ISSUE-IV (BI-ANNUAL E-JOURNAL)

NYAYA PRAJÑĀ

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JULY, 2024

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Dated 29th July, 2024

MESSAGE

I am very delighted to learn that Judicial Academy, Assam is going to publish its 4th issue of *Nyaya Prajna* , a biannual e-journal, containing scholarly articles on legal issues.

In an era where the rule of law and justice are paramount, the role of scholarly publications in shaping legal thought and discourse cannot be overstated. *Nyaya Prajna* promises to maintain a high academic standard and excellence by offering insightful analysis, comprehensive reviews, and in-depth discussions on contemporary legal issues. This will foster a deeper understanding of the law and promote informed legal discourse.

I am confident that *Nyaya Prajna* will contribute significantly to the enrichment of legal knowledge and the advancement of the legal profession. The efforts in curating and presenting high-quality content are invaluable to the legal community and society at large. This e-journal has provided a platform to Judicial Officers for self-learning and enhancement of their legal knowledge.

It is with great pleasure that I extend my heartiest congratulations to Judicial Academy, Assam on the publication of 4th issue of *Nyaya Prajna*. I convey my best wishes to the Judicial Academy in its journey ahead as a beacon of excellence in legal education.

(Justice Vijay Bishnoi)

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From the Desk of the Chief Editor

Welcome to the fourth issue of Nyaya Prajna, the bi-annual e-Journal of the Judicial Academy, Assam. Although our journal is still in its early stages, we are proud of its growing impact as a platform for the judicial community to exchange ideas and insights in the ever-evolving field of law.

In this issue, we present a selection of articles that delve into significant legal developments. Notably, with the recent enactment of three major Criminal Acts, we feature three thought-provoking articles from emerging judges who provide their perspectives on these changes in procedural laws. In this issue, we present a collection of articles that delve into significant legal developments.

We encourage more contributions from our judicial fraternity in future issues, showcasing a diverse range of opinions and views. Your ongoing engagement and contributions are vital to our collective pursuit of academic and legal excellence. We eagerly anticipate your feedback, which is essential for our continuous improvement.

I would like to extend my heartfelt appreciation to the Director of the Judicial Academy, Assam, the members of the Editorial Board, and the dedicated officers and staff of the Academy. Their steadfast commitment has been crucial in bringing this journal to fruition.

Thank you for your continued support.

Warm regards,

Siddhartha Pratim Moitra

(Shri S. P. Moitra)
Editor-in-Chief

EVENTS & REPORTS

The 1st quarter of the year 2024 was relatively busy for the Academy. The first programme of the year was the 2 days Pre-Appointment Orientation and Capacity Building Training Programme for the Chief & Deputy Legal Aid Defense Counsel and Assistant Legal Aid Defense Counsel in collaboration with Assam State Legal Services Authority.

The month of January saw the successful conclusion of "One Day In-service Training" in cluster-wise across the 15 districts of Assam. It is pertinent to mention that this training programme was a continuation of the earlier cluster wise Training Programme held in the month of December 2023 and indeed it was proud moment for us as it was inaugurated by Hon'ble Mr. Justice Surya Kant, Judge, Supreme Court of India.

Our venerable mark of respect goes to Hon'ble Mr. Justice Ranjan Gogoi, Former Chief Justice of India and Hon'ble Mr. Justice Sandeep Mehta, Judge, Supreme Court of India who choose to address Judicial Officers in the KNOWLEDGE ENHANCEMENT PROGRAMMES conducted by Judicial Academy Assam on 24.02.2024 & 03.03.2024 respectively.

In compliance with the directions of "E-committee Supreme Court of India", a total of 13 ECT programme was conducted by Judicial Academy Assam for the Judicial Officers of the Assam, Nagaland, Arunachal Pradesh and Mizoram and other stake holders like Staff of Registry of Gauhati High Court, Stenographer, Computer typist, Staff of District Courts of Assam, Master Trainers of Judicial Officers, Advocates, System Officers, System Assistants during the month of February and March.

A webinar was organized in collaboration with District Legal Services Authorities on " Assam Victim Compensation Scheme, 2012" for the Secretaries of DLSA's Assam and Secretary Gauhati High Court Legal Services Committee on 3.2.2024.

