitting to do an act or deed.

It is also referred to as 'quid pro quo' viz 'something in return for another thing'. Such a consideration should be a lawful consideration.

4. Consent

According to Section 13 of the Act, "Two or more persons are said to have consented when they agree upon the same thing in the same sense." This is stated as the identity of minds or "consensus-ad-idem"

5. Free Consent

Section 14 of the Act, states that "consent is said to be 'free' when it is not caused by:

- Coercion – Section 15
- Undue influence – Section 16
- Fraud – Section 17
- Misrepresentation – Section 18
- Mistake – Section 20, 21 and 22

Coercion

According to Section 15 of the Act, "Coercion" is the committing, or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Undue Influence

According to Section 16 of Act, "A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other."

Fraud

According to Section 17 of the Act, "fraud means and includes any of the following acts committed by a party to a contract or with his connivance or by his agent with intent to deceive another party thereto or his agent or to induce him to enter into the contract."

Misrepresentation

"Misrepresentation" does not involve deception but is only an assertion of something by a person which is not true, though he believes it to be true. Misrepresentation could arise because

of the innocence of the person making it or because he lacks sufficient or reasonable ground to make it.

6. Mistake

It means an erroneous belief about some facts.

A mistake can either be:

- Mistake of law
- Mistake of fact

Mistake of law

A mistake of law does not mean a mistake in provisions of any law, but it means there is a mistake in understanding the provision of any law by the party to contract.

A mistake of law can be further classified either as a mistake of Indian law or a mistake of foreign law.

Mistake of fact

A mistake of fact can be classified either as a bilateral mistake or a unilateral mistake.

Bilateral mistake: A bilateral mistake of fact occurs when both parties to the contract are operating under a mistaken reality. Bilateral mistakes are also known as mutual mistakes or common mistakes.

Unilateral mistake: A mistake of fact is unilateral when only one party is mistaken. A mistake of fact that is unilateral in nature is not normally a reason to set aside a contract or a reason that will allow a plaintiff in a civil trial to seek damages.
A unilateral mistake of fact will result in an enforceable voidable contract.

7. Unlawful Object

In terms of section 23 of the Act ‘consideration’ or ‘object’ is unlawful if it is forbidden by law; or it would if permitted, defeat the provisions of any law or is fraudulent or involves injury to the person or property of another or is immoral or opposed to public policy.

Every agreement where the object or consideration is unlawful is void. Thus section 23 has set out the limits to contractual freedom.

8. Agreement Expressly Declared as Void

As we know, certain agreements are void ab initio under the Contract Act, like

- agreements by incompetent persons (Section 11)
- agreement with unlawful object or consideration (Section 23)
- an agreement made under a mutual mistake of fact (Section 20)
- agreement without consideration (Section 25)
- agreement in restraint of marriage, trade, or legal proceedings etc., as they are opposed to public policy.

In addition to the above, there are also other agreements that are expressly declared as void.

Where consideration is unlawful in part

Section 24 of the Indian Contract Act, "If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void".

Agreement the meaning of which is uncertain (Sec 29)

Where the meaning of the terms of an agreement is uncertain or if it is not capable of being understood with certainty, then the agreement is void. But where the meaning is capable of being made certain, then the agreement is valid.

Wagering agreement

A wagering agreement involves payment of a sum of money upon the determination of an uncertain event. Wager means gambling or betting.

Contingent Contract

The contingent contract is defined as the contract in which the promisor undertakes to perform the contract upon that happening or nonhappening of a specified future uncertain event, which is collateral to the contract.

Types of Contract based on Formation:

Based on formation, there are four types of contracts, which are as under:

1. Express Contract:

Section 9 of the Act defines what is meant by the term express: "Promises, express and implied —In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express."

This means that if a proposal or a promise is expressed by listing the terms in words – in writing or orally is said to be an Express Contract as long as it gets acceptance from the other party.

The terms of the Express Contract are clearly stated either orally or in writing. So, the main aspect of the Express Contract is that the terms of the contract are expressed clearly.

2. Implied Contracts:

A contract inferred by:

- The conduct of a person
- The circumstances of the case.

By implies contract means implied by law (i.e.) the law implied a contract through parties never intended.

According to sec 9 in so for as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

Example: A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

3. Quasi-contract:

In this type of contract, the rights and obligations arise not by an agreement but by the operation of law.

A quasi-contract is not agreed upon by the two parties, but it comes into existence by a court order. It is thus enforced by the law which also creates it. Most of the time the quasi-contract is created to stop any of the parties from taking unfair advantage of the other.

Example: If Mr A leaves his goods at Mr B's shop by mistake, then it is for Mr. B to return the goods or to compensate for the price.

4. E-Contract:

When a contract is formed by the use of electronic devices and means, it is called an electronic contract or an e-contract. The electronic means and devices may include emails, tests, telephones, digital signatures etc. They are also known as the Cyber contracts, the EDI contracts, or the Electronic Data Interchange contracts. The terms of the contract are listed by electronic means or implied by the actions of the users.

Proposal or Offer:

According to the Indian Contract Act 1872, the proposal is defined in Section 2 (a) as "when one person will signify to another person his willingness to do or not do something (abstain) to obtain the assent of such person to such an act or abstinence, he is said to make a proposal or an offer."

Essential of a Valid Offer:

1. Offer must create Legal Relations

The offer must lead to a contract that creates legal relations and legal consequences in case of non-performance. So, a social contract that does not create legal relations will not be a valid offer. Say for example a dinner invitation extended by A to B is not a valid offer.

2. Offer must be Clear, not Vague

The terms of the offer or proposal should be very clear and definite. If the terms are vague or unclear, it will not amount to a valid offer. Take for example the following offer – A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

3. Offer must be Communicated to the Offeree

For a proposal to be completed it must be communicated to the offeree. No offeree can accept the proposal without knowledge of the offer. The famous case study regarding this is Lalman

Shukla v. Gauri Dutt. It makes clear that acceptance in ignorance of the proposal does not amount to acceptance.

4. Offer may be Conditional

While acceptance cannot be conditional, an offer might be conditional. The offeror can make the offer subject to any terms or conditions he deems necessary. So A can offer to sell goods to B if he makes half the payment in advance. Now B can accept these conditions or make a counteroffer.

5. Offer cannot contain a Negative Condition

The non-compliance with any terms of the offer cannot lead to automatic acceptance of the offer. Hence it cannot say that if acceptance is not communicated by a certain time it will be considered accepted. Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.

6. Offer can be Specific or General

An offer can be to one or more specific parties, or the offer could be to the public in general.

7. Offer may be Expressed or Implied

The offeror can make an offer through words or even by his conduct. An offer which is made via words, whether such words are written or spoken (oral contract) we call it an express contract. And when an offer is made through the conduct and the actions of the offeror it is an implied contract.

Classification of Offer

There can be many types of offers based on their nature, timing, intention, etc. Let us take a look at the classifications of offers.

- General Offer

A general offer is made to the public at large. It is not made for any specified parties. So, any member of the public can accept the offer and be entitled to the rewards/consideration. For

example, you put out a reward for solving a puzzle. So, if any member of the public can accept the offer and be entitled to the reward if he finishes the act (solves the puzzle.)

- Specific Offer

A specific offer, on the other hand, is only made to specific parties, and so only they can accept the said offer or proposal. They are also sometimes known as special offers. Like for example, A offers to sell his horse to B for Rs 5000/-. Then only B can accept such an offer because it is specific to him.

- Cross Offer

In certain circumstances, two parties can make a cross offer. This means both make an identical offer to each other at the exact same time. However, such a cross offer will not amount to acceptance of the offer in either case.

For example, both A and B send letters to each other offering to sell and buy A's horse for Rs 5000/-. This is a cross offer, but it will be considered acceptable for either of them.

- Counteroffer

There may be times when a promise will only accept parts of an offer and change certain terms of the offer. This will be a qualified acceptance. He will want changes or modifications in the terms of the original offer. This is known as a counteroffer. A counteroffer amounts to a rejection of the original offer.

Lapse and Revocation of Offer:

Section 6 deals with various modes of lapse of an offer. A lapse and revocation of an offer become invalid (i.e., comes to an end) in the following circumstances:

Offer lapses after a stipulated or reasonable time

An offer lapses if acceptance is not communicated within the time prescribed in the offer, or if no time is prescribed, within a reasonable time [Sec. 6 (2)].

For example, an offer made by WhatsApp suggests that a reply is required urgently and if the offeree delays the communication of his acceptance even by a day or two, the offer will be considered to have lapsed.

Case law: Ramsgate Victoria Hotel Co. vs Montefiore

Offer lapses by not being accepted in the mode prescribed

But, according to section 7, if the offeree does not accept the offer according to the mode prescribed, the offer does not accept the offer according to the mode prescribed; the offer does not lapse automatically.

It is for the offeror to insist that his proposal shall be accepted only in the prescribed manner, and if he fails to do so he is deemed to have accepted the acceptance.

Offer lapses by rejection

An offer lapses if it has been rejected by the offeree. The rejection may be expressed i.e., by words spoken or written, or implied.

Example: A offered to sell his car to B for Rs 20 Lakhs. B offered Rs. 18 Lakhs for which price A refused to sell.

Subsequently, B offered to purchase the car for Rs. 20 Lakhs. A declined to adhere to his original offer. B filed a suit to obtain a specific performance of the alleged contract. Dismissing the suit, the court held that A was justified because no contract had come into existence, as B, by offering Rs. 18 Lakhs had rejected the original offer.

Subsequent willingness to pay Rs 20 Lakhs could be no acceptance of A's offer as there was no offer to accept. The original offer had already come to an end on account of the 'counteroffer' (Hyde vs Wrench).

Offer lapses by the death or insanity of the offeror or the offeree

If the offeror dies or becomes insane before acceptance, the offer lapses provided that the fact of his death or insanity comes to the knowledge of the acceptor before acceptance [Sec. 6 (4)]

It may be inferred that acceptance in ignorance of the death or insanity of the offeror, is a valid acceptance, and gives rise to a contract.

Thus, the fact of death or insanity of the offeror would not put an end to the offer until it comes to the notice of the acceptor before acceptance.

An offeree's death or insanity before accepting the offer puts an end to the offer and his heirs cannot accept for him (Reynolds vs. Atherton).

Offer lapses by Revocation

An offer is revoked when it is retracted back by the offeror. An offer may be revoked, at any time before acceptance, by the communication of notice of revocation by the offeror to the other party [Sec. 6 (J)]

Example: At an auction sale, A makes the highest bid. But he withdraws the bid before the fall of the hammer. There cannot be a concluded contract because the offer has been revoked before acceptance.

Revocation by non-fulfilment of a condition precedent to acceptance

An offer stand revoked if the offeree fails to fulfil a condition precedent to acceptance [Sec. 6 (3)].

Example: where A, offers to sell his bike to B for Rs. 30,000 if B joins the lions club within a week the offer stands revoked and cannot be accepted by B if B fails to join the lions club (in default of payment of earnest money).

Offer lapses by subsequent illegality or destruction of subject matter

An offer lapses if it becomes illegal after it is made, and before it is accepted.

Example: where an offer is made to sell 10 bags of wheat for Rs. 20,000 and before it is accepted, a law prohibiting the sale of wheat by private individuals is enacted, the offer comes to an end.

In the same manner, an offer may lapse if the thing, which is the subject matter of the offer, is destroyed or substantially impaired before acceptance.

Acceptance:

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus, the proposal when accepted becomes a promise."

So as the definition states, when the offeree to whom the proposal is made, unconditionally accepts the offer it will amount to acceptance. After such an offer is accepted the offer becomes a promise.

When the proposal is accepted, and it becomes a proposal it also becomes irrevocable. An offer does not create any legal obligations, but after the offer is accepted it becomes a promise. And a promise is irrevocable because it creates legal obligations between parties. An offer can be revoked before it is accepted. But once acceptance is communicated it cannot be revoked or withdrawn.

Rules regarding Valid Acceptance

1. Acceptance can only be given to whom the offer was made

In the case of a specific proposal or offer, it can only be accepted by the person it was made to. No third person without the knowledge of the offeree can accept the offer.

For example, in the case of Boulton v. Jones, Boulton bought Brocklehurst's business but Brocklehurst did not inform all his creditors about the same. Jones, a creditor of Brocklehurst placed an order with him. Boulton accepted and supplied the goods. Jones refused to pay since he had debts to settle with Brocklehurst. It was held that since the offer was never made to Boulton, he cannot accept the offer and there is no contract.

When the proposal is a general offer, then anyone with knowledge of the offer can accept it.

2. It has to be absolute and unqualified

Acceptance must be unconditional and absolute. There cannot be conditional acceptance, which would amount to a counteroffer that nullifies the original offer. Let us see an example. A offers to sell his cycle to B for 2000/-. B says he accepts if A will sell it for 1500/-. This does not amount to the offer being accepted, it will count as a counteroffer.

Also, it must be expressed in a prescribed manner. If no such prescribed manner is described then it must be expressed in the normal and reasonable manner, i.e., as it would be in the normal course of business. Implied acceptance can also be given through some conduct, act, etc.

However, the law does not allow silence to be a form of acceptance. So, the offeror cannot say if no answer is received the offer will be deemed as accepted.

3. Acceptance must be communicated

For a proposal to become a contract, the acceptance of such a proposal must be communicated to the promisor. The communication must occur in the prescribed form, or any such form in the normal course of business if no specific form has been prescribed.

Further, when the offeree accepts the proposal, he must have known that an offer was made. He cannot communicate acceptance without knowledge of the offer.

So, when A offers to supply B with goods, and B is agreeable to all the terms. He writes a letter to accept the offer but forgets to post the letter. So, since the acceptance is not communicated, it is not valid.

4. It must be in the prescribed mode

Acceptance of the offer must be in the prescribed manner that is demanded by the offeror. If no such manner is prescribed, it must be in a reasonable manner that would be employed in the normal course of business.

But if the offeror does not insist on the manner after the offer has been accepted in another manner, it will be presumed he has consented to such acceptance.

So, A offers to sell his farm to B for ten lakhs. He asks B to communicate his answer via post. B e-mails A accepting his offer. Now A can ask B to send the answer in the prescribed manner. But if A fails to do so, it means he has accepted the acceptance of B and a promise is made.

5. Implied Acceptance

Section 8 of the Indian Contract Act, 1872 provides that acceptance by conduct or actions of the promisee is acceptable. So, if a person performs certain actions that communicate that he has accepted the offer, such implied acceptance is permissible.

Unlawful Assembly

Article 19 (1) (b) of the constitution of India 1949 laid down that all citizens shall have the right to assemble peacefully and without arms. The Indian citizen has been given the freedom to assemble, organise a public gathering or even procession on their own will the right to assembly also have some reasonable restrictions by the state if the gathering is violating public peace and tranquillity.

A Lawful assembly becomes an unlawful assembly when five or more five people assemble to do an unlawful act or do a lawful act in a violent, boisterous, or tumultuous manner. If there are less than five people then that assembly will not be considered as an unlawful assembly, as the main ingredient of five or more people is missing.

The unlawful assembly has been defined under section 141 of the IPC as an assembly of five or more people having a common object to perform an omission or offence. In Moti Das vs the State of Bihar- it was held that an assembly that gathered lawfully became unlawful as soon as one of the members asked the other to us all the victim and the victim associate after listening that the member of the assembly started a riot and was running behind a victim. The essentials for the ingredients of unlawful assembly are that there must be a group of 5 people or more they must have a common objective and the common objective must be to commit one of the five illegal act which is mentioned under section 141 of the IPC, i.e.

1) To overawe (create fear) government by criminal force- this means to create fear for the government by the use of force like damaging government properties and harming other people.

2) to resist the execution of law or legal process- it means to not follow the legal orders for the judgement of the court.

3) to commit an offence - if the act is prohibited by the law but still the assembly of five or more people are having a common object of performing that at it will be considered as unlawful assembly.

4) forcible possession or dispossession of any property- when criminal force is being used by the assembly against a person to deprive him of the right provided to him by the law this act is prohibited under section 141 (4) of the IPC.

5) To compel any person to do an illegal act - the assembly is forcing someone to do an illegal act then that would be considered as an unlawful assembly.

Section 142 of IPC - whosoever, being aware of facts which render any assembly and unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In this section, it is stated that the person should have all the information or knowledge about the unlawful or illegal activities being performed in that assembly and still, if he continues to be a member of that assembly then he is considered as a member of an unlawful assembly.

Under section 143 of IPC till section 149 of IPC, all the punishments for unlawful assembly are mentioned.

Punishment for unlawful assembly.

1) Under section 143 of the Indian Penal Code- whosoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine, or both.
2) Under section 144 of Indian Penal Code - whosoever joins unlawful assembly armed with a deadly weapon which is likely to cause death; shall be punished with imprisonment for 2 years, or fine, or both.
3) Under section 145 of Indian Penal Code - whosoever joins or continues to be in unlawful assembly knowing it to be commanded to disperse, shall be punished with imprisonment for two years, or fine, or both.
4) Under section 149 of the Indian Penal Code - where an assembly comments in the offence then every member of that unlawful assembly who knew such offence is likely to be committed, will be guilty of that offence and be punished for the term same as for the offence.

Ingredients of sec 149 of Indian Penal Code

1) There must be an unlawful assembly- assembly of 5 or more people having a common object as mentioned under section 141 of the Indian penal code.
2) Commission of an offence by any member of an unlawful assembly – if the member of the unlawful assembly performs any unlawful act according to the law.
3) Search of funds must have been committed in the prosecution of the common objective of the assembly; or must be such as the member of the assembly knew to be likely to be committed – the member of the unlawful assembly from before had the knowledge of the wrongful act and its consequences which was going to happen.

Section 188 of the Indian Penal Code- that is disobedience to order duly from promulgated by the public servant- whoever knowing that by an order promulgated by a public servant lawfully employed to promulgate such order, he is directed to apps train from a certain act, or to take certain order with certain property in his possession or under his management dis over such directions. Shall be punished if the disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed then the punishment for this can be for one month or fine or both.

If search disobedience causes danger to human life, health or safety etc then the accused can be punished for 6th month or fine or both.

Section 151 of Indian Penal Code, 1860: knowingly joining or continuing in assembly of five or more people after it has been commanded to disperse.

Whosoever knowingly joins or continues in any assembly of five or more people likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or with both.

What will happen if someone has hired a person for unlawful assembly?

Section 150 of the Indian penal code, 1860: whoever hires, engages or employee or is promoting hiring, engagement or employment of any person to join or become a member of an unlawful assembly shall be punished as a member of such unlawful assembly and for any offence which may be committed by any such person as a member of such unlawful assembly in the persuasion of such hiring or engagement.

What will happen if someone is given a place of shelter for helping the person for an unlawful assembly?

Under section 157 of the Indian penal code, 1860: whosoever health the person involved in an unlawful assembly or give him up to live in or hire him or give him any charge knowing that the person is involved in the unlawful activity shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or with both.

If a person himself is interested in being hired in an unlawful assembly for doing any such act which is specified in section 144 shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or with both. If that person is armed or is carrying any harmful weapon or a deadly weapon, he shall be punished with imprisonment for a term of two years or with a fine or with both.

What happens when less than 5 people are there?

In a case Ranveer vs state of Uttar Pradesh,2018

The Supreme Court held that no one can be held guilty under section 148 or 149 of IPC in the absence of at least 5 accused even if there are four people, they cannot be convicted under unlawful assembly they will be held liable for their individual activity, intention or motive.

What will happen if there is a fight going on between a lot of people, then will it be considered as an unlawful assembly?