The month of March and April saw the preparation of comparative analysis of the Three New Criminal laws namely Bharatiya Nagarik Suraksha Sanhita, Bharatiya Nyaya Sanhita and Bharatiya Sakshya Adhniyam introduced by Govt. of India and we are pleased to inform that the Comparative Analysis of the Old law and New Law is successfully uploaded in the website of our academy in E-book format.

To create awareness regarding the three new criminal laws "3 days Orientation Programme on the New Laws" was held in 10 batches for all the Judicial Officers of Assam, Nagaland, Mizoram and Arunachal Pradesh and Public Prosecutors of Mizoram during the month of May and June 2024.

Judicial Academy Assam was indeed honoured to have the benign presence of Hon'ble Mr Justice Dinesh Maheswari, Former Judge, Supreme Court of India as Chief Guest during the inaugural ceremony of the Orientation Programmes on new criminal laws.

Smti Dibya Salim,Assistant Professor, National Law Institute University, Bhopal ; Dr. Nandini C.P. ,Professor, DSNLU; Sri Rajashekhara N, IPS Central Detective Training Institute, BPR&D Ramanthpuram, Hyderabad ; Sri Dhirendra Rana , Additional Sessions Judge , Spl Judge NDPS Act, , District Court North Delhi, Shri Anil Kishore Yadav, IPS Director, Central Academy for Police Training , Bhopal, Sri Faisal Fasih , Assistant Professor , The West Bengal National University of Juridical Sciences Kolkata ; Shri Sumit Dalal, District Judge-04, South West District, Delhi; Dr. Sarfaraz Ahmed Khan, Associate Professor, The West Bengal National University of Juridical Sciences Kolkata, Dr Amol Deo Chavan, Associate Professor, NLUJAA were the Resource Persons for the said training. . Several Grade I Judicial Officers of Assam Judicial Service also imparted training on the new Criminal Law.

Sensitization Programme on "Local Acts & Rules both on Civil & Criminal" was held for the states of Nagaland, Mizoram and Arunachal Pradesh.

In collaboration with the Vigilance department of Arunachal Pradesh, "3-day Capacity Building Training on Prevention of Corruption Act" was held for the serving Officers working in various capacities under the Vigilance Department, State of Arunachal Pradesh.

Shri Nasim Akhtar, Special ludge, NDPS, Assam attached as Faculty, Judicial Academy, Assam, attended the Training of Trainers for State Judicial Academies held at National Judicial Academy Bhopal on 18.5.2024 to 19.5.2024.

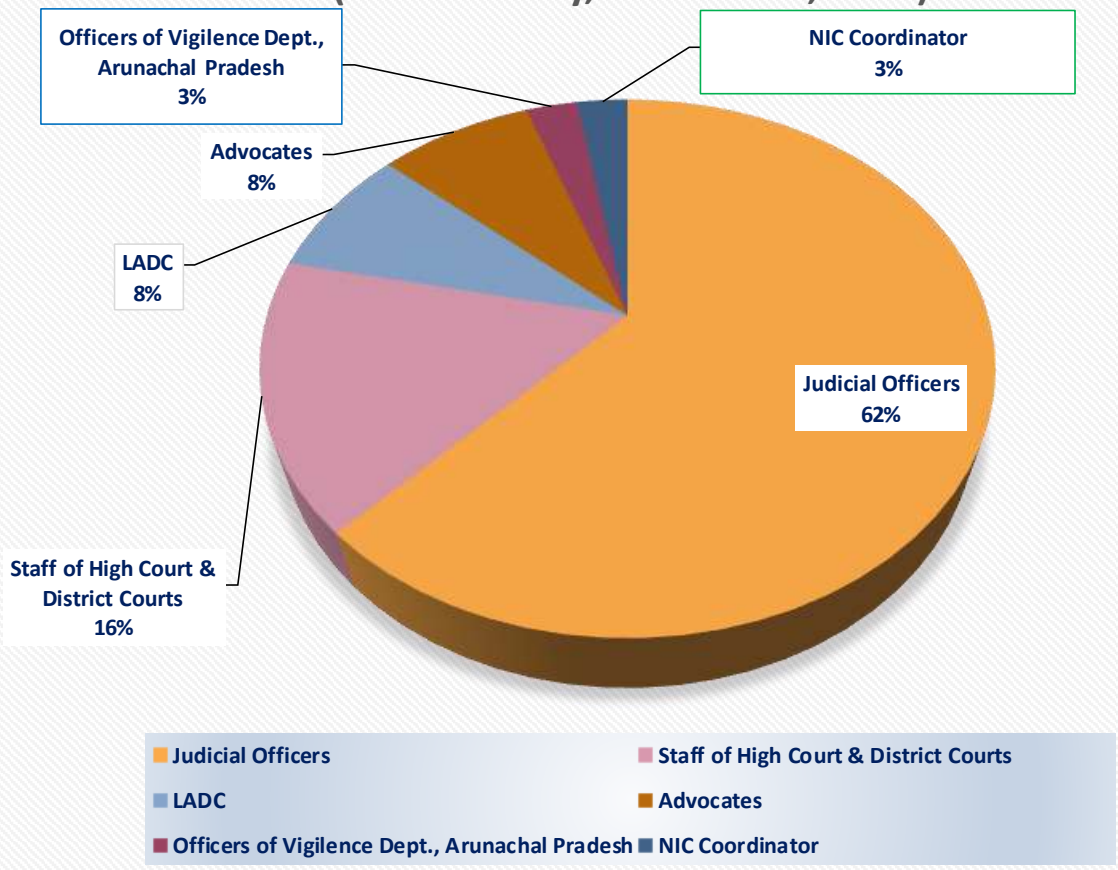
Smti Shivani Handique Research Officer, Judicial Academy, Assam was nominated to attended the "4-day Orientation Programme on New Criminal Laws at the Central Academy for Police Training, Bhopal w.e.f. 6.3.2024 to 9.3.2024.

Our Faculty members and Research Officer were called as Resource Persons to impart training to Sub-Registrars of Revenue and Disaster Management Department, Assam held by National Law University Assam.

The end of the 1st quarter was marked by successful completion of 1st phase of the Induction Training programme for Grade-I & Grade-III Assam Judicial Service Officers.

Beneficiaries of Judicial Education

(w.e.f. January, 2024 - June, 2024)



Celebration of Republic Day at the precincts of Judicial Academy, Assam

LITERARY SECTION

SECTION 223 *proviso* OF THE BHARATIYA NAGRIK SURAKSHA SANHITA, 2023 -CONUNDRUM-

• Shri C. Chaturvedy, District & Sessions Judge, Chirang, Kajalgaon

The new procedural law for trial of criminal cases, The Bharatiya Nagrik Suraksha Sanhita, 2023 will replace the Code of Criminal Procedure in the days to come. Among the several changes introduced by the new law, this note deals only with the provisions of Section 223 BNSS.

SECTION 223 BNSS: -

Section 223 reads as follows;

> 223. A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:
>
> *Provided that no cognizance of an offence under this section shall be taken by the Magistrate without giving the accused an opportunity of being heard:*

As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a magistrate first takes judicial notice of an offence. This is the position whether the magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer.[1]

Thus, when the complaint is presented before the Magistrate he has to see there is no bar to taking of cognizance by any provisions of BNSS (CrPC) such as the provisions of Section 217 BNSS and similar other provisions containing the expressions "**No Court shall take cognizance**". Once the Magistrate is satisfied that there is no bar to taking cognizance he proceeds to record the statement of the complainant. The act of recording the statement amounts to taking cogniznce. It may be pointed out that merely because the Magistrate has taken cognizance and proceeded to record the statement of the complainant it does not necessarily mean that process will be issued.

1 Darshan Singh Ram Kishan v. State of Maharashtra [(1971) 2 SCC 654].

Section 226 BNSS (corresponding to Section 203 CrPC) still leaves a scope for dismissal of the complaint. A process is issued on the grounds mentioned in Section 227 BNSS (204 CrPC).

Now, as held by the Supreme Court, in ***Anharibhai Muljibhai Kakadia vs Shaileshbhai Mohanbhai Patel***, the Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202.[2]

It was further held in Anharbhai that after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Sarah Mathew [(1992) 1 SCC 217] that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

While the principal body of Section 223 is a replica of Section 200 CrPC, it is the proviso which is newly added and likely to create confusion in its application.