We can see that through the case Mangal Singh vs state of Madhya Pradesh, 1996- in this case there was a free fight which cannot be said to be any form of an unlawful assembly and each accused will be responsible for his act. For example, if there is a group of 7 people who were charged for unlawful assembly and after the trial four of them were released by the court. So,

the rest of 3 people cannot be held liable for unlawful assembly as under section 141 of the IPC unlawful assembly can only be formed if there are five or more than five people.

If the court believes that there were more than five or five people but only three of them are arrested then the court can charge them with unlawful assembly.

In a case B. N. Srikantiah & Others vs The State of Mysore on 14 April 1958

On 25th August 1952, a group of 6 people formed an unlawful assembly with the common objective of murdering deceased Anne Gowda and they committed this offence which is punishable under section 143 of the Indian penal code.

It was further saved by the court that accused Shrikantiah, Siddha, Kadaripathi, Hanumantha and pujari Anantha on the 25th day of August at mayasandra in Magadi taluk did commit murder intentionally which cause the death of Anne Gowda, therefore, committing an offence punishable under section 302 of the Indian penal code and the accused Sanjiv Rao encouraged Srikanth and pujari Ananta to commit this offence, therefore, he was punished under section 103 and 302 of the Indian penal code. A Prima facie case has been made out against them for the murder of and Anne Gowda.

In the case Sukha And Others vs The State Of Rajasthan on 5 April 1956 -There were two people chotiya and Parsia who were being beaten by Shukla and his friends so the other two who were being beaten by them cried out loud after listening to this a lot of people came out to help them or to see what is happening and at this point of time Shukla fire a shot on Persia and after seeing this a lot of people came out to support Persia and there was a right at which took place between the supporter of Persia and Shukla. After listening to the case the court said that it does not matter whether the people who joined in because of instigation or after seeing the assault which was going on they joined the assembly on their account, it had an object of beating up Persia and chotiya and the those who came to their assistance also made their object common (to protect them or beat Shukla).

After this, the court concluded that the object of the assembly was unlawful but the ultimate goal object was just to bid and not to kill someone the convictions of the judge was under section 325 and 149 of the Indian penal code is unquestionable.

In a case Rambabu vs king emperor,1945 Patna

A procession was going to be conducted and the police gave a proper route for the procession to go out to be held but as the process continued they chose a different way, after being stopped by the police they did not listen and they continued their procession. After this case been taken to the court it was said that this type of act is also considered an unlawful act

Difference between section 34(common intention) and section 149(common object) of the Indian penal code.

1. Section 34 is a common intention where section 149 is a common object.

2. The intention which is mentioned in section 34 can be of any kind whereas the intention mentioned in section 149 must be one of the objects which are already mentioned in section 141.

3. Section 34 does not create any special offence whereas section 149 creates a specific offence.

4. In section 34 the person should have mat first and decided to do such offence before the act is committed, in section 149 there should not be a prior meeting or planning of doing a task.

5. In section 149 there should have at least 5 members whereas in section 34 the least number of people should be 2.

How can unlawful assembly be dispersed?

Dispersal of assembly by use of civil force

Section 129 in the code of criminal procedure, 1973: in this section, it is mentioned that any executive magistrate or officer in charge of the police station and if there is an absence of such officer then any police officer with rank above sub-inspector make command the unlawful assembly which is a group of 5 or more people causing disturbance to maintain peace and disperse and it shall be the responsibility of the people to disperse accordingly.

If even though after being commanded by the officer the assembly does not disperse or is conducting the unlawful activity e even after the command then the exit or police officer or other officers main give command to move the assembly by force, arresting and confining the persons who form part of it to disperse such assembly or that they may be punished according to law they need a male person for this purpose.

Section 130 of code of criminal procedure, 1973

Use of armed forces to disperse assembly

If any such assembly e cannot be dispersed even by civil forces or by any other means and it is necessary for the public security that it should be dispersed then the executive magistrate of the highest rank who is present may give a command to be dispersed by the armed force

This can only be done if the magistrate is having any officer in command of the group of people belonging to the armed force to disperse the assembly and the armed force under his command, they can also arrest and confine such person or if it is important to arrest a person in order to disperse the assembly, or to have them punished according to the law.

Under section 131 in the code of criminal procedure 1973: the power of certain arm force officer to disperse assembly- when the public security is manifestly endangered by any such assembly and know executive magistrate can be communicated with than any commissioned officer of the armed force may disperse such assembly with the help of armed force under his command and may arrest and can't find any person forming part of it in order to disperse such

assembly or that they may be punished according to law. Even though he is commanding the force he is responsible to convey this information to the executive magistrate and obey his instruction on whether to continue this or not.

Now let's discuss what is rioting.

It is mentioned under section 146 of the Indian penal code 1860: the main ingredients or essentials of rioting is that there should be five or more five people with a common object just as it is mentioned in section 141 of the Indian penal code. When any member of the unlawful assembly while performing the common object or while prosecution of the common object uses force or violence then it is becoming a riot.

So, the difference between unlawful assembly and riot can be classified as - Riot under section 146 of IPC is the force or violation (any legal order) which is used by the member of the unlawful assembly while performing the common object whereas unlawful assembly does not include any force or violence. It can also be said that right is included in an unlawful assembly. Riot comes under unlawful assembly, with a lot of essentials the same as in unlawful assembly.

Riot also goes hand in hand with unlawful assembly as this also needs five or more than five people to perform a riot or to be punished for the crime of riot. In a case Kapildev Singh vs state it was seen that out of 5 people two of them were released by the court so the rest 3 cannot be punished for the crime of riot as it needs an assembly of five or more than five people. If the court believes that there were more than five people but only two of them are arrested then they can be punished for riot.

If a person is armed with a deadly weapon in a riot, then he shall be punished for imprisonment for a term which may extend to three years or with a fine or with both this is mentioned in section 148 of the Indian penal code, 1860.

If a public servant has been ordered to remove or disperse the unlawful assembly and is doing his duty, if someone tries to interfere in his work and does not let him disperse the unlawful assembly threatens him by using the criminal force shall be punished with imprisonment for a term of three years or fined or both.

Conclusion.

Unlawful assembly describes a group of five or more people with a mutual object of intentionally disturbing the peace of the society and if the group is using force or violence then it is termed as a riot. Unlawful assembly is mentioned in section 141 of the IPC whereas riot is mentioned under section 146 of the Indian penal code. In India we encounter a lot of riots which usually take place or see a lot of unlawful assembly around us as recently in Delhi e there was a communal riot which took place because of some misunderstanding which caused a lot of harm to the people and the infrastructure of the country. The punishment for unlawful assembly is mentioned under section 143 of the Indian penal code whereas punishment for riot is mentioned under section 147 of the Indian penal code, 1860.

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VOID AGREEMENT (Section 26-33)

I. Introduction

As we all know, contractual agreements are entered into for the fulfilment of certain obligations that are of interest to both parties. And to give effect to the same, the Indian contract act was drafted so that various forms of court can be given legal recognition in order to seek a remedy in the court for any breach by party. However, not all contracts are valid.

An agreement is regarded as a contract when it is enforceable by law. In other words, an agreement that the law will enforce is a contract. As the conditions of enforceability are stated in section 10 which deals with that every agreement is not a contract. And as an agreement is a contract when it is made for some consideration between parties who are competent with their free consent & for a lawful object.

The terms 'void' & 'voidable' have common law origin and are used to show the degree of defect in contract denoting different degrees of the ineffectiveness of contractual engagement. Void agreements; as given under section 2(g), 'an agreement not enforceable by law is said to be void'.

The following types of agreement are declared to be void:

- Agreements of which consideration and objects are unlawful in part (section 24)
- Agreement without consideration (section 25)
- Agreement in restraint of marriage (section 26)

- Agreement in restraint of trade (section 27)
- Agreement in restraint of legal proceeding (section 28)
- Unmeaning agreements (section 29)
- Wagering agreements (section 30)
- Agreement to do impossible acts (section 56)

I. Section 26 of the act – Agreement in restraint of marriage void

'Every agreement in restraint of the marriage of any person, other than minor, is void'. It is the policy of the law to discourage agreements that restrain freedom of marriage. The restraint must be general or partial, that is to say, the party may be restrained from marrying at all, or from marrying for a fixed period, or from marrying a particular person, or class of persons, the agreement is void. The only exception is in favour of a minor.

The penalty upon remarriage may not be construed as a restraint of marriage. Thus, an agreement between two co-widows that if any of them remarried, she should forfeit her right to her share in the deceased husband's property has been upheld, the court pointing out that no restraint was imposed upon either of the two widows for remarriage.

In the case of Badu v. Badarnessa, (1919) 29 CLJ 230 - "All that was provided was that if a widow elected to remarry, she would be deprived of her rights." Similarly, agreements that upon remarriage, the widow would lose the right to maintenance and upon husband marrying a second wife, the first would get the right to divorce him, have been upheld".

II. Section 27 of the act – Agreement in restraint of trade void

'Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void'. Subject to the exception – saving of agreement not to carry on the business of which goodwill is sold.

Freedom of trade and commerce is a right protected by the Constitution of India. Just as the legislature cannot take away individual freedom of trade, so also the individual cannot barter it away by agreement. "The principle of law is this: Public policy requires that every man shall be at liberty to work for himself, and shall not be at liberty to deprive himself or the State of his labour, skill or talent, by any contract that he enters into."

In the case of Vancouver Malt & SAKE Brewing Co. Ltd v. Vancouver Breweries Ltd, (1934) 39 LW 618 (AIR 1934 PC 101) it was held that " Every man should have unfettered liberty to exercise his powers and capabilities for his own and the community's benefit."

Section 27, therefore, declares in plain terms that: Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is, to that extent, void.

All restraints covered whether partial or general

Madhub Chander v. Raj Coomar (1874) 14 Beng LR 76 is the first case in which the scope of the section came up for consideration before the Calcutta High Court. The plaintiff and the defendant were rival shopkeepers in a locality in Calcutta. The defendant agreed to pay a sum of money to the plaintiff if he would close his business in that locality. The plaintiff accordingly did so, but the defendant refused to pay.

The plaintiff sued him for the money contending that the restraint in question was only partial as he was restrained from exercising his profession only in one locality and that such restraints had been upheld in English law.

Couch J, however, held the agreement to be void and laid down: The words "restrained from exercising a lawful profession, trade or business", do not mean an absolute restriction, and are intended to apply to a partial restriction limited to someplace.

"Profession, Trade or Business"

The courts have not been rendered entirely sterile in the matter. Thus, for example, where it was necessary to do so, the High Court of Kutch regarded an agreement to monopolise the privilege of performing religious services in a village as being opposed to public policy and void under Section 27, as used in the section were intended to cover the religious services of the priest. On the other hand, the Allahabad High Court in Poti Ram v. Islam Fatima (AIR 1915 All 94 (2)) upheld as valid a restrictive covenant on the ground that the activity restrained was not in the nature of "profession, trade or business".

Statutory Exceptions

The only exception mentioned in the proviso to section 27 of the Contract Act is that relate to the sale of goodwill. It is thus stated: 'One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business

therein: Provided that such limits appear to the court reasonable, regard being had to the nature of the business.'

Apparently, the object is to protect the interest of the purchaser of goodwill. "It is so difficult to imagine that when the goodwill and trade of a retail shop were sold, the vendor might the next day set up a shop within a few doors and draw off all customers".

Therefore, some restriction on the liberty of the seller becomes necessary. Indeed, the restriction is the only "means by which a saleable value is given to the goodwill of a business". Far from being adverse to the public interest, the restriction, by giving a real marketable value to the goodwill of the business, operates as an additional inducement to individuals to employ their skills and capital in trade and thus tend to the advantages of public interest.

Section 28 of the Act – Restraint of legal proceedings

It is a well-known rule of English law that "an agreement purporting to oust the jurisdiction of the courts is illegal and void on grounds of public policy". Thus, any clause in an agreement providing that neither party shall have the right to enforce the agreement by legal proceedings is void. An arrangement may, however, stipulate that there is no intention to contract, or that it is only a gentleman's agreement. In such a case, no action is possible under the agreement.

Section 28 of the Indian Contract Act renders void two kinds of agreement, namely:

1. An agreement by which a party is restricted absolutely from enforcing his legal rights arising under a contract, by usual legal proceedings in the ordinary tribunals.
2. An agreement that limits the time within which the contract rights may be enforced.

Restriction on legal proceedings

Explaining the section, Garth CJ of the Calcutta High Court observed in Koegler v. Coringa Oil Co Ltd (ILR (1876) 1 Cal 466-69): "This section applies to agreements which wholly or partially prohibit the parties from having recourse to a court of law. If, for instance, a contract were to contain a stipulation that no action should be brought upon it, that stipulated would….be void, because it would restrict both parties from enforcing their rights under the contract in the ordinary legal tribunals."

The right to appeal does not come within the purview of the section. A party to a suit may agree not to appeal against the decision.

Compromise outside court

In the case of Shashi Agarwal v. Debt Recovery Appellate Tribunal (AIR 2010 All 24:2009 ALR 372) the claim in question was under Recovery of Debts due to Banks and Financial Institutions Act, 1993. The parties entered into a compromise outside the court regarding withdrawal of proceedings. The court said that it was not hit by sections 28, 57 and 59 of the Contract Act because no restraint was being placed upon the institution of proceedings.

Limitation of Time

Another kind of agreement rendered void by the section is where an attempt is made by the parties to restrict the time within which an action may be brought so as to make it shorter than time within an action may be brought so as to make it shorter than that prescribed by the law of limitation. According to the Limitation Act, 1963, for example, an action for breach of contract may be brought within three years from the date of the breach. If a clause in an agreement provides that no action should be brought after two years, the clause is void.

Thus, a clause in a policy of life insurance shall be brought after one year, from the death of the assured" was held void. Similarly, clauses in the standard fire insurance policy of the life insurer curtailing limitation to 12 months of the occurrence of the event or 3 months of the rejection of the claim by the insurer were not permitted to be invoked to bar the claim filed within three years.

III. Section 29 of the Act – Agreements void for uncertainty

Agreements, the meaning of which is not certain, or capable of being made certain, are void. For example, A agrees to sell to B 'a hundred tons of oil'. There is nothing whatsoever to show what kind of oil was intended. The agreement is void for uncertainty.

The reason why certainty is necessary appears from the following statement of the House of Lords, as stated in Scammell v. Ouston, (1941) "It is necessary that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite, or capable of being made definite without further agreement of the parties, and that promises and performances to be rendered by each party are reasonably certain."

An interesting illustration is Guthing v. Lynn ((1831) 2 B & Ad 232), a horse was bought for a certain price coupled with a promise to give 5 pounds more if the horse proved lucky. The agreement was held to be void for uncertainty. The court has no machinery to determine what luck, bad or good, the horse had brought to the buyer. Such cases have generally arisen in connection with a sale of goods, there being uncertainty as to the price.

IV. Section 30 of the Act – Agreements by way of wager, void

Section 30 basically deals with wagering agreements. The section does not define 'wager'. Subbha Rao J (afterwards CJ) in Gherulal Parakh v. Mahadeodas (AIR 1959 SC: 1959 2 SCR 406) said: "Sir William Anson's definition of "wager" As a promise to give money or money's worth upon the determination r ascertainment of an uncertain event, brings out the concept of wager declared void by section 30 of the contract act".

A wagering contract is one by which two persons professing to hold opposite views touching the issues of a future uncertain event, mutually agree that dependent on the determination of that event, one shall pay or hand over to him, a sum of money or other stakes; neither of the contracting parties having any other interesting that the sum or stake he will so win or lose, their parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until that issue is known. If either of the parties may win but cannot lose, it's not a wagering contract.

1. Uncertain event

The first thing essential to wager is that the performance of the bargain must depend upon the determination of an uncertain event, A wager generally contemplates a future event, but it may even relate to an event which has already happened in the past, but the parties are not aware of its result r the time of its happening.

2. Mutual gain or loss

The second essential feature id that upon the determination of the contemplated event each party should stand to win or lose. If there are no such mutual chances of gain or loss, there is no wager. Thus in Babasaheb v, Rajaram (AIR 1931 BOM 264).

3. Neither party to have control over the event

Thirdly, neither party should have control over the happening of the event one way or the other. "If one of the parties has the event in his own hands, the transaction lacks an essential ingredient of the wager".

4. No other interest in the event

Lastly, neither party should have any interest in the happening of the event other than the sum of stake he will win or lose. This is what marks the difference between a wagering agreement and a contract of insurance. Every contract of insurance requires for its validity the existence of insurable interest. Insurance effected without insurable interest is no more than a wagering agreement and, therefore, void.

Exceptions

1. Horse race

The section does not render void a subscription contribution, or an agreement to subscribe or contribute, toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards to the winner or winners of any horse races.

2. Crossword competitions and lottery

Literary competitions which involve the application of skilful competitors are not wagers. But where prices depend upon a chance, that lottery is a lottery. Madhya Pradesh has characterized

lotteries as wager. An agreement for payment of prize money on a lottery ticket came within the category of wagering agreement as contemplated by section 30.

V. Section 31 of the Act - Contingent contract

The expression contingent contract is defined in section 31 of the Contract Act. It is an agreement that states which actions under certain conditions will result in specific outcomes. It usually occurs when negotiating parties fail to reach an agreement. It can also be viewed as protection against a future change of plans. It is a sort of conditional contract and the condition is of uncertain nature. A contract that is subject to certain or an absolute type of condition cannot be regarded as a contingent contract.

For example A contracts to pay B rupees 10,000 if B's house is burnt. This is called a contingent contract.

VI. Section 32 of the Act – Enforcement of contracts contingent on an event happening

The contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event became impossible, such contracts become void.

The section lays down two basic principles:

1. A contract to do an act on the happening of a future uncertain condition cannot be enforced unless and until that event happens.
2. If the happening of that event has become impossible, the contract becomes void.

The contract would also not be enforceable where the event does not happen in the way contemplated by the contract. Where a car was insured against loss in transit, the car was damaged without being put in the course of transit, the insurer was held to be not liable. Once the event has happened, the contingent contract ripens into an absolute one.

VII. Section 33 of the Act – Enforcement of contracts contingent on an event not happening

When the performance of a contract depends upon the non-happening of an event, naturally the parties have to wait till the happening of that event becomes impossible. When such circumstances come to pass that show that the event can no more happen, then only the performance of the contract can be demanded.

For example: A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

Conclusion:

Indian Contract Act has tried to prohibit contracts that are either against the public policy or are immoral or which are in direct violation of the fundamental rights as prescribed in the Indian Constitution. Though the work of the act is to promote and maintain contractual relationships between the parties but at the same time, it's important to restrict such contracts which if implemented then the general public have to suffer which is not the objective of any legislation.

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4. https://indiankanoon.org/search/?formInput=void%20agreement

Phishing – The Modern Day Techdemic

So let me just introduce you to the new 'techdemic' that approaches us. Along with the ceaseless time came advancement which has been appreciated and facilitated all around the world, but as they say where there is a right, there is a wrong too. This global village which is connected with its internet highways enabling our access to anywhere anytime endangers our personal security by being prone to cyber-attacks. This practice of ambushing is termed as Phishing and it is as fishy as it sounds. As defined in oxford dictionary the term means, 'fraudulent practice of sending email purporting to be from reputable companies in order to induce individuals to reveal personal information such as passwords and credit card numbers. To put it in plain words it's a cybercrime that targets individuals via email, telephone or text message wherein cybercriminals pose themselves as legitimate institutions luring individuals to share their sensitive data. The primary objective backing such oblique activity is to trick the recipients of email, text or calls to undertake desired actions of criminals with the user's device or account getting infected with malware or even being hacked. The term traces its origin back to the '90s through America Online (AOL) which was a leading internet service provider in America when a group of hackers personated themselves as employees of the company and grabbed all their personal credentials.