Firstly, according to the proviso, the accused, now, will have a right of hearing before the act of taking cognizance. This would mean that the moment complaint is filed, notice would have to be issued to the accused. BNSS does not prescribe the format of such *notice* in its schedule.

Secondly, a right of hearing is meaningless unless the accused has right to pray for the dismissal of the complaint. This would mean that accused can pray for dismissal of complaint even before the Magistrate has decided on his own, whether to proceed under Section 226 or 227 of BNSS. Such a liberty to accused is contrary to the cases referred above.

Thirdly, once the complaint is filed and the notice is issued to accused, in what capacity is he required to appear in Court because the Magistrate is yet to issue formal process under

2 2012 10 SCC 517 (p 23)

Section 227 BNSS. Hence does he appear as *accused* or simply *person*. Section 2(h) of BNSS defines "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some *person*, whether known or unknown, has committed an offence. Thus, when the complaint is presented, it refers to person. The proviso says that the person is an accused. The status of such a *person* will be a question. As to meaning of *accused* in the context of various proceedings within the Code of Criminal Procedure, a reference may be made to the case of ***Direction of Enforcement vs Deeak Mahajan (1994) 3 SCC 440.***

Fourthly, a confusion is likely to arise is whether such *person/accused* would be required to take bail?

Fifthly, assuming the Magistrate takes cognizance in the presence of ***accused/person*** and thereafter dismisses the complaint under Section 226 BNSS, whether the release of *accused/person* would amount to discharge within the meaning of Section 268 BNSS?

I have only jotted down some of the situations, which in all probability will arise, once the complaint is filed under Section 223 BNS.

I am seeking answers .....?

"We apply law to facts. We don't apply feelings to facts"

Sonia Sotomayor

NAVIGATING TRIAL IN ABSENTIA: INSIGHTS INTO SECTION 356 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA

• Shri Jaspal Singh, Principal Judge, Family Court, Barpeta

Unlike in many countries such as the United States, China, Bangladesh, Canada, France and Italy, there was no explicit statutory provision in the erstwhile criminal procedural law of India for trial in absentia of wilful absconders. Such wilful absconders could easily derail a criminal trial by absconding from it, bringing it to a standstill. Of course, Section 299 was the only provision in the Code of Criminal Procedure, 1973, which addressed the issue of wilful absconders but to a very limited extent. It did not provide for a trial in absentia of wilful absconders; it only enabled the Court to record the depositions of prosecution witnesses in the absence of the absconding accused which could only be used after the arrest or appearance of such accused, but upon fulfilment of conditions specified therein. Because of abscondence of accused persons, criminal trials get derailed and remain pending for years together. A major cause of piling of criminal cases in our country is that the provisions in our criminal procedural law were inadequate to deal with cases where accused persons absconded. An effective statutory provision for a trial in absentia was echoed in many quarters as the need of the hour. Even our neighbouring country, Bangladesh, which was founded in the year 1971, had added Section 339B, by which "trial in absentia" was incorporated, in their Code of Criminal Procedure, 1898 way back in the year 1982. But even after over 75 years of our independence, we did not have such a provision in our statute book. Referring to Section 339B of Code of Criminal Procedure, 1898 of Bangladesh, our Hon'ble Supreme Court in **Hussain and Another v. Union of India**, AIR 2017 SC 1362, held: "It is for the concerned authority to take cognizance of the above amendment which may considerably reduce delay in cases where one or the other accused absconds during the trial."

But with the coming into force of the new criminal procedural law, the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS), with effect from July 1, 2024, our country has joined the club of nations that possess an effective mechanism for dealing with wilful absconders with an iron hand. Laudably, the BNSS comes with a statutory provision of "Inquiry, trial and judgment in absentia of proclaimed offender", contained in Section 356. This provision is a welcome addition to Indian criminal law, although many criticize the BNSS as merely "new wine in an old bottle." However, the wordings of Section 356 of the BNSS are such that to many readers the provision may appear somewhat confusing, lacking clarity as to the observance of certain procedures in a trial in absentia. Such confusions may pertain to procedures like commitment of a case and framing of the charge, raising questions if such procedures could at all be observed in the absence of the accused. In a conventional criminal trial, which is held in the presence of the accused, the above procedures are invariably observed in the presence of the accused. One view regarding a trial in absentia is that where the accused could

not be arrested during the investigation and was declared as a proclaimed offender, commitment of the case and framing of the charge with respect to such proclaimed offender, in a trial in absentia, are to be done in his absence. But many are of a different view that a trial in absentia contemplated under Section 356 is essentially the one in which charge was framed in the presence of the accused, but later the accused absconded midway during the trial, because under the Proviso to sub-section (1) of Section 356, such a trial can only be commenced after a period of ninety days has lapsed from the date of framing of the charge, and further, it is a well-settled proposition that in a Sessions trial or in a trial of warrant cases, charge cannot be framed in the absence of the accused.