Modern-day cyber criminals attempt phishing through numerous ways: Email phishing, Spear phishing, Angler Phishing, Vishing and Smishing. Attackers, by way of slithering our personally identifiable information such as confidential data, PAN number, communication details, health conditions etc., impersonate and use the identity for committing crimes and infiltrating corporate systems. The compromised email addresses are even for sale on dark web marketplaces

At this juncture, it is crucial for us now to unwind on how we can keep ourselves aloof from phishers. According to the technoids, it is advisable not to click on a link in a message or email if the source is unknown and if the URL of the website doesn't start with "https" or if we don't find a closed padlock icon we should also refrain from entering sensitive information or downloading files.

This techdemic also surged with the pandemic in India when the malpractices used COVID-19 themes such as brand impersonation, scamming and business email compromise which even led the government of India to issue an advisory bewaring individuals and business enterprises of malicious actors' phishing at large scale and planning attacks. The advisory was issued by India's nodal cybersecurity agency, the Indian Computer Emergency Response Team (CERT-In). The email ID expected to be used for such a phishing campaign was somewhat similar to 'ncov2019@gov.in'. Through the medium of fake apps, victims devices are used as a tool for spying, accessing their phone data, camera and microphones.
With the digital infrastructure scenario rapidly becoming congruent the Information and

Technology Act, 2000 of India with its subsequent amendment in 2000 of India with its subsequent amendment in 2008 added new provisions to cover and deal with Phishing practice in India.

Section 43 of the Information and Technology Act, 2000 provides for a wide range of activities such as hacking into a computer network, data theft, introducing and spreading viruses through computer networks, damaging computers or computer networks or computer programme, disrupting any computer or computer system or computer network, denying an authorized personnel access to a computer or computer network, damaging or destroying information residing in a computer etc. which is penalized under Section 66 of the Act with imprisonment for a term which may extend to three years or with fine which may extend to up to five lakh rupees or with both.

Application of section 1(2) read with section 75 of the Information and Technology Act, 2000 empowers invocation of the power of extraterritorial jurisdiction of the nation that is the fact regarding the nationality of offender or whether the crime is committed in or outside India becomes immaterial and so it applies to any person who tries to harm the computer system or network located in India either by operating inside or outside India.

Section 77A of the IT Act provides that, subject to certain exceptions, all offences under the IT Act for which the punishment is imprisonment for a term of 3 (three) years or less, are compoundable. The provisions of sections 265B and 265C of the Code of Criminal Procedure, 1973 ("CrPC") shall apply with respect to such compounding.

Section 77B of the IT Act provides that notwithstanding anything contained in the CrPC, all offences punishable with imprisonment of 3 (three) years and above under the IT Act shall be cognizable and all offences punishable with imprisonment of 3 (three) years or less shall be bailable.

Furthermore, as per the Indian Penal Code, phishing can attract liability under the heads of cheating, mischief, forgery and abetment. Possible ancillary action in a phishing case could occur under the Trade Marks Act, 1999 and the Copyright Act, 1957.

Speaking for the rights of the victim, they can report against such a phishing attack by filing a complaint on the National Cyber Crime Reporting Portal which is an initiative of the Government of India to facilitate complainants to report cybercrime complaints online, this portal is dealt with by law enforcement agencies/ police based on the information available in the complaints. One can also walk in to file a written complaint with the cyber-crime cell of the city or in its absence an FIR can be lodged.

As we tread upon our individual journeys in this contemporary era, there arises a need for netizens to remain more equipped with arms and tools against such crimes. Although there were amendments made in the Information and Technology Act, 2000 they don't suffice seeing the

changing pace and rapid evolution of technological minds. With India propelling towards digitization, time for a comprehensive Data Protection Bill has arrived. Unlike India other countries like the USA, Canada, Australia, Singapore, China, United Kingdom and Brazil with their California Privacy Rights Act, Digital Charter Implementation Act, Australia's Privacy

Act, Personal Data Protection Act, Personal Information Protection Law, Data Protection Act have taken a step forward towards legislating or amending their respective acts in order to curb with growing and changing needs of the time.

At the end of the day, it's a must for us to remain aware and alert at all times while dealing within the sensitive sphere of technology that can simultaneously protect and destroy something extremely valuable to us.

Abetment

Law keeps a check on human behaviour. It categorizes them into criminal and non-criminal behaviours. However, every non-criminal behaviour, even something as simple as buying a knife for your kitchen becomes criminal when there are criminal intentions behind it.

The concept of abetment widens the horizons of criminal law to incorporate these criminal intentions and penalize them even when the person who bought the knife did not actually kill anyone but handed it over to someone else to do it. To explain the concept of abetment, the word ‘abet’ should be given deep scrutiny. In general use, it means to aid, advance, assist, help and promote.

In the case of Sanju v. State of Madhya Pradesh, the honourable Supreme court defined ‘abet’ as meaning to aid, to assist or to give aid, to command, to procure, or to counsel, to

countenance, to encourage, or encourage or to set another one to commit. The definition of 'abet' as laid down, makes it clear that abetment only occurs when there are at least two people involved, which further directs us towards the arrangement and operation of the act.
In usual parlance, a person is held to be liable only if he or she has personally committed a crime. Detouring from the usual concept, the concept of Abetment says, that he who has helped the criminal or provided him with any assistance in any form can also be held to be liable. This article will discuss at length, the nitty-gritty of Abetment laws in India.

Meaning of Abetment
In common parlance, the word 'abet' signifies help, co-activity and support and incorporates within its ambit, an illegitimate reason to commit the crime. So as to bring an individual abetting the doing of a thing under any of the conditions specified under Section 107 of the Indian Penal Code, it isn't just important to demonstrate that the individual who has abetted has participated in the means of the transactions yet additionally has been associated with those means of the transaction which are criminal.

108. Abettor.—A person abets an offence, who abets either the commission of an offence or the commission of an act which would be an offence if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.
Explanation 1.—The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.
Explanation 2.—To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.
Illustrations
(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.
(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.
Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.
Illustrations
(a) A, with a guilty intention, abets a child or lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act is committed or not, is guilty of abetting an offence.
(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act that causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is, therefore, subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house and is liable to the punishment provided for that offence.
(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly and therefore does not commit theft. But A is guilty of abetting theft and is liable to the same punishment as if B had committed theft.
Explanation 4.—The abetment of an offence is an offence, the abatement of such abatement is also an offence.
Illustration
A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.
Explanation 5.—It is not necessary to the commission of the offence of abetment by a conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.
Illustration
A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison and procures and delivers it to B for its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

108-A. Abetment in India of offences outside India.—A person abets an offence within the meaning of this Code who, in [India], abets the commission of any act without and beyond [India] which would constitute an offence if committed to [India].
Illustration
A, in[India], instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.]

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this

Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of the abetment, when it is committed in consequence of the instigation, or pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in S. 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy and is liable to the punishment for murder.

110. Punishment of abetment if person abetted does act with different intention from that of abettor.—Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

111. Liability of abettor when one act abetted and different act done.—When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner, and to the same extent as if he had directly abetted it:

Proviso.—Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Illustrations

(a) A instigates a child to put poison into the food of Z and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment. A is liable in the same manner and to the same extent as if he had instigated the child to put the poison into the food of Y.

(b) A instigates B to burn Z's house. B sets fire to the house and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act and not a probable consequence of the burning.

(c) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

112. Abettor when liable to cumulative punishment for act abetted and for act done.—If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Illustration

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily caused grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and, if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress A will also be liable to punishment for each of the offences.

113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.—When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, caused a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner, and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

114. Abettor present when an offence is committed.—Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

115. Abetment of an offence punishable with death or imprisonment for life—if offence not committed.—Whoever abets the commission of an offence punishable with death or[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if act causing harm to be done in consequence.—and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or [imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and, if any hurt is done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

116. Abetment of an offence punishable with imprisonment—if the offence is not committed.—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official function. B refuses to accept the bribe. A is punishable under this section.

(b) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section and is punishable accordingly.

(c) A, a police officer, whose duty it is to prevent robbery, abets the commission of the robbery. Here, though the robbery is not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(d) B abets the commission of a robbery by A, a police officer, whose duty it is to prevent that offence. Here, though the robbery is not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

117. Abetting commission of the offence by the public or by more than ten persons.—Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration

A affixes in a public place a placard instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

118. Concealing design to commit an offence punishable with death or imprisonment for life.—Whoever intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with death or[imprisonment for life],

[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence or makes any representation which he knows to be false respecting such design

if the offence is committed — if the offence is not committed.—shall, if that offence is committed, be punished with imprisonment of either description for a term which may extend to seven years, or, if the offence is not committed, with imprisonment of either description, for a term which may extend to three years; and in either case shall also be liable to fine.

Illustration

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Public servant concealing design to commit an offence which it is his duty to prevent.—Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;

[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design

if the offence is committed.—shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

if the offence be punishable with death, etc..—or, if the offence be punishable with death or[imprisonment for life], with imprisonment of either description for a term which may extend to ten years;

if the offence is not committed.—or, if the offence is not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment or with such fine as is provided for the offence, or with both.

Illustration

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has by an illegal omission concealed the existence of B's design and is liable to punishment according to the provision of this section.

120. Concealing design to commit an offence punishable with imprisonment.—Whoever, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence punishable with imprisonment,
voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design
if the offence is committed — if the offence is not committed.—shall, if the offence is committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth, and, if the offence is not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

Relevant Case Laws

The law of abetment has undergone major changes very recently. The changes are laid out by the landmark cases below:

In Pramod Shriram Telgote v. the State of Maharashtra, it was held that "clear mens rea to commit the offence is a sine qua non for conviction under Section 306 IPC".

In Channu v. the State of Chattisgarh, it was held that "merely because wife committed suicide in matrimonial house, husband and in-laws can't be charged for abetment to suicide."

In Gurucharan Singh v. the State of Punjab, it was held that "to convict a person for abetment of suicide, there has to be a clear mens rea to commit an offence."

Conclusion

Abetment as a provision has been sufficient both from the view of the offence as well as the penalty for the offenders of abetment. However, with the development of technology and looking at the current scenario, the legislation of India has tried to bring the required changes in this provision. Through the Information Technology (Amendment) Act, 2008, the section has been amended so as to give a wider meaning to the act and omission by the use of encryption or any electronic method.

Therefore, we can say that abetment as an offence is a just and fair law that enhances the principles of natural justice in the legal system.

AGENCY UNDER THE CONTRACT ACT

The law of agency is an area of commercial law dealing with a set of contractual, quasi-contractual, and non-contractual fiduciary relationships that involve a person, called the agent, that is authorized to act on behalf of another to create legal relations with a third party. Section

182 of the Indian Contract Act defines Principal and Agent as follows: An "agent" is a person employed to do any act for another or to represent another in dealing with third persons. The person for whom such an act is done, or who is so represented, is called the "principal".

When one party delegates some authority to another party whereby the latter performs his actions in a more or less independent fashion, the relationship between them is called an agency on behalf of the first party. Agency can be expressed or implied. Chapter X of the Indian Contract Act, 1872 deals with the laws relating to Agency. It is important to know the law relating to agency because nearly all business transactions worldwide are carried out through an agency. All corporations, big or small, carry their work out through an agency. Therefore, laws relating to the agency are an important area of Business Law. Relationships relating to principal and agent involve three main parties: The Principal, the Agent, and a Third Party.

Whatever a person competent to contract may do himself, he may do through an agent, except for acts involving personal skills and qualifications. This is given sanction to by Section 226 of the Indian contract Act, 1872, which says: Contracts entered through an agent, and obligations arising from acts done by an agent may be enforced in the same manner and will have the consequences as if the contract had been entered into and the acts done by the principal in person.

TEST OF AGENCY

Agency exists whenever a person has the authority to act on behalf of others and to create contractual relationships between third persons and the other. When this kind of power is not enjoyed, there is no agency. Similarly, a person rendering personal service to his masters or working in his factory cannot be called an agent because he is not acting for another in dealing with third persons. It is only when he acts as the representative of others in business dealing to create contractual relationships that other and third persons can that person be called an agent and there is agency.

To constitute Agency the following ingredients are to be satisfied.

1. Principal: To constitute Agency there must be a Principal, who appoints another person as an agent to represent or work on his behalf.

2. Principal must be competent: According to Section 183 principal must be competent to contract. Section 183 says that any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

3. There must be an Agent: In a Contract of Agency, Agent is a person who is appointed by the Principal to work on his behalf. According to Section 184, any person may become an agent, but no person who is not of the age of majority and sound mind can become an agent.

4.Consideration not Necessary: Section 185 of the Indian Contract Act 1872 says that no consideration is necessary to create an agency. It is an exception to the general rule - a contract without consideration is void, but as per this exception, it can be said that a contract without consideration is valid.

AN AGENT IS NOT A SERVANT

A servant acts under the direct control and supervision of his employer, that is, he is to act according to the orders of the master. He does not hold the capacity to create relations between his employer and third parties.
On the other hand, an agent is not subject to direct control and supervision of his principal. He has a larger discretion to act within the scope of his authority. A principal directs the agent as to what work has to be done, while an employer orders his servant to know how the work is to be done.

AN AGENT IS NOT AN INDEPENDENT CONTRACTOR
An independent contractor is employed to perform a certain specified work but the manner and the means of the work are completely left to his discretion. The main point of distinction between an agent and an independent contractor is that the contractor does not represent his employer in relation to other persons and as such cannot bind the employer to contracts entered by himself. However, the agent represents the employer in relation to dealing with third parties and binds the employer to the contracts entered by his capacity.

WHO MAY EMPLOY AN AGENT?
According to Section 183, any person who has attained the age of majority and has a sound mind can appoint an agent. In other words, any person capable of contracting can legally appoint an agent. Minors and persons of unsound mind cannot appoint an agent.

WHO MAY BE AN AGENT?
In the same fashion, according to Section 184, the person who has attained the age of majority and has a sound mind can become an agent. A sound mind and a mature age are necessary because an agent has to be answerable to the Principal.

NO CONSIDERATION IS NECESSARY-
According to section 184, the fact that a principal has agreed to be represented is a sufficient detriment to the principal to support the contract of agency, that is, the support for the promise by the agent to act in that capacity. It is to be noted, however, that a gratuitous agent is not bound to do the work entrusted to him by the principal. However, if he has begun a work, he needs to finish it. Usually, an agent is paid remuneration for his service.

TYPES OF AGENTS
Universal Agent: A Universal agent is authorized to do all the acts which the Principal can lawfully do and can delegate.
Special Agent: A Special Agent is employed to do some particular act or represent his Principal in some particular transactions. For example, An agent employed to sell a Bike. If the special agent does anything outside his authority, the principal is not bound by it and third parties are not entitled to assume that the agent has unlimited powers.

General Agent: A General Agent is one employed to do all acts connected with a particular business or employment. For example, A manager of a firm. He can bind the principal by doing anything which Falls within the ordinary scope of that business. Whether he is authorized for any particular act or not, is immaterial provided that third-party acts bona fide.
Del Credere Agent: He is one who in consideration of an extra commission guarantees his Principal that the third person with whom he enters into contracts on behalf of the principal shall perform their financial obligations that is, if the buyer does not pay, he will pay. Thus he occupies the position of a surety as well as an Agent. He is not answerable to his principle for the failure of the third person to perform the contract. A del credere agent constituted an exception to this

Broker: He is employed to make contracts for the purchase and sale of goods. He is not entrusted with the possession of goods. He simply acts as a connecting link and brings it to parties together to bargain and if the circumstances materialize he becomes entitled to his commission called brokerage. He makes a contract in the name of his Principal. Thus, a broker is an agent primarily employed to negotiate a contract between two parties where he is a broker for sale he has no position of the goods to be sold.

CREATION OF AN AGENCY
Direct (express) appointment– The standard form of creating an agency is by direct appointment. When a person, in writing or speech appoints another person as his agent, an agency is created between the two.
Implication– When an agent is not directly appointed but his appointment can be inferred from the circumstances, an agency by implication is created.
Necessity– In a situation of necessity, one person can act on behalf of another to save the person from any loss or damage, without expressly being appointed as an agent. This creates an agency out of necessity.
Estoppel– An agency can also be created by estoppel. In a situation where one person behaves in such a manner in front of a third person, as to make someone believe he is an authorized agent on behalf of someone, an agency by estoppel is created.
Ratification– When an act of a person, who acted as another person's agent (on his behalf) without his knowledge is later ratified by that person, this creates an agency by ratification between the two.

AUTHORITY OF AGENCY-
The Authority of an agent can be both express or implied.
Express authority
According to Section 187, authority is said to be expressed when it is given by words spoken or written.

Implied authority

According to Section 187, authority is said to be implied when it is to be inferred from the facts and circumstances of the case. In carrying out the work of the Principal, the agent can take any legal action. That is, the agent can do any lawful thing necessary to carry out the work of the Principal.

Implied authority is of four main types

1. Incidental authority- doing something that is incidental to the due performance of express authority
2. Usual authority- doing that which is usually done by persons occupying the same position
3. Customary authority- doing something according to the pre-established customs of a place where the agent acts
4. Circumstantial authority- doing something according to the circumstances of the case

Chairman L.I.C v. Rajiv Kumar Bhaskar

In this case, as per the salary saving scheme of L.I.C, the employer was supposed to deduct the premium from the employee's salary and deposit it with L.I.C. Upon the death of the employee, it was found by his heirs that the employer has defaulted in doing so, causing the policy to lapse. A clause in the acceptance letter was referred to, in which the employer had said that he would act as the agent of the employee and not as that of L.I.C. It was held that the employer was acting as the agent of the company, thereby making the company (L.I.C) responsible as a Principal due to the fault of the Agent (the employer).

WHO IS A SUB-AGENT?

An agent may sometimes delegate the duty that has been delegated to him by the Principal to somebody else. Ordinarily, an agent cannot delegate the duty he is supposed to perform himself to another person (delegatus non potest delegare- discussed below), except in particular circumstances where he must, out of necessity, do so. Section 191 of the Indian Contract Act, 1872 defines a sub-agent to be a person employed by and acting under the control of the original agent in the business of the agency.

Delegatus non potest delegare-

An agent cannot in ordinary circumstances delegate the duty that was delegated to him. The principle is based upon the idea that when a Principal appoints an agent, he does so by placing his confidence and trust in the agent and might not have similar trust in the work of another person.

Difference between sub-agent and substituted agent-

The difference between the sub-agent and the substituted agent is very fundamental. When a person, in the capacity of an agent, is asked to name someone for a certain task, the person who is named does.

RIGHTS OF AN AGENT-

1) Right to Receive Remuneration

An agent is entitled to remuneration under Section 219 of the Indian Contract Act. However, Section 220 of the said Act states that an agent who is guilty of wrongdoing in the Agency's business is not entitled to any remuneration in respect of that aspect of the business that he has done wrong.

2) Right of Lien (Section 221)

In the absence of any contract to the contrary, the agent shall be entitled to retain the goods, documents, and other property, whether movable or immovable, of the principal received by him until he has been paid or accounted for the sum due to himself for commission, disbursements, and services in respect of the same.

3) Right to Indemnity

The agent must be indemnified against the consequences of lawful actions. Indemnity means promising to make good the loss. According to Section 222 of the Indian Contract Act, 1872, "The employer of an agent is obliged to indemnify him in the exercise of the authority conferred on him against the consequences of all legal acts performed by that agent."

4) Right to compensation

Under section 225 of the Indian Contract Act, 1872 an agent is entitled to claim compensation for injuries sustained as a consequence. Section 225 states as follows: "The principal must compensate his agent for the injury caused to that agent by the principal's neglect or lack of ability to do so."

DUTIES OF AN AGENT

1) Agent's duty in conducting principal's business (Section 211)

An agent is obliged to conduct the business of his principal in accordance with the instructions provided by the principal or in the absence of any such instructions, in accordance with the custom existing at the place where the agent conducts that business. If the agent acts otherwise if any loss is caused, he must make it good for his principal and if any profit accrues, he must pay for it.

2) Skill and diligence required from the agent (Section 212)

An agent is bound to perform the agency's business with as much ability as is normally exhibited by individuals engaged in similar business unless the principal is aware of his lack of ability. The agent is always obliged to behave with due caution and to use the expertise he possesses and to compensate the principal for the direct effects of his own negligence, lack of ability or misconduct, but not for failure or harm caused indirectly or remotely.

In Jayabharathi Corp v. Sv P.N. Rajasekhara Nadar, it was held that "Section 212 addresses another part, which states that it is the responsibility of an agent to use all due caution to communicate with the principal in circumstances of difficulty and to do his best to seek his orders. He is responsible to the principal in all such cases where the agent misinforms the principal and a loss arises due to his misconduct."

3) Duty to render proper accounts (Section 213)
An agent is required, in compliance with Section 213 of the Indian Contract Act 1872, to provide his principal with proper accounts on demand.

4) Duty to communicate with the principal (Section 214)
In cases of difficulty, it is the responsibility of an agent to use all fair caution in communicating with his principal and in trying to receive his instructions.

5) Not to deal on his own Account (Section 215)
Section 215 of the Indian Contract Act 1872 deals with the principal's right when the agent deals, on his own account, with the agency's business without the permission of the principal. If an agent deals in the agency's business on his own account without first obtaining his principal's consent and acquainting him with all material circumstances that have come to his own knowledge of the subject, the principal may repudiate the transaction if the case shows either that any material fact has been dishonestly concealed from him by the agent or the dealings have been disadvantageous to him.

6) Not to make Secret Profits (Section 216)
Section 216 of the Indian Contract Act deals with the right of the principal to profit obtained by the agent dealing in the agency's business on his own account. Without the knowledge of his principal, an agent could not deal on his own in the agency business to make secret profits.

7) Duty to pay sums received for the principal (Section 218)
An agent is obliged to pay to his principal all amounts earned on his account in accordance with Section 218 of the Indian Contracts Act, 1872.

8) Not to Disclose Secret
It is an agent's responsibility to keep the agency's business secret and not disclose sensitive matters. In Pannalal Jankidas v Mohanlal, the Supreme Court held that where the agent who was asked by the principal to get the goods insured and actually charged the principal's premium but never got the insurance, the agent was held liable to compensate the principal when the goods were lost in an explosion."

PRINCIPLES DUTY TO THE AGENT

The Principal has 4 duties towards the Agent:

1. The Principal is bound to indemnify the agent against any lawful acts done by him in the exercise of his authority as an agent.
2. The Principal is bound to indemnify the agent against any act done by him in good faith, even if it ended up violating the rights of third parties.
3. The Principal is not liable to the agent if the act that is delegated is criminal in nature. The agent will also in no circumstances be indemnified against criminal acts.
4. The Principal must make compensation to his agent if he causes any injury to him because of his own competence or lack of skill.

BAILMENT

Bailment, as defined under Section 148 of the Indian Contract Act, 1872 is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them (bailor)

The word 'bailment', is derived from 'bailler', a french word which means 'to deliver'. Bailment has been defined under Section 148 of the Indian Contract Act, 1872, according to which Bailment involves the delivery of goods from one person to another for a specific purpose and upon a contract, when the purpose is fulfilled, the good has to be returned or dealt with on the direction of the person who has delivered the goods.

Who are the parties to the contract of Bailment?

There are generally two parties to the contract of Bailment. The person who is the owner and delivers the good is called 'bailor' while the person to whom the goods are delivered is called 'bailee'.

General rules relating to Bailment are mentioned in Chapter IX (Section 148-181) of the Indian Contract Act, 1872. Bailment is a type of special contract, so all essential elements of a valid contract like consent, competency, etc are required for it to be valid. But, a valid bailment can arise even without a valid contract between the two parties, for example, a lost good finder becomes a bailee and has the responsibility to return it to its owner, the bailer, even if no contract exists between them.

How is Bailment different from the sale of the good?

Sales involve the transfer of the ownership of the good in exchange for something of value while on the other hand, Bailment involves the transfer of the possession of the good, not the ownership.

What goods can be bailed?

Only the goods that are of movable nature can be bailed. However, current money or legal tender cannot be bailed and deposition of money will not be counted as bailment as money is not good and the same money will not be delivered back to the client.

Essential Features

Delivery of Possession

There must be a delivery of goods, which means, delivery of possession of the goods by the bailer to the bailee to fulfil the purpose of bailment. Possession refers to exercising control over the good and excluding any other person to do the same.

Section 149 of the Indian Contract Act, 1872 talks about the same. The delivery of possession can either be actual or constructive. It means that either the good can directly be put in the actual physical possession of the bailee or put the bailee in a position of power over such goods that can be physically possessed later, if possible. In constructive delivery, the bailor gives the bailee means of accessing the custody of the good and not its actual delivery.

For example, C has a rare coin locked safe deposit box. As the delivery of a safe deposit box is impossible, when C, bailor, gives the key of the deposit box for the bailment of the coin to A, bailee, it would be considered as constructive delivery.

It is important to note that mere custody of goods is not equivalent to the possession of goods. In Reaves v. Capper, it was held that a servant can be in the custody of the goods because of the nature of his job but that does not mean he is in possession of the goods. For example, a servant holding his master's umbrella is not a bailee.

Delivery upon Contract

There must be a contract between the bailor and the bailee for such transfer or good and its return. If there is no contract, there cannot be bailment. Moreover, the contract can either be expressed or implied.

Exception: If the good is lost, the finder of good will be seen as the bailee even if there was no contract of Bailment or delivery of goods under a contract. A finder of goods is a person who found a lost good belonging to someone else and keeps it under his possession until the owner of the good is found. This leads to an involuntary form of Bailment contract between them. The finder has all rights and duties that of a bailee.

Delivery must be for some purpose

It is essential that there must be a purpose for which the delivery of the goods takes place. If after the completion of the purpose of bailment the good is not accounted for, then bailment cannot arise. This is an important feature as it separates it from other relations like agency, etc...

Return of goods

After the completion of the purpose, the good must be delivered to the bailor or dealt with as per his instructions. If he/she is not bound to return the good then there is no bailment. Even if there is an agreement to return an equivalent and not the same good, it will not amount to bailment.

For example, a tailor receives a saree for stitching as he is the bailee. After the saree has been stitched, the tailor is supposed to return it to the bailor.

Moreover, it is necessary for the bailee to follow the instruction given by the bailor for the purpose of the return of the good if any.

In Secy of state v. Sheo Singh Rai, a man, for the purpose of cancelling and consolidating nine government promissory notes into a single note of Rs. 48000, went to a Treasury Officer. Later, the notes were misappropriated by a servant at the treasury and the man filed a suit against the State to hold it responsible as a bailee. He failed as there is no Bailment without delivery of good and a promise to return the same and the government was not bound to return the same notes or deal with them in accordance with the wishes of the man.

Classification of Bailment

Bailment can be broadly categorized into two types:

On the basis of Remuneration

Gratuitous Bailment

When a bailment is made without any consideration of benefit to the bailor or to the bailee, it is referred to as gratuitous bailment. In simple terms, it is a bailment without any consideration.

For example, when one lends a book to a friend free of cost.

Non-Gratuitous Bailment

When generally there is a consideration for bailment between the bailor and the bailee then it is referred to as non-gratuitous bailment.

For example, when someone gets a book issued from a library in exchange for a fee.

On the basis of benefits to the parties

For the exclusive benefit of the bailor

In this case, the bailor delivers his/her good to the bailee for safe custody. There is no benefit/benefit for the bailee.

For example, leaving a pet with a neighbour when going out.

For the exclusive benefit of the bailee

In this case, the bailor delivers a good for the benefit of the bailee. For example, a friend borrowing our car for a week.
For the mutual benefit of them both
In this case, the bailor deliver his good to the bailee for consideration and both the parties get benefit out of bailment,
For example, giving a bike for repair to a mechanic, for which the mechanic gets paid.

Duties/Rights of Bailor and bailee

Duties of Bailor

Disclose known faults
It does not matter whether the goods are gratuitously or non-gratuitously bailed, the bailor has a duty to disclose all the known faults about that good that is being bailed to the bailee. Failing to do so would make the bailor liable to indemnify the bailee for all the damages caused to him directly from this fault. However, it is important to note that in the case of non-gratuitous bailment, the bailor is responsible even for those faults from which he/she is not aware.
Examples:

1. A lends his bike to B. A is aware of the fact that the bike's brakes are not working properly and fails to inform the same to B. B met with an accident and is severely injured. A is liable to pay B for the damages sustained.

2. Raj hires a racing car from Shyam to participate in a racing competition. During the race, the car caught fire. Raj was unable to extinguish it as the fire-fighting equipment was out of order, due to which he sustained injuries. Therefore, Shyam is responsible to pay Raj even if he was not aware of the fact that fire-fighting equipment was out of order.

Bear expenses of bailment

In case of Non-Gratuitous Bailment
Bailor is expected to bear all the extraordinary expenses but the bailee is bound to bear all the ordinary and reasonable expenses of the bailment.
Example: A leaves his dog with B, a professional dog trainer, for a week as he is going out of town. B is being paid for the same so A is not required to bear the ordinary expenses. However, the dog suffered from a high fever and B had to call a doctor. A has to repay all the medical expenses born by B.

In case of Gratuitous Bailment

The bailor is required to pay all the necessary expenses incurred by the bailee for the purpose of bailment for the delivered goods.
Example: A lends his dog to B, a close friend, for a week as he is going out of town. A is not paying anything to B to take care of his dog so he needs to pay him for all the ordinary expenses born by B to feed the dog for a week. However, if the dog gets sick and suffers from a high fever, A has to pay B for all the additional medical expenses incurred by him.

Indemnify Bailee
According to Section 159, in case of gratuitous bailment, the bailor can terminate bailment at any time even if the bailment was for a specific time or purpose. However, the bailor is required to indemnify the bailee if the losses incurred by him due to the premature termination exceed the benefits he derived out of the bailment.
Example: A lends his car to B, a friend for a week as B has to go out of town for a family gathering. As B has not paid any charges for bailment, he fills 30 litres of petrol in the car for the drive. Suddenly after 4 days, A calls B to give his car back. So, B can demand from A value of petrol remaining in the car after 4 days.

Indemnify the bailee when he suffers due to the title of bailor to the goods being defective
According to Section 164, the bailor has to indemnify the bailee if even after knowing that he is not entitled to the good and makes bailment due to which, the bailee suffers losses.
Example: A lends his car to B, a customer for a week as B has to go out of town for a family gathering. B has already paid an advance of Rs 5000 to A. However, after 4 days, the police seized the car from B as it was stolen and belonged to C. B had to arrange a new car for the same purpose and had to pay a higher rent. B can claim from the amount he has already paid and also the higher rent he had to pay for the new car.

Receive back the goods
After the expiration of the term of the bailment or when the purpose is fulfilled, the bailor has a duty to receive the goods back from the bailee. However, if the bailor refuses to do the same, he will be entitled to pay the bailee compensation for the necessary expenses of custody and care.
Example: A bailed his dog to B for one week at the daily charge of Rs. 100. A visited B to receive his dog after 25 days. He has to pay the additional charges for 18 pays. However, if this had been a gratuitous bailment, A would have been required to pay the ordinary and extraordinary expenses for 18 extra days.

Duties of the Bailee

Take Reasonable Care of the Goods Bailed
As per Section 151, irrespective of the fact that the bailment is gratuitous or non-gratuitous, the bailee has a duty to take reasonable care of the goods bailed similar to a man of ordinary

prudence would. However, according to Section 152, if even after reasonable care the goods are damaged or destroyed, the bailee is not liable for the loss of the bailed goods.
Example: A bailed his dog to B for a week at a daily charge of Rs. 100. As A came to B to reserve the dog after a week, he finds out the dog was stolen from B. If it is proved by B that he took reasonable care of the dog but still the dog was stolen, then he will not be held responsible, but, if however, A proves that B didn't take reasonable care, say left the dog unchained, B would be responsible for the same.

No Unauthorized use of goods
As per Section 154, if due to the fact that the bailee uses the good bailed in a manner inconsistent with the terms of the contract then he will be held liable in case there is any damage to the good, even if he was not negligent or the damage resulted from an unforeseeable accident.
Example: A lends his car to B for him to drive only. B allows C, her cousin to drive the car. C rides the car with care but still ends up in an accident, damaging the car. B is liable to compensate A for the damages caused to the car.

Not mix goods bailed with own goods
The bailee must not mix the bailed goods with his own goods and must keep them separately. If however, he mixes the bailed goods with his own then:
1. According to Section 155, if mixed with the consent of the bailor, both of them will have a proportionate interest in the mixture produced.
2. As per Section 156, if mixed without the consent of the bailor, and if it can be mixed/divided, the bailor has to bear all the expenses for the same and damages caused due to the mixture.
3. According to Section 157, if mixed without the consent of the bailor, and if the mixture is beyond separation, the bailee is required to compensate the bailor for the loss of the goods.

Return any Accretion to the goods

In the absence of any contract for the same, any profit which may have accrued from the goods bailed, the same must be delivered to the bailor.
Example: A bailed his cow to B for a week. The cow gave birth to a calf during this period. The bailee must deliver the calf along with the cow to A at the time of delivery.
Return the goods
After the time for which the good has bailed is expired, or the purpose has been fulfilled, the bailee must return it to the bailor as per his direction.

Rights of the Bailor

Enforcement of rights

The bailer, by suit, can enforce all the liabilities or duties of the bailee.

Avoidance of Contract

According to Section 153, if the bailee does anything which is inconsistent with the terms of bailment, then, the bailor can terminate the bailment.

Example: A bailed his horse to B for his own riding only. B allowed C to ride the horse, violating the terms of bailment. A can terminate bailment.

Return of goods lent gratuitously

In case the goods are lent gratuitously, the bailor has the right to demand their return whenever he sees fit, even though they were lent for a specific period of time or purpose. However, he needs to indemnify the bailee in case the losses exceed the benefit derived from the use of such a good due to premature termination of bailment.

Compensation from a wrong-doer

If the bailee is wrongfully deprived by any third party of the use or possession of goods bailed and does them any injury, the bailor or the bailee has the right to bring a suit against the third person for the injury.

Rights of the Bailee

Delivery of goods to bailor without title

According to Section 166, if the bailor has no title to the goods bailed, then the bailee, in good faith, can deliver them back to the bailor according to his directions, if any, the bailee will not be responsible for such delivery.

Can apply to a court to stop delivery

According to Section 167, if there is a situation in which a third person claims the goods bailed to the bailee, then the bailee can stop the delivery of such goods to the bailor by applying to the court and decide the title of the goods.

Right against trespass

According to Section 180, if the bailee is deprived of the use of the goods bailed by any third party, the bailee has the right to bring an action against the third party.

Bailee's lien

When the bailee is not paid charges for the goods bailed he has the right to retain the goods. This right is referred to as 'particular lien'.

Atul Mehra v Bank of Maharashtra

Facts of the Case
PARTIES IN THE CASE:-
Atul Mehra …
Appellants
Versus
Bank of Maharashtra …
Respondent
CITATION:- AIR 2003 P&H 11

The case was filed at the Trial Court by Atul Mehra, the appellant in the present court, whereby issue Nos. 1, 2 and 3 were decided against him and issue No. 4 was decided against the Respondent as it was not pressed. The suit was dismissed with costs. Thereby, an appeal was filed by the appellant in this case, Atul Mehra, in the Lower Appellate Court which has upheld the findings given by the learned Trial Court. Hence, the present Regular Second Appeal.

Atul Mehra (i.e. the appellant) in the present appeal had hired locker No. 75 on 15th January 1986 at Bank of Maharashtra (i.e. the respondent). He had deposited jewellery in the said locker the value of which he claimed as Rs 4,26,160.

The strong room in which the locker was located was broken in and the contents thereof were stolen by miscreants. On 9th January 1989, an FIR for the same was filed. It was stated in the FIR that all other 43 lockers in the strong room were also broken in and contents were thereof stolen.

On 2nd February 1989, all the 44 locker holders made representation to the bank by a registered acknowledgement duly pointing out the gross negligence and misconduct of the respondent in maintaining the lockers. They have contended that the alleged strong room was a made-up affair and it was made only of plywood, whereas it ought to have been made of iron and concrete.

On 20th February 1989, a representation to this effect was also made to the Ministry of Finance, Government of India, and the Senior Superintendent of Police, Amritsar.

On 21st July 1989, the police had made a report about the defective strong room and the lockers therein.

In contesting the suit, the Respondent has contended that the appellants had no locus standi to bring the suit against the Respondents. They have denied the following facts to be true

- That jewellery in the value of Rs. 4,26,160/- was kept in the locker,
- That there was any misconduct or negligence on the part of the respondent-bank in taking care of the lockers and strong room,

o The police report dated 21st July 1989,
o That there was any statutory or contractual liability on them to make good the loss allegedly suffered by the appellants.

The facts that they did admit to are the following:-
o That the appellants had taken locker No. 75 from the respondent-bank on 15th January 1986.
o That the lockers were broken by miscreants and content of the same were stolen.

The appellants filed replication. They refuted the contents of the written statement and reiterated the facts stated in the plaint.
Issues raised
1. Whether the plaintiffs have suffered a loss due to misconduct and negligence by the defendant?
2. If issue No. 1 is proved, whether the plaintiffs are entitled to recover any amount. If so, to what amount?
3. Whether the defendant-Bank has no contractual liability to make a good loss incurred by the plaintiffs?
4. Whether the plaintiffs have no cause of action or locus standi to file the present suit?
5. Would the relationship between the locker hirer and the bank fall within the definition of bailment as given in Section 148of the Indian Contract Act, 1872, merely on the locker being hired; or is it necessary also to prove by independent evidence entrustment, quantity, quality and value of the property claimed?

Arguments advanced

By the Appellant (Atul Mehra)
1. It was also argued that vital pieces of evidence were not considered by the later courts. Mr Chibbar had cited the Supreme Court's judgment in the case of Ishwar Dass Jain v. Sohan Lal where it has been held that "the High Court can interfere with the concurrent findings of fact recorded by the Courts below if vital pieces of evidence have not been considered which, if considered, would have led to a different conclusion".
2. According to the learned Counsel, once the relationship between the appellant and respondent is established as that of bailor and bailee, the lack of knowledge on the part of the respondent would be of no effect to their liability to compensate the appellant. It was argued repeatedly by the Counsel that the relationship between the parties is that of bailment as defined under Section 148 of the Indian Contract Act, 1872.
3. The learned Counsel has aptly argued that if the bailee undertakes to mind some goods for reward, but fails to produce them to the bailor when asked to do so, it is a reasonable

inference that the bailee has been negligent. Hence, in the present case, it is reasonable to infer that the respondent has at least been negligent.