Even a State Judicial Academy in its Reference Material on new Criminal Laws 2023 has mentioned about Clause 356 of the BNSS Bill thus: "The trial under Cl.356 cannot begin until ninety days after the framing of charge. Offences punishable with imprisonment for ten years or more are exclusively triable by a court of sessions, and in such cases, charges cannot be framed in the absence of the accused. The Bill retains this position. If framing of charge is a prerequisite for trials in absentia, the scope of Cl.356 is limited to those who abscond during trial, and it excludes an accused person who has absconded during the investigation. This is consistent with the second precondition for proceeding with a trial in absentia, that the accused should have absconded to evade trial."

As I have mentioned above, the Proviso to sub-section (1) of Section 356 mandates that the Court shall not commence the trial contemplated under sub-section (1) unless a period of ninety days has lapsed from the date of framing of the charge. The Proviso reads in the manner as if the framing of charge is not a part of the trial in absentia contemplated in sub-section (1), rather it is a procedure preceding at least ninety days before the commencement of such a trial. Moreover, the words "whether or not charged jointly" appearing in sub-section (1) of Section 356 may make a reader think that a trial in absentia can only be held if charge has already been framed against such an accused, either singly or jointly.

One of the rules of interpretation of statutes, where the words employed in the statute are ambiguous and are reasonably capable of giving more than one meaning, is to identify the "mischief and defect" that the statute intended to address and provide an effective remedy. Referred to as the Mischief Rule of interpretation of statutes, this rule seeks to answer the question as to what mischief the previous law failed to remedy, leading to the enactment of the statute in question. In applying this rule, the Court is essentially asking whether the Parliament in enacting the statute intended to rectify a particular mischief, even though it might not be covered by a literal reading of the statute's wordings. Without discussing further about the principles governing the Mischief Rule of interpretation of statutes for the sake of brevity, let me straightaway come to the point. Before the coming into force of the BNSS, there was no statutory provision in the criminal procedural law of India to address the problem of wilful absconders, as I have already discussed. This, basically, was the "mischief and defect" in the Code of Criminal Procedure, 1973 which afforded ample scope to the crafty accused to abscond from

the criminal trial, thereby derailing it as per his whims. The new criminal procedural legislation, the BNSS, contains a provision in Section 356 for inquiry, trial and judgment in absentia of proclaimed offenders, providing an effective remedy of the aforesaid "mischief and defect" in the earlier law.

The nature of the remedy provided by a new law can best be understood by examining the Legislature's intention behind its enactment. In December 2023, while reintroducing the revised drafts of the criminal law bills on the floor of the Parliament amid its Winter Session, the then Home Minister of India had spoken on various aspects of the proposed new criminal laws, including about trial in absentia. The legislative intent behind the enactment of a provision of law can be beneficially deciphered from what is spoken on the floor of the Parliament by the concerned Minister of the Government while introducing the law bill in the Parliament. The Home Minister was by no means expressing his personal views on the subject but was dwelling on the Government intent behind the proposed legislation. Let us now quickly take a glimpse of what the Home Minister spoke with respect to trial in absentia.

"Many may have objections to the provisions under trial in absentia. What sympathy can there be for someone who has committed a crime and fled the country? Whether it's the Mumbai bomb blast or any other act of terrorism. They commit crimes and take refuge in countries like Pakistan or others. The question arises, should they be punished or not?" he asked.

The Home Minister said that such accused will be given 90 days to appear before the Court, and if they don't appear, a public prosecutor will be appointed for their prosecution.

"This approach will not only expedite the legal process but also change their status in the other country when they are prosecuted. It will make the process to bring them back speedy," he added.