4. The learned counsel for the Appellant, Mr R. K. Chhibbar has argued that both the lower courts have erred in the judgment because they had based their findings on the case of Mohinder Singh Nanda v. Bank of Maharashtra which he contends to be per incuriam.

5. Chhibbar, learned Senior Advocate, has also argued that both the learned Courts below have failed to take notice of the fact that the strong room, as well as the lockers, had been built in contravention of the guidelines on security arrangements in the banks issued by the Indian Banks Association and the guidelines issued by the Reserve Bank of India. According to the learned Counsel, these guidelines are to be strictly construed and a strong room was to be built in accordance with the specification given therein. Learned Counsel has further pointed out that even DW-1, P. K. Aggarwal, Senior Manager of the respondent-Bank, had admitted that the guidelines issued by the Indian Banks Association are binding.

By the Respondent (Bank of Maharashtra)

Mr Ashok Pal Jaggal, learned counsel for the Respondent, has put forward the argument that the agreement between the parties constitutes the relationship of landlord and tenant. The agreement uses the term "rent and hirer". This relationship cannot be equated with bailment. He has relied on Section 106 of the Transfer of Property Act which provides for giving notice for termination of the tenancy. The hiring agreement between the two parties provides for a written notice of termination.

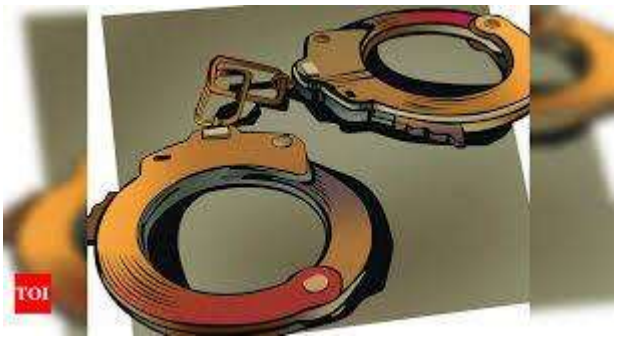
Conclusion

Contract of bailment involves the transfer of possession of the good from the bailor to the bailee for the specific purpose and both, the bailor and the bailee, have been confronted with some rights and duties which are necessary for them to follow whenever seem suitable. Also, for the contract of bailment to be valid, all the essential features need to be fulfilled. Moreover, bailment of goods is different from the sale of goods as bailment is involved with the transfer of possession while the sale is involved with the transfer of ownership.

Submitted by

Advocate Aini Borah

Concept of Bail under Criminal Procedure Code



Abstract: We are well aware of the circumstances in which a person may be arrested under a warrant or even without a warrant. One important purpose of arrest is to secure the presence of the accused person at the time of his inquiry or trial and to ensure that he is available to receive a sentence on conviction. If this purpose can be achieved without forcing detention on the accused during enquiry or trial, it would be an ideal blending of two apparently conflicting claims, namely, freedom of the individual and the interests of justice. The provisions relating to bail aim at such blending. They have been enacted with a view to restoring liberty to the arrested person without jeopardizing the objectives of the arrest.

Introduction: Article 21 of the Indian Constitution declares that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The concept of bail is closely related to article 21 of the Constitution. It safeguards the personal liberty of a person from his detention. The concept of bail is closely related to the term "custody", "arrest" &" detention". In all these types of situations, there is deprivation of liberty of a person. The question of bail arises when a person is in custody or arrested or when there is detention.

'Bail' is derived from the old French verb 'baillier' meaning 'give or deliver'. The term bail has not been defined in the Criminal Procedure Code, nevertheless, the word 'bail' has been used in the Criminal Procedure Code several times & remains one of the vital concepts of the criminal justice system in consonance with the fundamental principles enshrined in part III & IV of the Constitution along with the protection of human rights as prescribed under International treaties/Covenants.

Bail has been defined in Law Lexicon as security for the appearance of the accused person on giving which he is released pending trial or intervention, what is contemplated by bail is "to procure the release of a person from legal custody by undertaking that he shall appear at the time & place designated and submit himself to the jurisdiction and judgment of the court". In fact, when a person is granted bail, he is deemed to be under the custody of the court.

The concept of bail involves two conflicting concerns-an individual's right to liberty and his right to be presumed innocent until proven guilty against the society's interest in maintaining law, order and security. The custody of a person pending the completion of trial may cause great

hardship to that person which may include loss of liberty, livelihood during that period. The object of keeping an accused person in detention prior to or during the trial is not punishment but,

- To prevent the repetition of offence with who is charged
- To seek the presence of the accused during the trial &
- To prevent the destruction of evidence.

Thus, the law of bails has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed crime; and on criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty.

HISTORY

The concept of bail can be traced back to 399 B.C, when Plato tried to create a bond for the release of Socrates. The modern system of bail evolved from England.

In medieval England, the sheriffs originally possessed the sovereign authority to release or hold suspected criminals. Some sheriffs would exploit the bail for their own gain. The Statute of Westminster (1275) limited the discretion of sheriffs with respect to the bail. Although sheriffs still had the authority to fix the amount of bail required, the statute stipulates which crimes are bailable and which are not.

In the early 17th century, King Charles I ordered noblemen to issue him loans. Those who refused were imprisoned. Five of the prisoners filed a habeas corpus petition arguing that they should not be held indefinitely without trial or bail. In the Petition of Right (1628), Parliament argued that the King had flouted Magna Carta by imprisoning people without just cause.

The Habeas Corpus Act 1679 states, "A Magistrate shall discharge prisoners from their Imprisonment taking their Recognizance, with one or more Surety or Sureties, in any Sum according to the Magistrate's discretion, unless it shall appear that the Party is committed for such Matter or offences for which by law the Prisoner is not bailable."

The English Bill of Rights (1689) states that "excessive bail hath been required of persons committed in criminal cases, to elude the benefit of the laws made for the liberty of the subjects. Excessive bail ought not to be required." This was a precursor of the Eighth Amendment to the US Constitution.

The Bail Act 1976 was enacted with the aims of creating more conditions by which defendants could be denied bail and also redefining the parameters of fulfilling bail. The legislation outlined that courts were obliged to offer bail to defendants unless a specific exception was met. The first of two known exceptions was that the defendant would not willingly surrender and

tamper with case evidence the second was that insufficient case evidence had been collected to allow a defendant to be granted bail. The act also nullified the recognizance system, removing the requirement of paying a specific amount of money and instead of arresting defendants for failing to surrender.

Many historians have observed a dilemma in which the 1976 Bail Act granted greater power to the courts in handling custody but also pushed them to not put defendants in custody unnecessarily. Legal commentator Susanne Bell notes that the act failed to incur universal legal promotion, instead only allowing defendants to be provided legal aid after they have been reprimanded. Bell believes that this, among other minor flaws, flawed the legislation, but it was nonetheless a springboard for other practical applications.
As a partial amendment to the 1976 Bail Act, the Criminal Justice Act 2003, stipulates that bail must be denied to defendants who test positive for Class A drugs outlined in the Misuse of Drugs Act 1971.

LEGAL PROVISIONS

The provisions relating to the grant of bail are enshrined in chapter XXXIII, under sections 436-450 of Criminal Procedure Code offences have been classified into bailable & non-bailable & 'cognizable' and 'non-cognizable. Officers in charge of the police station, magistrate, Sessions Court and High court are empowered under criminal procedure code to deal with bail, imposing conditions on bail, cancellation of bail or anticipatory bail.

PROVISIONS AS TO BAIL & BONDS

Sec. 436: In What Cases Bail To Be Taken
Sec436a: Maximum Period for which an undertrial Prisoner Can Be Detained
Sec.437: When bail may be taken in case Of Non-bailable Offence
Sec.437a: Bail require Accused to Appear before the Next Appellate Court
Sec.438: Directions for Grant of Bail to Person Apprehending Bail
Sec.439: Special Powers or High Court and Court of Session Regarding Bail
Sec.440: Amount of Bond and Reduction Thereof
Sec.441: Bond of Accused and Sureties
Sec.441A: Declaration by Sureties
Sec.442: Discharge from Custody
SEC443: Power to order sufficient bail when that first taken is insufficient
SEC444: Discharge of sureties
SEC445: Deposit instead of recognizance
SEC446: Procedure when a bond has been forfeited
SEC446A: Cancellation of bail and bail bond

SEC447: Procedure in case of insolvency or death of surety or when a bond is forfeited
SEC448: Bond required from minor
SEC449: Appeal from orders under section 446
SEC450: Power to direct levy of the amount due on certain recognizance

TYPES OF BAIL

The Code of Criminal Procedure, 1973 contains elaborate provisions relating to bails. Code provides different kinds of bail:

- Bail in Bailable offence (section 436)
- Bail in Non- Bailable offence (section 437)
- Anticipatory Bail (section 438)
- Ad interim Bail
- Bail after conviction (section 389)
- Bail on defeat (section 167(2))

BAIL-IN BAILABLE OFFENCE SECTION 436

Section 436 of the code of criminal procedure deals with provisions of bail in bailable offences under this section, bail is the right of a person who has been accused of commission of an offence which is bailable in nature. This provision casts a mandatory duty on police officials as well as on the court to release the accused on bail if the offence alleged against such a person is bailable in nature.

It further makes it clear that whenever any person, accused and applies for bail, then the police official or the court, as the case may be, has no other alternative. This section further makes it clear that if the person applying for bail, is booked for the commission of the bailable offence, then neither the court nor the police official can refuse to release such person merely because of non-availability.

It is also the duty of the court as well as police official to release the accused of bailable offence on his personal bond if such person, regardless of the order of security, fails to furnish security within 7 days from such order. While casting such duty on police officials as well as on magistrate, the law raises a presumption in favour of the accused to the effect that the accused is so indigent and poor that he cannot arrange for a surety and therefore, after that period he has to be released on his personal recognizance.

If a person fails to comply with the conditional bail bond as regards 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 is brought in custody. Any such refusal shall be without prejudice to the powers of the court to call upon any person bound by such bond to pay the penalty thereof under section 446.

A new section has been enacted as section 436-A by Act of 2005 stipulating that a person not accused of an offence carrying the death penalty, who has undergone detention for a period extending up to one half of the period of imprisonment prescribed for that offence could be released on his personal bond with or without surety.

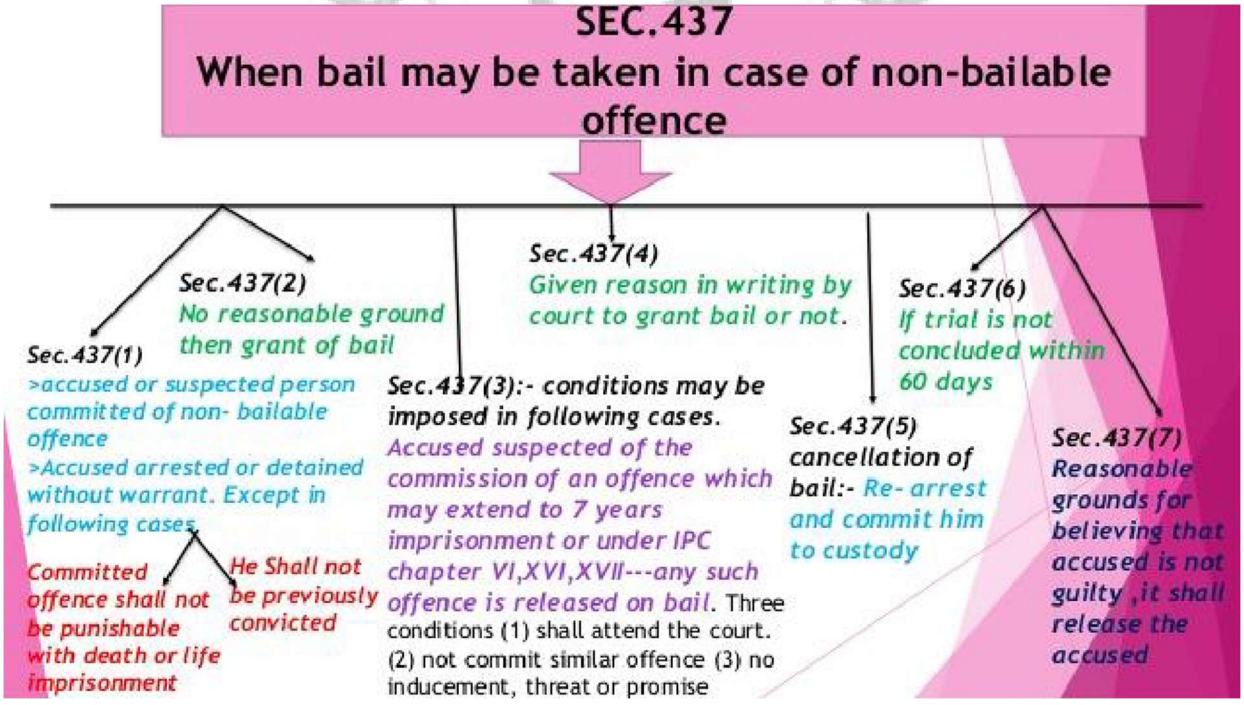
The Supreme Court in Vaman Narain Ghiya v. State of Rajasthan (2009 (2) SCC 281) observed the court has no jurisdiction when granting bail under section 436 of code even to impose any condition except demanding of security.

BAIL-IN NON-BAILABLE OFFENCE SECTION 437

Provision, as to bail in case of non-bailable offence, is laid down in section 437 of the code. It deals with discretionary power to the court (other than High Court or court of sessions) to release an accused on bail on a non-bailable offence case. It lists down circumstances when bail will not be granted or when bail will be granted with specific conditions. (Given in images below)

In Shakuntala Devi v. State of Uttar Pradesh (1986 Cri LJ 365) court explained that the word "may" has been used in section 437 which should not be read as mandatory rather it confers discretionary power or court.

In Sanjay Chandra v. CBI (2012 1 SCC 40) court stated that at the time of considering bail the sentiments of the community are not to be taken into account for rejecting a bail plea. Court held that it should not function as per the whims of society, judges should not work in an arbitrary manner.



ANTICIPATORY BAIL

Section 438 empowers the High Court and the Sessions Court to grant anticipatory bail, i.e. a direction to release a person on bail issued even before the person is arrested. Anticipatory bail means bail in anticipation of an arrest. The term "anticipatory bail" is really a misnomer, because what section 438 contemplates is not anticipatory bail, but merely an order releasing the accused on bail in the event of his arrest. It is manifest that there can be no question of bail unless a person is under detention or custody. Therefore, it is only on arrest that the order granting "anticipatory bail" becomes operative.

The necessity for granting anticipatory bail arises because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

In Dhiren Prafulbhai Shah v. the State of Gujarat (2016 Cri LJ 2217) the Gujarat High Court in this case dealt with section 438 of code in the context of section 18 of the atrocities act where the court held that "If a person is accused having committed murder, dacoity, rape etc., he can pray for anticipatory bail under 438 of criminal procedure on the ground that he is innocent and has been falsely involved, but if a person alleged to have committed an offence under the Atrocities Act cannot pray for anticipatory bail & he would get arrested. This is the reason for the authorities to guard against any misuse of the provisions of the Atrocities Act.

In Dr. Subhash Kashinath Mhajan v. The State of Maharashtra and Anr (Criminal appeal no.416 of 2018) Exercise of jurisdiction under section 438. Criminal Procedure Code is an extremely important judicial function of a judge and must be entrusted to judicial officers with some experience and a good track record. Both the individual and society have a vital interest in orders passed by the courts in the anticipatory bail application.

BAIL ON DEFAULT

Section 167 (2) of the criminal procedure code, 1973 empowers a judicial magistrate to authorize custody of an accused person in cases wherein investigation cannot be completed in twenty-four hours. It provides for the maximum period of custody that can be authorized. It further contains a mandate that if the investigation is not completed within the stipulated maximum period, the accused is to be released on bail whatever may be the nature of the accusation against him.

In-State of Uttar Pradesh v. Laxmi Brahman (AIR 1983 SC 439) section 167(2) deals with powers of the magistrate to detain the accused in custody and release him on bail on expiry of the statutory period. It is quite clear that power is conferred on the magistrate to receive the conferred on the magistrate to release the accused on bail under the provision.

Recently, the Supreme Court in Rakesh Kumar Deol v. State of Assam (Crl no.2009 of 2017 dt. 16.08.2017) held that an accused is entitled to statutory bail (default bail) under section 167 (2) (a) (2) of code of criminal procedure if the police failed to file the charge sheet within 60 days of his arrest for the offence punishable with imprisonment up to 10 years.

INTERIM BAIL

If the court rejects the accused's plea for interim bail or his application for anticipatory bail the police are free to arrest him without a warrant. Interim bail may be granted when the court is satisfied that the object of the accusation against the accused is to injure his reputation and humiliate him. The court which grants bail can also withdraw the concession of bail, either suo moto i.e. on its own or the application from the police/complainant/any other aggrieved person. However, the courts exercise their power of cancellation of bail with care and circumspection.

BAIL AFTER CONVICTION

The appellate court can have the power to grant bail to the convicted person only after the appeal is filed. Therefore under certain circumstances, the trial court which convicted the accused is required to release him on bail for such period as will afford him sufficient time to present the appeal and to obtain a bail order from the appellate court. The circumstances in which the convicted person who intends to file an appeal against his conviction is to be released on bail by the trial court are:

I. Where such person, being on bail, is sentenced to imprisonment for a term not exceeding 3 years; or

II. Where the offence of which such person has been convicted is a bailable one, and he is on bail (section 389 (3))

CANCELLATION OF BAIL

If an accused person who has been released on bail attempts to obstruct the smooth progress of a fair trial either by suborning or by intimidating prosecution witnesses or tries to jump bail and to abscond or to run away to a foreign country, it would be just and reasonable that his bail is cancelled and he is arrested and committed to custody.

As observed earlier, in all arrest cases other than those in respect of non-bailable offences, bail can be claimed as a matter or right. But where a person released on bail in such a case fails to comply with the conditions of the bail bonds as regards 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. Apart from such a contingency regarding the non-appearance of the accused person, the court release the accused on bail in such a case cannot itself cancel the bail, even though the accused is manifestly interfering with the course of injustice by tampering with witnesses. In such a situation, the prosecution is required to move the Sessions Court or the High Court for the cancellation of bail under section 439 (2).

CONCLUSION

The release on bail is crucial to the accused as the consequences of pre-trial detention are grave. If release on bail is detained to the accused, it would mean that though he is presumed to be innocent till the guilt is proved beyond a reasonable doubt, he would be subjected to the psychological and physical deprivations of jail life. The jailed accused loses his job and is prevented from defending himself. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. Therefore, the law of bails attempts to

devise such a system and to operate it in such a manner as to enable it to release on bail maximum number of accused persons without seriously endangering the objectives of arrest and trial

CONCEPT OF FIR

Introduction

FIR is the first information report (hereinafter as FIR). It is the first step in the furtherance of an investigation. It is a report of the information given to the police officers that a crime has been committed. The purpose of filing an FIR is to set criminal law into motion and not to mention all the small details therein. FIR acts as a tool on which police authorities base and start their investigation.

Definition of FIR

The Code of Criminal Procedure Code, 1973(hereinafter referred to as CrPC) does not define the term FOR but it explains it by the virtue of section 154(1) that-
"Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf"

This proviso mentions the commission of a cognizable offence. A cognizable offence is an offence under which police personnel do not require a warrant to arrest a person and does not require the permission of the court to start an investigation. Cognizable offences are more serious and heinous in nature, like, murder, rape, dowry death, etc. "Cognizable offence" is defined in section 2(c) of CrPC.

Basis	Cognizable offence	Non-Cognizable offence
Mention	It is mentioned under section	It is mentioned under section

	2(c) of CrPC	2(l) of CrPC
Need of warrant to arrest a person	No need for a warrant	Can not arrest without a warrant
Bailable offence	It is a non-bailable offence	It is a bailable offence
Mandatory permission to start an investigation	No permission to start an investigation	Requires permission to start an investigation
Degree of the crime	It is a heinous crime like murder, rape, dowry death, etc.	It is not that heinous like forgery, defamation, cheating, etc.
Whom can victim approach	The victim can go to the police or to the magistrate to file a complaint	The victim can not go to the police but only to the magistrate
Bound to register	The police officer is bound to register the FIR	A police officer cannot file an FIR without the prior permission of the magistrate

How to register non-cognizable offences

When the officer in charge is approached by the informant for non-cognizable offences. He will record the information in his book. The permission of the magistrate to investigate the matter is mandatory to start the investigation.
The investigating powers of the police are the same in both cognizable and non-cognizable offences. Therefore, If a person wants to file a complaint against cognizable offences he will have to go to the magistrate. If the magistrate is satisfied he will direct the police to investigate the case.

Who can file an fir

Anybody can register an FIR. There is no bar provided by the CrPC as to who can not register an FIR. If a person knows the commission of a cognizable offence, he can lodge an FIR. If a

police officer has information of commission of a cognizable crime, he can himself file an FIR. A victim is also competent to lodge an FIR.

It is held by the judicial interpretations that first-hand knowledge of the commission of the crime is not necessary. It could be hearsay, but the informant should mention the name of his source. Information provided by the informant can be given either orally or in writing.

In Hallu & Ors. vs. the State of M.P, it was held that "Section 154 does not require that the Report must be given by a person who has personal knowledge of the incident reported. The section speaks of information relating to the commission of a cognizable offence given to an officer in charge of a police station."

Providing a copy of FIR

It is made mandatory by section 154(2) that a copy of the FIR should be provided to the informant. This copy should be given free of cost. However, it is also important to note that the accused is also entitled to get a free copy of the FIR. Section 207 provides that where the proceedings have been instituted on a police report, the magistrate should furnish a copy of the FIR free of cost to the defendant. Section 173(5) provides that the documents to be given by the magistrate can also be given by the police officers up to their convenience.
In both these circumstances, a copy of the FIR is provided after the charge sheet.

However, the accused will be entitled to get the FIR before the charge sheet by paying a certain amount of fee as it has been held by various judgments that First Information Report fits the definition of Public document under section 74 of Indian Evidence Act, 1872. Therefore, the accused has a right to access the FIR after paying the requisite fee to the public officer.

Difference between FIR and Chargesheet

- FIR is a document written by police officers upon receiving the information that a cognizable offence has been committed whereas a Chargesheet is made by the law enforcement agency as a formal document of accusation.
- FIR is the first step of investigation whereas Chargesheet comes at the end of the investigation.
- FIR must be registered promptly whereas Chargesheet is filed within a specific period of time.

The recent case of Lalita Kumari vs. Government of Uttar Pradesh & Ors. deserves a mention here as the question was raised whether FIR should be filed without any inquiry if the complaint discloses a cognizable offence.

In the present case, the petitioner filed a writ of habeas corpus for the protection of her daughter. He tried to file a complaint of the missing person of her minor daughter (Lalita Kumari) as she did not return for half an hour and the petitioner failed to locate her. The police officer did not file the complaint. Later, The superintendent of police took the matter and registered the FIR. But, the police were not trying to locate her daughter.

It was observed that the FIR is a pertinent and irreplaceable document in the criminal law procedure of our country and from the view of the informant, it is to set the criminal law in motion, to track the guilty person and to initiate the investigation.

The legislative intent is to mandatorily register the FIR. It relied on decisions by this Court in Ramesh Kumari v. State (NCT of Delhi), State of Haryana v. Bhajan Lal and Parkash Singh Badal v. the State of Punjab. In Lallan Chaudhary v. the State of Bihar, the SC held that Section 154 clearly mandates that an officer in charge of a police station has no other option but to register the case on the basis of information if it is disclosing a cognizable offence. The credibility of the information can not be a condition precedent to file an FIR. Moreover, the word "shall" used in section 154 should be given emphasis as it shows the compulsory nature of the section.

Where can it be filed

It should be filed in the nearest police station which has jurisdiction over the place of crime that has been committed.

Refusal to lodge an FIR by the police

The rejection to file an FIR can be classified in two ways i.e. legal and illegal. Legal reasons to not file an FIR will include when the court does not have jurisdiction, when the offence is not cognizable or when they are not in their legal capacity to file the FIR.

Even if a police officer does not have jurisdiction he can not just refuse to record the information as the same will be considered as dereliction of duty. So, in order to avoid that the police officer will have to record the information and send it to the police station having the jurisdiction.

Also, if the crime which information is giving information about is a non-cognizable offence then

a police officer must inform the informant to file his complaint to the magistrate.

Remedies available-

- Section 156(3) provides that the informant can send the substance of such information directly;y to the Superintendent of Police, and if the Superintendent will be satisfied then he may investigate the matter either by himself or through his subordinate.
- If we read section 156(3) in light of section 190, the aggrieved person can file the complaint to the Judicial Magistrate/ Metropolitan Magistrate.
- Article 226 of the Indian Constitution gives powers to the High Courts to issue writs of Mandamus, Habeas Corpus, Certiorari, Quo Warranto and Prohibition.
- A writ petition of mandamus can be filed in the High Court against the police officers, inter alia, to Register the FIR and directing him to show cause (a) why he has not registered the FIR; (b) why disciplinary proceedings for "Misconduct" should not be initiated against him for dereliction of duty; (c) why he should not be suspended from Police service for interfering in the administration of justice and shielding the accused person.
- Also, a police officer could be booked for section 166A of the Indian Penal Code, 1860 which deals with public servant disobeying the law with intent to cause injury to any person. This section provides simple imprisonment up to one year or fine or both.

Can judicial remedy be taken before statutory remedy

It is a settled principle of law that the presence of statutory remedy does not bar the courts to provide a judicial remedy. However, Courts have advised on various occasions to exhaust their statutory remedies before judicial remedy.

Presence of Lady officer when required

This question has been answered by the amendment act of 2013 through which A lady police officer or any woman must be present when the information is provided by a female victim against whom an offence is alleged to have been committed or attempted under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code (45 of 1860)

Diff b/w fir and police complaint

Irrespective of the fact that FIR and police complaints are both complaints, they inherently differ from each other. Some of the differences are mentioned below-

- FIR is not defined in CrPC whereas Complaint is defined in section 2(d) of CrPC.
- FIR deals with only cognizable offences but police complaint deals with both cognizable as well as non-cognizable offences.

- FIR is lodged by the police officer in charge whereas a complaint is to be given to a magistrate.
- FIR can be lodged by any person but there are certain exceptions in the case of persons who can file a police complaint.
- In case of police complaint, the investigation starts just from filing the FIR but in case of police complaint, the investigation is not initiated without the permission of the authority.
- FIR has a prescribed format for law whereas complaint does not have a prescribed format.

Mode of filing FIR

Without the physical presence of the informant, it leaves the informant a little unreliable, also a careful reading of section 154 shows that the information provided in FIR should be read over to the informant and the same shall be signed by the informant.
But this rule is not a hard and fast rule and can be moulded according to the circumstances. The court observed in Sukharam vs. the State of Maharashtra, it was held that it is not important for the informer to be present personally before the police for registration of an FIR. Similarly, Rajasthan High Court opined in the matter of Total Singh vs. the State of Rajasthan, 1989 Cri LJ 1350 (Raj HC) that:
"if the telephonic message has been given to the officer in charge of a police station, the person giving the message is an ascertained one or is capable of being ascertained the information has been reduced to writing as required under S.154 of Cr.Pc and it is a faithful record of such information and the information discloses commission of a cognizable offence and is not cryptic one or incomplete in essential details, it would constitute FIR".
Therefore, it can be recorded over telephone or telegram if the information is concise, valid and not a rumour prima facie.
Nowadays, it is seen that some police stations are registering FIRs even on the mode of email and WhatsApp. So, there is no restriction on the mode of communication.

Can there be a second fir

The Supreme Court's view is clear that there can not be a second FIR. An FIR consists of the first statements and story of the informant but this will not hold good if there will be a second FIR because there now, there will be no first statements.
What is e- FIR

E-FIR stands for electronic First Information Report. This is an FIR that is filed online. The process for filing an e-FIR is not mentioned in CrPC. States have made different online portals to file it. This is an easy way to file an FIR for women who have been a victim of grave offences or who are afraid to give their statement to police officials in person.

What is Zero FIR

Before filing an FIR, one has to be sure about the jurisdiction of the Police to lodge that FIR. But zero FIR can be filed in any police station regarding whether the Police station is close to the place of a crime or does it have jurisdiction or not. It differs from the ordinary FIR as where an FIR contains a proper serial number, zero FIR does not contain any serial number. Also, there has to be a basic investigation before the FIR is transferred to the other police station which will have jurisdiction over it.

Can an FIR be quashed

To meet the ends of justice and to prevent misuse of power, rights, and freedoms provided by law, the Indian legal system has empowered the High Courts with the power to quash criminal proceedings in a case if it is satisfied that such quashing is required.
By virtue of section 482 of CrPC courts are given inherent powers "to make such orders as may be necessary to give effect to any order under this
Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."
In the case of Devendra & Ors. vs. State of U.P. & Anr., it was held that:
"It is now well-settled that High Courts ordinarily would exercise their jurisdiction under Sec. 482 of the Cr.P.C. if the allegations made in the F.I.R., even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the F.I.R. or the evidence collected during the investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment in a criminal court for nothing".
In the following instances, various courts have held that quashing of FIR will be proper if -

- Where the allegations alleged within the FIR or the statements of witnesses recorded in support of the crime alleged by them does not make a case against the accused person or the statements does not fulfil the ingredients of the offence.
- Where the allegations made under the complaint are so absurd and inconceivable that no prudent person will ever reach to the conclusion that there is sufficient ground for continuing against the accused
- Where the FIR was filed because of the discretion of magistrate is arbitrary being not based on evidence or wholly irrelevant and inadmissible material
- Where the complaint suffers from elementary legal defects, like need of sanction or absence of a complaint by a lawfully competent authority
- Where the allegations made in the FIR only relate to a non-cognizable offence, then no investigation could be done without the permission of the magistrate.
- Where there is an express legal bar imposed in any of the provisions of that Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and

continuance of the proceedings and/or where there is a specific provision in that Code or that concerned Act, providing efficacious redress for the grievance of the aggrieved party.

- Where a criminal proceeding is manifestly instituted to harass the person or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge.

The Court, in Madhavrao Jiwaji Rao Scindia case, has observed that where matters are also of civil nature like matrimonial, family disputes, and more, the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

Condonation of Reasonable delay in Lodging FIR

Delay, by and large, brings the prosecution case out of the court and the court needs to investigate the matter earnestly for the reason so equity might be done to the victim. All sensible postponement in lodging the FIR should be excused in light of a legitimate concern for Justice, and the accused ought not to be permitted to take safeguards of details and delay in the Justice conveyance framework.

Confessional statement in FIR

In the case of State v. Shafique (1991) 43 DLR(AD) 203, it was observed that-

"Confession can form the sole basis of conviction against its maker on the conditions that it is true and voluntary; it fits in the circumstances of the particular case which may at least create an impression that it is true and it either admits in terms of the offence or at any rate substantially all the facts which constitute the offence. There is no compulsion that a true and voluntary confession needs to be materially corroborated for using it against its maker."

Hyperlink:

1.https://www.javatpoint.com/cognizable-offence-vs-non-cognizable-offence#:~:text=A%20cognizable%20offence%20is%20an,the%20permission%20of%20the%20court

2.https://www.legalpedia.co.in/legalnotes/difference-between-fir-complaint.html

3.https://blog.ipleaders.in/fir-police-complaint/#_ftn1

4.http://lawtimesjournal.in/first-information-report-fir-under-crpc/

5.https://www.lexology.com/library/detail.aspx?g=a750ca41-1b94-445e-aa91-96c009bed6e5#:~:text=FIR%20means%20'First%20Information%20Report.text=Section%20154%5B1%5D%20of%20the,an%20accused%20without%20a%20warrant

Contract of Guarantee (Section 126- 147 of Indian Contracts Act,1872)

Contract of guarantee is governed under Indian Contracts Act, 1872 and includes three parties in a contract- principal debtor, creditor and surety. The principal debtor is the one who borrows the money from the creditor, keeping surety as the guarantor i.e., in case of default of payment by principal debtor surety has to clear off the debt.

In the case of Ramchandra B. Loyalka v. Shapurji N. Bhownagree, the plaintiff (P) was a sub-broker employed by the defendant broker (D) on 50% commission. P introduced 6 constituents and became answerable to the broker for them. The constituents defaulted which resulted in the loss of Rs.16000. P asked for an amount due under his brokerage from D and agreed to make good Rs.16000. D thereafter sued the constituents and compromised his claim against some of them by receiving amounts much smaller than what was due from them and claimed the unrecovered amount. P sued to take accounts of the dealings between himself and D, and as to the compromises arrived at by D with some of the constituents, alleging D had settled the claims as against those constituents for lesser amounts without P's (guarantor) consent. Therefore, P was discharged from his obligation to pay the debts of those constituents. It was held that in order to constitute a contract of guarantee there must be a third contract, by which the principal debtor expressly or impliedly requests the surety to act as surety. S.145 provides that in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety. This is not possible unless the principal debtor is privy to the contract of surety-ship. P was anyway liable to pay under the second agreement by which he expressly agreed to be liable for the amounts mentioned in the document and hence D was entitled to the unrecovered amount.

Essentials of a contract of the guarantee are:

- Concurrence of Parties
- Liability of Surety (Section 128 of Indian Contracts Act, 1872)
- Existence of a debt
- Consideration for guarantee (Section 127 of Indian Contracts Act, 1872)
- Essentials of a valid contract
- No misrepresentation or concealment of facts
- Writing not necessary

Section 126 of Indian Contracts Act, 1872 defines a contract of guarantee as "A contract to perform the promise, or discharge the liability of a third person in case of his defaults". It involves three parties namely: Surety, who gives the guarantee; Principal debtor, in respect of whose default guarantee is given; and Creditor, to whom the guarantee is given.

There must be consideration between the creditor and the surety so as to make the contract enforceable. The consideration must also be lawful. In a contract of guarantee, the consideration received by the principal debtor is taken to be sufficient consideration for the surety. Section 127 of Indian Contract Act, 1872 states that anything done or anything promised

for the benefit of the principal debtor may be sufficient consideration to the surety for giving a guarantee. Hence any benefit received by the principal debtor is an adequate consideration for a guarantee to bind the surety.

For example, B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is sufficient consideration for C's promise.

Section 128 of Indian Contracts Act 1872 states the surety's liability and defines it coextensive to that of the debtor unless it is stated otherwise in the contract. In a contract of guarantee, the liability of the surety is secondary i.e., the creditor must first proceed against the debtor and if the latter does not perform his promise, then only he can proceed against the surety. The liability of the surety is joint and connected with the principal debtor. It is the choice of the creditor to recover the amount either from the principal debtor after his default or from the surety. He may file a suit against both the principal debtor and the surety or may file a suit against the surety only or the principal debtor only.

Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd., (2003) 4 SCC 305. The clauses of the guarantees executed by the appellant in favour of PICUP clearly show that the liability of the guarantors was to remain unaffected by the failure of PICUP to enforce its mortgage and hypothecation against the assets of the company. There is nothing in the contracts that can in any way be construed as contrary to the joint and several liabilities created under section 128.

In Bank of Bihar v Damodar Prasad it was held that the creditor does not have to exhaust all the remedies against the principal debtor before suing the surety. The surety has to pay the debt if the principal debtor does not pay. The purpose of the contract of guarantee is defeated if the creditor is asked to postpone his remedies against the surety. The liability of the surety is immediate.

Section 129 of the Act states about 'Continuing guarantee', A guarantee which extends to a series of transactions, is called a 'continuing guarantee'. For example: A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

Where two person contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person

under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. This is mentioned in Section 132 of the Indian Contract Act,1872.

A surety is said to be discharged from liability when his liability comes to an end. Indian Contract Act 1872 specifies the following conditions in which a surety is discharged of his liability –

- Section 130 - By notice of revocation
- Section 131 - By the death of surety
- Section 133 - By variance in terms.
- Section 134 - By discharge of the principal debtor
- Section 135 - By composition, an extension of time, or promise not to sue

Section 130 of the Indian Contract Act says "A continuing guarantee can be revoked at any time by the surety, as to future transactions, by notice to the creditor." A guarantees to B, to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C; C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee. The essentials are: by providing notice to the creditor and for future transactions.

Section 131 of ICA, 1872 defines the revocation of guarantee on the death of surety. The liability for any transactions which took place before the death of surety will be upon the heirs.

Section 133 of Indian Contract Act 1872 states that any variance made in terms of the contract without surety's consent between principal debtor and creditor discharges surety as to transactions subsequent to variance. In the case of Anirudhan v The Thomco's Bank Ltd., it was held that surety would not be discharged if the variance in terms of the contract was for the benefit of surety.

In the case of Bonar v. Macdonald, the defendants entered into a contract of guarantee for the conduct of the manager of a bank. The bank raised his salary and he was made liable to one-fourth of the loss, without the consent of the surety. The manager allowed a customer to overdraw his amount and this led to the loss. Therefore, it can be inferred that any material changes in the contract can discharge the duty of the surety, as is evident from the above case law. The manager was made liable for one-fourth of the loss of the firm which was to be paid by the surety, in case of a default by the manager.

If the principal debtor is released because of any contract between the creditor and principal debtor or by any act or omission of the creditor, then the surety is released. It is mentioned in section 134 of the Indian Contracts Act, 1872 and is connected with section 128 of ICA which says that the liability of the surety is co-extensive with that of the principal debtor. The reason

for the discharge of surety is with the principal debtor that this release of the principal debtor extinguishes the principal obligation, to begin with.

Section 135 of Indian Contracts Act, 1872 states that a contract between the creditor and the principal debtor, by which the creditor makes a composition with (if the creditor makes any sort of compromise with the principal debtor with respect to the debt them surety will be discharged),
or promises to give time to (where the creditor extends the time for the payment of the debt without the consent of surety, then the surety will be discharged), or not to sue (If the creditor agrees with the principal debtor to not to ever sue against him the surety will be discharged), the principal debtor, discharges the surety unless the surety assents to such contract."
When the surety is not discharged:

- Section 136 of Indian Contract Act 1872 says that when a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, then the surety is not discharged. Suppose, A is the creditor, B is the principal debtor, C is the surety of the contract and D is the third party with whom A enters into a separate contract. A enters into a new and separate contract with D, who acts as the third party to give more time to B to repay his debt or loan, without involving either B or C in this new contract. Now in this situation, C will not be relieved or discharged from his duties and obligations as the original surety as the new contract does not involve the surety or the principal debtor in any capacity.

- Section 137 of Indian Contract Act 1872, mere Forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not discharge the surety. Mere forbearance means on its own. When the creditor does not sue the principal debtor on its own then the surety is not discharged.

- Section 138 of the act states that 'When one co-surety is released does not discharge another co-surety. A release by the creditor of one of them does not discharge the others nor does it free the surety so released from his responsibility to the other sureties.'