It is evident from the above speech of the then Home Minister of India that, addressing the problem of fugitive criminals who are accused of grave offences, the provision of trial in absentia has been incorporated under Section 356 of the BNSS for persons declared as proclaimed offenders. It is known to all that many persons accused of grave offences flee the country and take refuge in other countries to evade the process of the law. We all know that there are also a few celebrities among them who are accused of grave economic offences, like money laundering etc. Apart from the offenders taking refuge in the overseas, there are also persons accused of grave offences who are hiding within the country itself with a view to evading the process of prosecution and trial. After framing of the charge, ninety days' time will be given to such proclaimed offenders to appear before the Court for facing the trial, and if they do not appear, trial will proceed in absentia. Thus, it is seen that the provision of trial in absentia under Section 356 of the BNSS covers those proclaimed offenders who had gone into hiding even since the stage of investigation, preventing themselves from police arrest and interrogation and evading trial. If Section 356 of the BNSS were only to cover those accused persons who have absconded midway during the trial, then what the Home Minister had said in the Parliament would be completely otiose.

With a clear understanding of the intent of

Section 356, I will now proceed to analyse it in detail. The heading of the Section is "Inquiry, trial and judgment in absentia of proclaimed offender". The heading itself shows that this Section is comprehensive in its applicability; it not just encompasses trial and judgment in absentia, but also inquiry in absentia. One can easily grasp 'trial in absentia' and 'judgment in absentia' to mean 'trial in the absence of the accused' and 'judgment in the absence of the accused', respectively. But the scope and nature of "inquiry in absentia" will become clearer as I delve deeper into the provision in the following discussion.

Sub-section (1) of Section 356 is the foundational clause of the provision of inquiry, trial and judgment in absentia of proclaimed offender. Significantly, sub-section (1) begins with a non-obstante clause "Notwithstanding anything contained in this Sanhita or in any other law for the time being in force", indicating thereby that what is contained in the enacting part of this sub-section shall override whatever is contained in the BNSS or in any other law for the time being in force. Section 356 provides a wholly new and unique concept of inquiry, trial and judgment in absentia of proclaimed offender, which is an exception to the norm of inquiry, trial and judgment in the presence of the accused, and it is clear from the above non-obstante clause that the enacting part of sub-section (1) of Section 356 shall take precedence over anything contained in the BNSS or in any other law for the time being in force that conflicts with it.

Sub-section (1) uses the words "when a person declared as a proclaimed offender, whether or not charged jointly, has absconded to evade trial and there is no immediate prospect of arresting him". From the heading of Section 356 itself, it becomes clear that the provision contained therein only applies to a proclaimed offender. To know who a proclaimed offender is, we need to go through Section 84 of the BNSS. Under sub-section (1) of Section 84, if any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. Sub-section (2) of Section 84 prescribes the manner of publication of the proclamation. Sub-section (3) of Section 84 provides for conclusive evidence regarding compliance of the requirements of the Section and the publication of the proclamation. Then, importantly, under sub-section (4) of Section 84, where a proclamation published under sub-section (1) is in respect of a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect. Sub-section (5) of Section 84 provides that the provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

Put in a single sentence, a "proclaimed offender" is a person accused of an offence punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force in respect of whom a proclamation has been published under sub-section (1) of Section 84, and such person fails to appear at the specified place and time required by the proclamation, and the Court has pronounced him a proclaimed offender and then made a declaration to that effect, after which the declaration so made has been duly published like a proclamation. It is noteworthy that only a person accused of an offence, which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force, can be pronounced a proclaimed offender and a declaration can be made to that effect. All those offences are necessarily grave offences and triable by the higher Court – in the case of offences under the Bharatiya Nyaya Sanhita, 2023, by the Court of Session, and in the case of offences under any other law for the time being in force, by the Court/Tribunal specified thereunder. Where a proclamation published under sub-section (1) of Section 84 is in respect of a person accused of any other offence, and such person fails to appear at a specified place and time required by the proclamation, then such person can only be termed as 'proclaimed person' and the Court need not pronounce him as such or make any declaration to that effect, unlike in the case of a 'proclaimed offender'.