- Section 139 of ICA,1872 has the object to ensure that no arrangement different from that contained in the surety's contract is forced upon him. Duty of care is owed by the creditor. The creditor either does something which is inconsistent with the rights of the surety or omits to do his duty towards the surety. And because of this the eventual remedy of the surety that he had against the principal debtor is impaired(weakened) , the surety is discharged.

Certain rights are provided to the surety and are as follows:

- Rights of surety on payment or performance:

According to Section 140 of the Indian Contract Act 1872, where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety

upon payment or performance of all that he is liable for is invested with all the rights which the creditor had against the principal debtor.

- Surety's right to benefit of creditor's securities (Section 141):

According to Section 141 of the said Act, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety, the surety is discharged to the extent of the value of the security.

- Right of Indemnity:

According to Section 145 of the Indian Contract Act,1872, in every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

- Right against Co-Sureties (Section 146):

In a contract of guarantee, if there is more than one surety, they are called co-sureties. Co-sureties are equally liable. Creditors can sue one or all. If only one surety is sued and he has to pay the debt then he may demand co-sureties to contribute.

According to Section 146 of the said Act, Co-sureties liable to contribute equally. where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contract, and whether with or without the knowledge of each other the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

- Right to Request:

In a contract of guarantee, surety has a right to request the creditor to choose the principal debtor to sue before he is called upon to pay the debt.

Guarantee which is invalid:

- Section 142 of Indian Contracts Act states that a guarantee which is obtained by misrepresentation is invalid. Any guarantee which has been obtained through misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

- Section 143 of the said act states that any guarantee which has been obtained by a creditor by keeping silent as to a material circumstance is invalid. Suppose A guarantees to C

payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

- Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. It is mentioned in section 144 of Indian Contracts Act, 1872.

Section 147 of Indian Contract Act, 1872 states that Co-sureties are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit. Suppose A, B and C are sureties for D enter into 3 several bonds. A in the penalty of Rs.10,000, B in that of Rs. 20,000 and C in Rs 40,000. D makes a default to the extent of Rs. 40,000. So, the liability of A will be 10,000, B's liability will be 15,000 and C's liability will be 15,000 as well.

Sources:

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DEFAMATION

Defamation has been defined under Section 499 of the Indian Penal Code (IPC) as whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person is said to defame that person. Defamation falls into two categories:
Libel – A defamatory statement published in a written form.
Slander – A defamatory statement made in a verbal form (spoken).
However, a mere defamatory statement does not amount to defamation. The publication of such statements is a prerequisite to establishing defamation.

MEANING
The word Defamation means Abuse, Aspiration, Denigration, Depreciation, Publication etc. Ordinarily, the offence of defamation is stated to be made against a person or persons harming his/their reputation. The ingredients of defamation are-
making or Publishing any imputation concerning any person,
such imputation must have been made with the intention to harm with the knowledge or having reason to believe that it will harm the reputation of the person concerned.
Therefore, the intention to cause harm is the most essential sine qua non of an offence of defamation under section 499 of Indian Penal Code.

Section-499 talks about Defamation
Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

This section requires three essentials:
Making or publishing any imputation concerning any person.

Such imputation must have been made by:
Words, either spoken or intended to be read; or
Signs; or
Visible representations.
Such imputation was made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning to whom it is made.
Makes or publishes any imputation concerning any person:

Every such person who is engaged in composing, dictating, writing or in any way contributing to the making of the libel is the maker of the libel. Where the matter is dictated by one person and written down by another person, both shall be guilty of this offence. Similarly, if one person speaks, another writes and the third approves of it, all the three shall be guilty. The reason is that all who concur and assent to the doing of an unlawful act will be guilty of this offence.
Publication of defamatory matter:

For the offence of defamation publication of defamatory matter is essential. In other words, the defamatory matter must be communicated to some person other than the person to whom it concerns e.g. dictating a letter to a clerk is publication. Where the defamatory matter is communicated to the person defamed, such communication will not amount to publication.
Thus in Taki Hussain's case, a person dispatched a public officer a notice by post which was closed in a cover. The notice contained imputation on the character of the recipient. Allahabad HC was of the view that since there was no publication of the matter, therefore, this was not constituted.

Defamatory matter, if written on a postcard, or printed on a paper will constitute publication when it is distributed or broadcasted. A defamatory petition presented to a superior public officer, if sent to a subordinate public officer in due course for inquiry would constitute publication within the meaning of this section.
In N.L. Shah v. Patel Maganbhai Revabhai, an interesting situation arose for a decision. There was agitation of lawyers in Gujarat in connection with the appointment and transfer of Chief Justice of H.C. On account of the agitation, the lawyers ceased to participate in court proceedings and resorted to satyagraha. An editorial in a newspaper criticized whether it behoves the lawyers as a class to resort to strike. The lawyers were inter alia described as kajia dalal i.e. dispute brokers, in the editorial.

In a suit for defamation against the editor, the Gujarat High Court held that the editorial did not refer to the complainant personally or to any other individual but referred to the lawyers as a class and at the most the lawyers of Gujarat. The alleged defamation could not be referred to a determinate or identifiable section or class of lawyers as distinguished from the rest of the members of the lawyer's fraternity.

The words kajia Dalal was held to be used in relation to the lawyers as a class and is not referable to a determinate section of lawyers, namely, the lawyers who were participating in the agitation. The thrust of the editorial was that lawyers should not have gone on strike. If the imputation is defamatory per se, necessary mens rea will be presumed. The maker of the statement must know that it will harm the reputation of one concerning whom it is made.

The court distinguished between 'character' and 'reputation'. The term 'reputation' means what is generally said or believed about the persons or things. 'character' means fortitude or moral constitution or strength of a person. It has no relevance with the belief or opinion of others in respect of a person.

Publication of defamatory matter in the newspaper:

A Newspaper stands, in matters of defamation, in the same position, as members of the public in general. The publisher of the newspaper shall be responsible for published defamatory matter whether he was aware of that or not. But an editor's position is somewhat different. He can escape his liability by proving that the defamatory matter was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.

In Ashok Kumar jain v. State of Maharashtra, it was held that where a defamatory statement against a person is published in a newspaper, the editor, printer, and publisher who has made a declaration and is shown in the paper as such is liable.

Where it is alleged that the Chairman of Board of Directors of Company and its General Manager took part in selling out newspapers, it could have been prevented but they did not, they would be guilty of the offence and cannot escape liability under section 502 unless they can make out a case of the exception under section 499.

In S. Khushboo v. Kanniammal, it has complained that the statement of the accused given in the news magazine amounts to his defamation. It was held that the statement of the accused was given to news magazine calling for societal acceptance of pre-marital sex. He did not attack the reputation of anyone in particular. It does not amount to defamation under Section 499 I.P. Code. Moreover, the complainant was not an aggrieved person. Hence the complaint was held liable to be quashed.

Defamatory article:

In M.P. Narayana Pillai v. M.P. Chako, it was held that where an article is published in many parts and some containing defamatory materials, others not, in such a case article as a whole must be read. The impact and effect of the computations have to be considered in the

background of the entire facts and circumstances stated therein. If the disreputable part can be removed by other parts and the conclusions, then no prosecution for defamation can be launched by picking and choosing the disreputable part alone.
Explanation 1- This explanation will come into operation when:

The imputation would have hurt the deceased's reputation, and
It would also have hurt the feeling of his family and relatives.
A suit was brought by the heir and nearest relation of deceased person for defamatory words spoken of such deceased person but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable.
Explanation 2- An action for libel will lie at the suit of an incorporated trading company in respect of defamation calculated to injure its reputation in the way of its business.
Explanation 3- A statement innocent in form or the form of an alternative will amount to defamation if it is ironical.
Explanation 4- This explanation makes it clear that the term referred to in the Explanation has reference to imputation on a man's character made to lower him in the estimation of others and not of himself. Thus describing a woman that she has paramours wherever she goes, is per se defamatory.
Exception 1.- The requirement of this exception are:

That the impugned statement must be shown to be true; and
That its publication must be shown to be for the public good.
This exception and exception 4 requires that the imputation should be true. The remaining exceptions do not require it to be so; they require that it should be made in good faith. It is also necessary that truth when set up as a defence must extend to the entire defamation and not only to a part of it.

In Jawaharlal Darda v. Manoharrao Ganpatrao, the respondent Manoharrao Ganpatrao Kapuskar filed a complaint in the Court of C.J.M alleging that by publishing news items in its newspaper Dainik Lokmat on 4-2-1984. Mr. J.L Darda the Chief Editor of the daily along with others have committed offences punishable under sections 499, 500, 501 and 502, read with section 34, Indian Penal Code.

It was held that as the news items were published for public good and not to malign the reputation of the complainant, therefore, no offence against the accused was made out.
Exception 2 – Any person occupying a public position renders himself open to criticism for his actions while discharging his functions from the position he occupies. It does not merely imply the absence of an ill will. So that the comment may be fair:

It must be based on facts truly stated;

It must not impute corrupt or dishonourable motives to the person whose conduct or work is criticized except insofar as such imputations are warranted by the fact.
It must be an honest expression of the writer's real opinion made in good faith:
It must be for the public good.
It was held In re Arundhati Roy, that the broad and general proposition that a reply submitted to a contempt of court in the light of second exception to section 499 of the IPC and its contrary to the law of Contempt as adjudicated by the courts in the country from time to time and the limits prescribed by the Act and the judicial pronouncements which are well within the knowledge of all reasonable citizens.

Exception 3- The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith.
Exception 4- The report of the proceedings of a court of justice should be without malice. It should be a fair and accurate report of what took place before the tribunal. It is not confined to judgments and orders but also covers pleadings whether relevant or not.
Exception 5- A journalist is supposed to discharge his duties fairly and if his comments are fair no one will be permitted to complain.
Exception 6- literary criticism of public performance submitted to its judgment. It covers books published on literature, art, painting, speeches etc. The criticism must be fair and made in good faith.
Exception 7- Statements made by a person in police investigation merely expressing suspicion as to the complicity of a certain person in crime will not amount to defamation.

Exception 8:
That the person to whom the complaint was made had lawful authority over the officer complained against;
that the accusation was made in good faith.

Punishment for Defamation:
Whoever defames another shall be punished with simple imprisonment for a term which may extend to 2 yrs, or with fine, or with both.

Critical Analysis
The pertinent question which arose before the court was whether sections 499 and 500 of the IPC go beyond the scope of the reasonable restrictions imposed under Article 19(2) of the

Constitution of India?
While answering in negative, the Supreme Court gave detailed reasoning of the explanations and exceptions appended to section 499. It was submitted by the petitioners on two earlier

occasions, R. Rajagopal alias R.R. Gopal v. State of Tamil Nadu it had been observed as follows:
In all this discussion, we may clarify, we have not gone into the impact of Article 19(1) (a) read with clause (2) thereof on Sections 499 and 500 of the Indian Penal Code. That may have to wait a proper case.

In N. Ravi v. Union of India wherein it had been observed as follows:
Strictly speaking on withdrawal of the complaints, the prayer about the validity of Section 499 has also become academic, but having regard to the importance of the question, we are of the view, in agreement with the learned counsel for the petitioners, that the validity aspect deserves to be examined.
As defamatory speech is one such restriction prescribed under Article 19(2) (1) of the Constitution.

Therefore, in order to curb defamatory speech, the court observed that the restriction imposed should be 'reasonable'. In Chintaman Rao v. The State of Madhya Pradesh the Supreme Court laid down the meaning of the term reasonable restrictions:
The phrase reasonable restriction connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public.

The word reasonable implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation that arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1) (g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality.

Also, whether the law that imposes the restriction is reasonable should be judged in accordance with the current social, economic and political circumstances of the nation. One of the rules of statutory interpretation is to interpret the words of a statute in light of the current facts and situations and not based on the facts/situations of the past.
Conclusion
The law of defamation seeks to protect individual reputation. Its central problem is how to reconcile this purpose with the competing demands of free speech. Since both these interests are highly valued in our society, the former is perhaps the most dearly prized attribute of civilized human beings while the latter is the very foundation of a democratic society. The apex court gave an interim time period of eight weeks to the petitioner within which they can challenge.
Meanwhile, other cases have also arisen, especially in the political fora such as the defamation case filed against Gogoi or the alleged arrest of Kiku Sharda. The decision brings finality to the case but raises certain questions in its wake. For instance, a progressive economy like India, is

resorting to penal provisions justified especially in an era, where reformative justice is replacing retributive justice. Besides the growing intolerance in the nation is another issue which might get a reason due to this judgement.

In such situations, there becomes a need to shed one's inhibition and discuss viable solutions. One such proposition in this area would be the right to reply. Of course, this has been debated earlier.

However, owing to the chilling effect which might be incumbent on the individual/organization; the right to reply has just added to the scepticism. However, the right to reply appears in a civilised manner to address matters rather than jumping to conclusions, convicting and seeking damages. Some US states and other countries have imbibed this concept. Certainly, we too can utilize this concept. The discussion brings us to the point that in cases of constitutional interpretation, the stakes become higher.

It is easy to criticize rather than get into the depths of matter. Of course, healthy criticism fosters creativity and growth. Nowadays, it is easy to have a critical approach rather than get into the skin of the matter. Also, it cannot be ignored that the judiciary tries its best to give a harmonious construction in such matters. As citizens, we too, have a responsibility– it is time to revisit ourselves.

Indian Contract Act 1872

Free consent (section 13 to 22)

Introduction;

In Contract law in India,

- The meaning of consent is given in Sec. 13, which states that it is when two or more agree upon the same thing and in the same sense. So the two people must agree to the same thing in the same sense as well. Just giving consent is not enough for a contract to be enforceable. The consent given must be free and valuntry. Let us now understand from an example

A offers B that he wants to sell his Maruti car to him for Rs 50000. B replies that I can pay only RS 10000 for your car. Since there is no consent between the parties, no contract will be formed.

- The Definition of free consent is provided under section 14, "Free consent is two or more person are said to consent who they agree upon the same thing in the same sense", It means free consent is the consent given by the will of the parties and not caused by any form of Physical or Mental force or pressure or Mistake consent is said to be free. Let us see an example;

Assume A and B are two parties and A had some financial crisis so he wants to make a contract. After knowing all the information and after analyzing this situation B wants to accept the contract made by A. Here the contractor agreements are made with the mutual consent of both Parties. This is nothing but the free consent of the contract.

Violating factors of free consent we have various factors that affect the free consent, and it relates to both the parties participating in your contract should be aware of these factors and should be cautioned for a free flow of the contract till it is the due date.

Those factors are Given down;

consent is considered to be free consent when the following factors are satisfied;

It should be free for COERCION (section 15)

The contract should not be done under the pressure of UNDER INFLUENCE (sec. 16)

The contract should be done without FRAUD (Section 17)

The contract should not be made through MISREPRESENTATION (sec 18)

The contract should not be made by MISTAKE (sec. 20,21, 22)

If consent is given under any of the above circumstances, the will of the aggrieved party, and in accordance with section 19 of the Indian Contract act, 1872.

COERCION (SECTION 15)

If a person commits or threatens to commit an act forbidden by the Indian Penal Code to obtain the consent of the other person to an agreement, the consent in such case is deemed to have been obtained by coercion. In simple words, coercion means "making a person give his consent by force or threat".

In other words Section 15 of the Indian Contract Act, 1872 defines Coercion is the committing, or threatening to commit, any act forbidden by the Indian Penal code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Example

- A threatens to shoot B if B does not agree to sell his property to B at the stated price, B's Consent, in this case, has been obtained by Coercion.

The act constituting coercion need not necessarily proceed from a party to contract I.e. It may proceed even from a stranger to the contract and likewise, it may be directed against anybody not necessarily the contracting party.

Example

- A threatens to shoot B, a friend of C. If C does not let out his house to him C agrees to do so. The agreement has been brought about by Coercion.

Essential Ingredients of Coercion:

- Committing or threatening to commit any act forbidden by Indian Penal Code or,
- The unlawful detaining or threatening to detain any property to the prejudice of any person whatever.
- With the intention of causing any person to enter into an agreement.

The burden of Proof:

The Burden of proving the use of Coercion lies on the party who wants to set aside the contract on the Plea of Coercion.

Coercion in India is known as duress in English Law.

Effect of Coercion;

Section 19 provides that an agreement consent to which is obtained by coercion is voidable at the option of the Party whose consent is so obtained.

Now we A case history of Coercion:

Shanti Budhiya Vesta Patel and others v/s Nirmala Jai Prakash Tiwari and others

In the present appeals, the appellants have challenged the legality and validity of the order dated 12-10-2007 passed by the High Court of judicature at Bombay whereby the High Court dismissed all the three civil Applications preferred by the appellants herein seeking recall of an earlier order dated 13-06-2006 passed by the High Court which was based on the consent terms duly signed by all the parties.

In order to properly appreciate the precise nature and scope of the controversy arising in the present appeals, it would be appropriate as well as expedient to set out a brief statement of pertinent facts. The original appellant, Budhiya Vesta Patel, was the predecessor-in-interest of the present appellants. Budhiya vesta Patel was appointed as a watchman by one R.K. Tiwari, who was cultivating grass on the suit property from 1954-55, to take care of the suit property and for this, a Kachcha shed on the suit property was provided to him. In due course of time, Budhiya Vesta Patel extended the shed to construct a chawal known as Budhiya Patel Chawl consisting of 38 Rooms, which were let out by him. After the death of the real owner of the suit property. Mr. Anant Mahadeo Tamby, husband of Leela Anant Tamby, respondent no. 7 Herein, the suit property stood recorded in the name of respondent no 7 By means of a consent decree passed in suit No 1230 of 1992 between respondent no 7 and M/s Hitesh Enterprises, respondent no. 8 Herein, the latter became the owner of the suit property.

UNDUE INFLUENCE (section 16)

"Influence that prevents someone from exercising an independent Judgement with respect to any transaction". In simple words, make him enter into an agreement. Or,

Undue Influence is defined under Section 16 of the Indian Contract Act. At the point when one party is in a situation to dominate the desire of others and misuses the power or position, at that point, it is an instance of undue influence, and the contract is voidable. At the point when all the accompanying three conditions are satisfied then just the circumstance is

The essential ingredients under this provision are;

- Relation between the parties:

A person can be influenced by the other when a near relation between the two exists.

- Position to dominate the will:

Relations between the Parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such a position in the following circumstances;

a> Real and apparent authority: Where a person holds a real authority over the other as in the case of master and servant, doctor and patient and etc.

b> Fiduciary relationship: Where the relation of trust and confidence exists between the parties to a contract. Such a type of relationship exists between father and son, Solicitor and client, husband and wife, creditor and debtor, etc.

Fiduciary relations which raise the Presumption of Undue Influence:

Fiduciary relation means Relation to trust and confidence. A person who is trusted by others may easily use his superior position to dominate the will of the other. This category is very large but till now following types of relations are judicially held to be of trust and confidence.

- Solicitor and client
- Doctor and patient
- Spiritual advisor and devotee
- Parents and child

- Trustee and beneficiary
- Woman and her confidential managing agents

c> Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or old age.

Implications (sec 19a)

An agreement induced by Undue Influence, any such contract may be set aside either absolutely or If the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

The burden of Proof:

The burden of proving the absence of the use of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Example:

A, a money-lender, advanced '10000 to B, an agriculturist. By undue influence, A induced B to execute a bond for' 20000 with an interest at 6% per month. The bond is voidable at the option of B. Court may set the bond aside, ordering B to repay 10000 with such interest as it may think appropriate.

Now let's see a case of Undue Influence:

Dila Ram vs Sardha

An old man, extremely ill and weak, under undue influence, was made to contract to pay an exorbitant fee to the doctor for his treatment. The court set aside the contract because it was made under undue influence.