Pausing for a moment, let me revert to sub-section (1) of Section 84 under which the Court orders publication of a proclamation, and which ultimately forms the basis for pronouncing a person accused of an offence, which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death, a proclaimed offender under sub-section (4) of Section 84 and making a declaration to that effect. Under sub-section (1) of Section 84, before ordering for publication of a proclamation, the Court must have reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed. The fact that the person against whom the warrant had been issued is absconding or concealing himself to avoid the execution of warrant is the *sine qua non* for the issuance of proclamation under Section 84. Since the ascertainment of this fact is essential for an order under Section 84, the Court must, through the execution report or otherwise, have reason to believe that the person is absconding. The only discretion available with the Court at this stage is that it can either rely on the materials available on record, or on the execution report, or can call for evidence or examine the Investigating Officer in relation to the execution of the warrant. The Court must not only have reason to believe that the person against whom warrant has been issued is absconding or concealing himself, but that satisfaction of the Court shall in all cases be reflected in the order.

Sub-section (1) of Section 356 requires that the person concerned must have been declared a proclaimed offender, indicating thereby that the Court must have made a declaration under sub-section (4) of Section 84

that such person has been pronounced a proclaimed offender, and thereafter such declaration must have been published by the Court under sub-section (1) of Section 84 and a statement in writing must have been made by the Court making the declaration, as required under sub-section (3) of Section 84. As the proposed inquiry, trial and judgment is in respect of someone who is not present before the Court, a strict compliance of requirements of the law will be necessary insofar as the Court's pronouncement of the person concerned as proclaimed offender, the making of a declaration to that effect and the due publication of the said declaration.

A pertinent question may arise, that if a person concerned has already been declared a proclaimed offender, then what more needs to be done in regard to the condition mentioned in sub-section (1) of Section 356, that such proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. It really appears to be an interesting question. One may perceive that there is a difference between a person declared as a proclaimed offender and a proclaimed offender (so declared) who has absconded to evade trial and there is no immediate prospect of arresting him, and that only in the latter case Section 356 of the BNSS will be applicable. One may even claim that only upon compliance of the procedure prescribed in sub-section (2) of Section 356, it can be proved that a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. To my opinion, the procedure prescribed in sub-section (2) of Section 356 is not meant for proving that a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. The procedure prescribed in sub-section (2) of Section 356 is, rather, a procedural safeguard for the concerned proclaimed offender, which is primarily meant to give him the notice of the proposed commencement of trial against him, warning him that the trial shall commence in his absence if he fails to appear.

We may once take note of Section 335 of the BNSS which deals with 'Record of evidence in absence of accused'. In sub-section (1) of Section 335, we find the words "If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him". The words are like the ones used in sub-section (1) of Section 356, the only difference being that in sub-section (1) of Section 335 it is mentioned as "has absconded" whereas in sub-section (1) of Section 356 it is mentioned as "has absconded to evade trial". Let us assume for a moment that the procedure prescribed in sub-section (2) of Section 356 is meant for proving that a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. But, in Section 335, no such procedure has been prescribed for proving that an accused person has absconded, and that there is no immediate prospect of arresting him. Drawing the analogy, it would become clear that the procedure prescribed in sub-section (2) of Section 356 has nothing to do with the proof of the fact that a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. Now, a question would come to mind as to why then in sub-section (1) of Section 335 it is mentioned as "has absconded" whereas in sub-section (1) of

Section 356 it is mentioned as "has absconded to evade trial". To my opinion, that may be so, because under sub-section (1) of Section 356, the person concerned is sought to be tried in absentia, whereas sub-section (1) of Section 335 does not relate to a trial, but only to recording of depositions of prosecution witnesses in the absence of the accused which may be given in evidence against him in the inquiry into, or trial for, the offence with which he is charged, if the conditions specified therein are fulfilled.

Question still remains regarding sub-section (1) of Section 356, as to what should be the material on the basis of which the Court is to draw its satisfaction that a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. To my opinion, the Court may go through the following materials for arriving at such satisfaction: *First*, the record of the case and materials on record, *secondly*, summonses, if any, which were issued against such person along with the service reports, *thirdly*, warrants of arrest which were issued against such person along with the execution reports, *fourthly*, evidence, if any, taken by the Court before ordering publication of proclamation under sub-section (1) of Section 84, *fifthly*, proclamation published under sub-section (1) of Section 84 along with the execution report, *sixthly*, declaration [made under sub-section (4) of Section 84] published like a proclamation along with the execution report, *seventhly*, the order of attachment (if any), issued under Section 85 along with the execution report, and *lastly*, the statement of the executing police officer (if any), recorded after the return of the warrant of arrest, or after the publication of the proclamation, or after the publication of the declaration, or after the return of the order of attachment. Once these materials are there on the record, the Court can proceed in terms of sub-section (1) or Section 356 after recording its reasons and satisfaction on both counts.