* Fraud (Section 17)

According to section 17, The term 'Fraud' includes all acts committed by a person with an intention to deceive another person

In other words Fraud,

1> A false suggestion as to a fact known to be false or not believed to be true: A false statement made recklessly without inquiring whether it is true or false would amount to fraud.

Example,

If A sells a shoe to B and says that it is made from calf leather while in reality the shoe is made from ordinary leather, A would be committing fraud, and the contract is voidable at the option of B

2> The active concealment of fact: If a person conceals a fact which is material to the contract and it is his duty to disclose it, it will be a case of fraud.

Example;

A sells a motorcycle to B. There is a defect in the motorcycle to B. There is a defect in the motorcycle which is not apparent, from B. Here A has committed fraud and the contract is voidable at B's option.

3> A promise made without any intention of performing it: The initial intention not to perform the promise that is being made is a necessary element to constitute fraud.

Example;
If A takes a loan from B and promises to pay it back by a certain date while in reality, he has no such intention, he would be committing an act of fraud.

4> Any other act was done-done to deceive or a fraudulent act.

5> Any act or omission declared to be fraudulent by Law: According to Company Law, a misrepresentation in a Company's prospectus is an act of fraud.

Elements of Fraud:

- Fraudulent work can be done by a party or his agent.
- The object of the fraudulent act must be to deceive the other party.
- The fraud must be against the party or his agent.
- The other party must have suffered some loss.

Effect of Fraud

- A party whose consent to an agreement was caused by Fraud has two remedies, namely:
- He may rescind the contract, or
- He may insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.

Example,
A fraudulently informs B that As the estate is free from encumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may avoid the contract or may insist on its beginning carried out and the mortgage debt repaid by A.

Implications (Effect of Fraud on Validity of Contract)
Where consent to an agreement is obtained by fraud, then the contract is voidable at the option of the party defrauded (Whose consent was so obtained).

He has the following Rights

- He can rescind the contract within a reasonable time.
- He can sue for damages.
- He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation been made true.

Let see some cases of Fraud:

1> False Statement (Sec 17(1))
Edington vs Fitzmaurice: A company was in great financial difficulties and needed funds to pay some pressing liabilities. The company raised the amount by the issue of debentures. While raising the loan, the directors stated that the amount was needed by the company for its development, purchasing assets and completing buildings. It was held that the directors had committed fraud.

2> Mere silence is no fraud
Shri Krishna vs Kurukshetra University: Shri Krishna, a candidate for the L.L.B. part 1 exam, who was short of attendance, did not mention that fact himself in the admission form for the examination. Neither the head of the law department nor the university authorities made proper

scrutiny to discover the truth. It was held by SC that there was no fraud by the candidate and the University had no power to withdraw the candidate on the account.

MISREPRESENTATION (sec. 18)

Misrepresentation means false representation made innocently with an honest belief as to its truth by a party without any intention to deceive the other party.

Example:

A intends to sell his horse to B and says," My horse is perfectly sound" A genuinely believes the horse to be sound, although he does not know that the horse has fallen sick yesterday. B thereupon buys the horse. There is misrepresentation on the part of A

Essential requirements of Misrepresentation:

- Innocent statement with the intention to act upon
- Representation must be false
- Contracting parties believe that statement is true
- Misrepresentation should be an essential element of a contract
- No intention of parties to deceive each other
- Contracting parties acted upon according to misrepresentation
- Made directly by parties to contract
- Other Party should suffer loss
- Other parties should not discover the fact by ordinary cre

Effects of Misrepresentation;

When a misrepresentation has been made, the aggrieved party has the following alternative courses open to him.

- He may avoid or rescind the contract; or
- He may affirm the contract and insist on the misrepresentation being made good.

CASES OF MISREPRESENTATION

Tax officer, Centre Circle Xi, range Bombay and others

In the above-cited case, the appellant has made a grievous mistake. In coming to the conclusion. In this case, the court does not have to give a final decision as to whether there is a suppression of evidence. The fact is not a thing to be considered at this stage. We are of the view that the Court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to the understatement of profits. This information was obtained by the Revenue in a subsequent year's assessment proceeding. There was prima facie evidence based on which the department could reopen the case further. The sufficiency or the correctness of the fact or material is not a thing to be considered at this stage.

RAJ KUMAR SONI Vs STATE OF U.P.

Here in the case again the suppression of material facts has been held to be the opposition of process of Law and it has been held that the party guilty of not representing the right facts is not to be benefited with any perks as it has to be held that such a party would not have to knock the doors of the court with clean hands.

MISTAKE (Sec 20, 21, 22)

A mistake may be defined as an erroneous belief concerning something.
A mistake may be of two types:
1> Mistake of Law
2> Mistake of fact
MISTAKE OF LAW
Mistake as to the law are of three categories:
• Mistake as to the law of the country: Every person is expected to know the law of the country. As the saying goes, ignorance of the law is no excuse.
Example:
If a person commits theft and says that he was not aware that thieving was a legal offence and may therefore be excused, cannot be exempted from punishment. Here the contract is not voidable.
• Mistake as to foreign Law: A citizen of a country is expected to know the law of his own country, but he is not supposed to know the law of a country other than his own. If a person commits a mistake about the law of a foreign land, such a mistake may be excusable. Such a mistake is deemed to be a mistake and the contract becomes void.
• Mistake as to private rights: Mistake as to the private rights of the parties to a contract is deemed to be a mistake as to a fact and the contract becomes void.
Example:
A and B together take a loan of Rs. 2000 from C. A repays the amount to C without the knowledge of B, who later again repays the amount to C. Here C is obliged by law to return the amount of Rs 2000 to B.
Mistake as to the fact:
A mistake of fact is two types:
• Unilateral Mistake
• Bilateral Mistake
Unilateral Mistake
If the mistake is on the part of one party to the contract as to a matter of fact essential to the contract, the contract remains valid unless the mistake is not the result of fraud or willful misrepresentation on the part of the other party.
EXAMPLE:
A wants to sell his car to B for Rs. 280000 but by mistake, he makes an offer for Rs. 260000 which B accepts. A cannot repudiate the contract on the ground that he has committed a mistake about the price.
Bilateral Mistake
When both the parties to a contract are under a mistake as to a matter of fact essential to the contract, it is a case of a bilateral mistake.
Case
Cooper vs Phibbs

The offended party took rent of fishery directly from the litigant unconscious of the way that he previously had an actual existence enthusiasm for the fishery right. The offended party thusly brought a suit for the dropping of the rent and the respondent contended this was an error of law. It was held that a mix-up concerning the general proprietorship or right stands on a similar balance as a slip-up of law and consequently was announced void.

Written by Priayanshu Kashyap

PLEDGE UNDER INDIAN CONTRACT ACT

INTRODUCTION

The Indian Contract Act of 1872 is the act governing the formation and enforcement of contracts in India and its territories. The Act lays down provisions regarding the essentials of the contract such as offer, acceptance, consideration etc. The Contract Act is both an amending as well as a consolidating act, and it is not exhaustive of the Law of Contract.

Pertinently, the Indian Contract Act, 1872 goes beyond the contracts of sale and purchase involving basic elements such as offer, acceptance and alike. The provisions of the Act also pertains to some special kinds of contract such as that of indemnity, guarantee, bailment and so on. These find mention in chapter VIII of the Act.

One such special kind of contract is the contract of pledge. Contract of pledge or simply pledge is a special kind of contract which is of great importance especially in economic transactions. Pledge in general words refers to the placement of a good or its title as security either for repayment of a loan borrowed from the creditor or as for discharging an obligation made under a promise. Pledge has been regarded in both India and common law of England as a type of bailment for both involved delivery and possession of goods. In spite of being similar, there are differences and the Contract of the pledge is distinct in itself.

This distinctiveness of the Contract of pledge arises from its features. The Indian Contract Act Chapter discusses the Contract of Pledge elaborately under the head of chapter IX Of Bailment subhead- Bailment of Pledges the relevant sections pertaining to the study of this concept are section 172 to section 179.

This research paper is therefore aimed at discussing the concept of Contract of Pledge in elaborate detail by delving deep into the theory and philosophy behind pledges, how a Contract of pledge works, what are the rights and remedies of the parties under it and how the contract of the pledge is distinct from the seemingly related concepts. The following research paper

proceeds by first laying down briefly the meaning of a contract of pledge followed by mentioning its features which makes credits to its distinctiveness.

Also, this research paper has embedded in it certain case laws for developing a comprehensive understanding of the actual application of the Contract of Pledge. Later sections of the paper include distinctions between Pledge and other concepts such as hypothecation, mortgage, lien etc. The author would adopt the style of the section by section analysis to elaborate on the issue.

PLEDGE: MEANING, DEFINITION AND NATURE

The Indian Contract Act 1872 defines the Contract of the pledge as; Pledge, Pawnor and Pawnee defined.-The bailment of goods as security for payment of a debt or performance of a promise is called a pledge. The bailor is in this case called the pawnor. The bailee is called pawnee.

From the definition of the term pledge in the given section, it is clear that pledge is also a type of bailment due to the fact that a contract of a pledge to come into existence, delivery of goods is requisite. A pledge can also be defined as a Pledge is the transfer by one person to another of the possession of certain goods to be held by the latter as security for the performance by the former of some obligation to pay or perform, which is performed, the pledge must be restored.[2] The Supreme Court has defined a pledge as a Pawn or a pledge as a bailment of personal property as a security for some debt or engagement. A pawnor is one who being liable to an engagement gives to the person to whom he is liable a thing to be held as security for payment of his debt or the fulfilment of his liability

There are three categories in which security is provided, namely- lien, mortgage and the third of them is the pledge. Under a contract of pledge, any good or the title of the good is pledged by one party to the other as collateral for the money advanced by the latter party. Thus making a pledge is a condition precedent for advancing money. Pledge may also be defined as delivery of goods by the debtor to the creditor for a debtor for any other contractual obligation and the object herein delivered shall be returned to the pledgor when the debt money has been repaid or the obligation has been performed.

A valid contract of pledge involves the bailment of goods, as defined under section 148 of the Act as security for the debt. There is no difference regarding the concept of a pledge in both the Indian and Common Law system of England. The nature of the contract is one of security where this security is liable in case of default by the debtor.

ESSENTIALS OF PLEDGE

1. Delivery of the good to be pledged.
2. A valid contract.
3. Right on the pledge.
4. Time of delivery.

4.1. Blundell Leigh v Attenborough

The facts of the case are that A gave B some jewels for the purpose of valuation and to let her know as to what credit can she secure on their value. B kept the jewel as security if he did make advances to her. This was on November 1st. that same day B took the jewels and pledged them with C for 1000 pounds. On a later date, B made an advance of 500 pounds to A on the pledge of the jewels and promissory note.

Subsequently, A died. B then sued C for recovery of jewels stating that the jewels which she gave the top a was only a gratuitous bailment and he was not entitled to do anything with them. When he subsequently advanced money it was not a pledge as he was not in the possession of the goods. When the matter went to the court, the trial court held that there was no valid pledge between A and B as the jewels were not in the possession of B at the time of the pledge being made.

Therefore A was entitled to get back the jewels from C without any payment of money of any kind. However, this decision was reversed by the Court of Appeals which held that the original delivery, though a gratuitous one, constituted a good and valid delivery. Thus even though he was not in the possession of the jewels at the time of making the pledge, it was still valid.

RIGHTS OF THE PAWNEE UNDER CONTRACT OF PLEDGE

The pawnee or the pledgee under a contract of pledge gets no absolute title at law; he is a mere possessor of the property or good pledged to him. This is known as Special Property. In this kind of property, the ownership rights including rights of its enjoyment remains with the pledgor while what is actually transferred his only possession.

However, the pawnee does have one right in this situation, namely the right to sell the thing pledged in case of default by the debtor. But this is not the only right to which the pawnee under pledge is entitled to.

The following sections deal with the rights of the pawnee as has been provided under the Indian Contract Act 1872.

5. Right to retain; until and unless the load has been repaid or the obligations have been performed, the pawnee has the right to retain the goods. This is illustrated in section 173 of the Indian Contract Act 1872.

173. Pawnee's right of retainers- The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise But for the interest of the Debt and all necessary expenses incurred by him in respect of the position or for the preservation of the goods pledged.

Thus a pawnee can retain the goods for-

A. payment of the debt or performance of the promise,
B. interests on the debt,
C. all other expenses incurred by him in respect of the pledged goods.

The Pawnee can hold or retain the goods only for the payment of the Debt for which the particular goods have been pledged. Unless a pledgee's claim under pledge has not been satisfied, another creditor cannot take away the pledged goods from his possession. A case here in point is Bank of Bihar vs State of Bihar where the pledgee bank advanced loan to the pleasure on the pledge of sugar bags whose constructive delivery was made By handing over of the key of the Godown where these were stored. However, these were then seized by the state of Bihar through a rationing officer and district magistrate. Thereafter the pledge,e the Bank, filed a suit for the recovery of the sugar bags. It was held that the act of the state of seizing the goods will not deprive the pledge of his right of the pledge and he was still liable to the amount he advanced.

2. Thus the state has the responsibility to indemnify him. The bank has a special property right over the sugar bags which will not extinguish until the Debt amount has been paid back to him. Thus the state has to reimburse the bank after realising the sale of the pledged goods on default of pawnor in making repayment of the debt.

3. Right to retain for subsequent advances - Section 174 provides that the Pawnee is not entitled to retain the goods for debt or promised other than that for which goods for a pledge. However, it is presumed that the pawnee has the right, if he makes subsequent advances to the pawnor, to retain the goods unless it is otherwise provided in the contract. Thus it is the term of the contracts which decides the right of the pawnee in this case.

4. Right to extraordinary expenses- the pawnee has further rights of claiming from the pledgor extraordinary expenses as provided under section 175,

175. Pawnees right as to extraordinary the expenses incurred. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

This includes the expenses which the pledgee has incurred by virtue of preserving the goods under his possession by way of pledge. The pertinent thing to note here is that the usage of the word receive which states the position that the pledgee cannot retain the goods for the extraordinary expenses. In other words, it can be said that a lien over the pledged goods does not extend to cover the right of Extraordinary expenses. Thuss what the pledgee has is the right of action for recovering these expenses.

5. Pledge rights in case of default- the pawnee is entitled to the exercise of this right when there is a default from the side of the pawnor of the debtor.

The pawnees rights are contained in section 176 of the act which reads As follows:

Pawnees rights where pawnor makes default. If the pawnor makes default in payment of the debt, or performance; at the stipulated time or the promise, in respect of which the goods were pledged, the pawnee may bring a Suit against the Pawn or upon the debtor, promise and retain a good place as Collateral security or he may sell the thing pledged on giving the reasonable notice of the sale.

If proceeds of such sale are less than the amount due in respect of the debt or promise the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the supplies to the pawnor.

Thus section 176 vests in the pawnee two distinct right in case of default namely:

6. To sue the pawnor upon the debt and retain the goods or collateral as security and

7. To sell the thing which has been pledged after proper notice of such a sale has been transmitted to the pawnor.

A pawnee has the right to sell the thing pledged and this right is exercisable after notice of intent of sale and thereafter the pawnee is entitled to sell the thing at any time of his will. The later part of the section further states that if after the sale the amount received is less than the debt then the pawnor would still be liable and when the proceeds received after-sale is higher than the amount to be paid under debt then it is the duty of the pawnee that he pays the surplus

back to the pawnor. After the sale, the right of the pawnor of re-delivery is extinguished but his right to redeem continues up to the sale.

Requirement of Notice- section 176 requires that if the pawnee is to exercise his right of sale then he must do so after he makes a notice of the same to the pawnor. Making of the notice is a statutory obligation and thus even though it is mentioned in the terms of the contract that notice is not necessary, still the pawnee is obligated to make a notice. A notice of sale must be given in all cases of pledge even when an instrument of pledge contains unconditional power of sale.

As to the form and manner of the notice, there has been no statutory compulsion. However, the language of the notice must not be such that it acquires the character of an implied notice. It must be clear and specific of the intentions of selling the goods. It is not necessary on the part of the pawnee to specify the details of the sale in the notice and even when he has mentioned the specific, he is under no obligation to abide by it. If in case of a pledge where no time for repayment has been specified then a right to sell may arise when a notice has been served by the pawnee regarding clearing the dues within a specified time.

The pawnee also has the right to bring a suit against the pawnor for the recovery of the amount advanced by him. Thus the choice of right the pawnee wants to exercise is his discretion.

PLEDGE UNDER MERCANTILE AGENT

Section 178 provides that a pledge made by a mercantile agent, acting in the ordinary course of business is valid. It reads as, 178. Pledge by mercantile agent.-Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.

Explanation: In this section, the expressions mercantile agent and documents of title shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).]
Consent of the owner of the goods is assumed to exist in a case where the mercantile agent pledges a good. A mercantile agent is one who has the authority on behalf of the owner to sell, consign or raise money out of the goods by keeping them as security.

The present section 178 came into force after the earlier wordings of it were repealed in 1930. In the earlier section any person in possession of goods or documents of that good can affect a pledge but after the new section has been enacted this right of pledging on behalf of goods whose ownership rests with another is only given to a mercantile agent. This section has been enacted with an objective to protect those dealing in good faith with persons who are mercantile agents. The new section is an improvement in another sense that it provides that those in possession and not in mere custody are entitled to pledge the goods owned by a third party.

PLEDGE UNDER VOIDABLE CONTRACT

This type of pledge has been provided under section 178A of the Act which states that even when the pawnor has obtained the goods under a voidable contract by the virtue of section 19 and 19A, and when the contract has not been rescinded at the time of pledge, the pawnee will acquire a good title to the pledged goods.

However, it is required that the pawnee must act in good faith and must have been unaware of the presence of a voidable contract. The principle here is that though there is a de facto contract even if it is voidable due to the reason of fraud, misrepresentation and alike. For instance, if a person buys goods without paying for them, there is consent, though not free and the contract in spite of being voidable will enable the party receiving the good to make a valid pledge. Thus what matters here is the possession of the tile of the goods to be pledged.

CASE LAWS OF 'PLEDGE UNDER INDIAN CONTRACT ACT'

8. Lallan Prasad v. Rahmat Ali & Anr. 1967 SCR (2) 233
9. The Morvi Mercantile Bank Ltd. And Anr. v. Union of India 1965 SCR (3) 254
10. The Official Assignee of Madras v. The Mercantile Bank Of India Ltd. (1935) 37 BOMLR 130
11. Karnataka Pawn Brokers Association and Ors. v. State of Karnataka and Ors.
12. Bank of Rajasthan v. Hajarimal Milap C. Surana

Conclusion

With the above study, the researcher has tried to answer the research questions mentioned in the project. The study can be concluded by stating that it has dealt with and analysed what a contract of pledge means and what its nature is. The features of the pledge along with various rights, duties and obligations it creates has also been dealt with in this research study. The rights

which the pawnee possess, the duties which the pawnor has and other features of the pledge have been explained by giving due considerations to the relevant case laws. In the later part of the project, the researcher has dealt with how pledge is different from lien, hypothecation and mortgage to clear the general doubts which arise.

1. https://indiankanoon.org/doc/722832/#:~:text=Section%20172%20in%20The%20Indian%20Contract%20Act%2C%201872&text=172.,'%20and%20'pawnee'%20defined.&text=called%20'pawnee'.-,%E2%80%94The%20bailment%20of%20goods%20as%20security%20for%20payment%20of%20a,promise%20is%20called%20'pledge'

2. http://www.legalserviceindia.com/legal/article-1361-contract-of-pledge-features-and-distinctiveness.html

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