The phrase "whether or not charged jointly" in sub-section (1) of Section 356 now requires some attention. Looking at the placement of these words in the said sub-section, one may visualise a situation where charges were framed jointly against two or more accused persons, but later, one or more of them has/have absconded and subsequently been declared as proclaimed offender(s). But, to my opinion, the phrase "whether or not charged jointly" appearing in sub-section (1) of Section 356 does not have anything to do with the framing of charge. According to me, the phrase only means that either the person declared as a proclaimed offender referred to in sub-section (1) of Section 356 is the only accused against whom the charge-sheet has been submitted, or that the charge-sheet has been submitted against two or more accused persons and he is one of them. But I would also like to mention here that a proclaimed offender referred to in sub-section (1) of Section 356 can be charged together with the accused who is present in the dock, and the trial in absentia of the proclaimed offender can proceed jointly with the trial of the accused who is present in the dock. Such a trial is deemed to be a "joint trial" as per Explanation II of Section 24 of Bharatiya Sakshya Adhiniyam, 2023.

Let me, now, move to the most important ingredient in sub-section (1) of Section 356 which, undoubtedly, can be regarded as the heart and

soul of the provision contained in Section 356. The sub-section progresses thus: "...when a person declared as a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person..." The ingredient of "deemed waiver of the right to be present and tried in person" is what I am referring to as the heart and soul of the provision. If the twin conditions, viz. (1) abscondence of the proclaimed offender to evade trial, and (2) no immediate prospect of arresting him, are found fulfilled in the case to the satisfaction of the Court, sub-section (1) of Section 356 declares that it shall be deemed to operate as a waiver of the right of such person to be present and tried in person. One of the fundamental principles of the criminal justice system is that the accused must be granted a fair trial. The right of the accused to be tried in his presence is a cornerstone of criminal justice system, reflecting the values of fairness, transparency, and the right to a defence. But, at the same time, such a right of the accused is hinged upon the duty to make himself present in the trial, and once he breaches this duty by his act of abscondence, he waives his said valuable right. The term "deemed" indicates that this waiver is assumed or imposed by law, regardless of the accused's explicit consent or acknowledgment. One may argue that the notion of deemed waiver infringes the right of a fair trial of the accused which is a fundamental right within the ambit of Article 21 of the Constitution. But such right has not been accepted as a fundamental right by the Hon'ble Supreme Court in **Jayendra Vishnu Thakur v. State of Maharashtra**, (2009) 7 SCC 104. The Hon'ble Supreme Court acknowledged that the right of an accused to watch the prosecution witnesses deposing before a Court of law indisputably is a valuable right. At the same time, the Hon'ble Supreme Court also held thus: "We may, however, notice that such a right has not yet been accepted as a fundamental right within the meaning of Article 21 of the Constitution of India by the Indian courts. In absence of such an express provision in our Constitution, we have to proceed on a premise that such a right is only a statutory one."

Once the proclaimed offender is so deemed to have so waived his right to be present and tried in person, sub-section (1) of Section 356 mandates that the Court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present under the BNSS and pronounce the judgment. Significantly, the word "shall" is used in the sub-section, followed by the expressions "after recording reasons in writing" and "in the interest of justice". To my understanding, the word "shall" connotes that no discretion is left with the Court, and it is mandatory for the Court to proceed with the trial in absentia of proclaimed offender in the interest of justice, once it is satisfied that the proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him. But the Court must record its reasons in writing. The requirement of recording reasons in writing ensures transparency and provides a documented justification for the Court's action.

Sub-section (1) of Section 356 makes it clear that the Court proceeding with the trial in absentia of proclaimed offender is to so proceed in the like manner and with like effect as if the

proclaimed offender was present. The expression "like manner" would signify that the trial in absentia will progress in the same manner as if it was a normal/regular trial where the accused is present in the dock. However, as the proclaimed offender is not actually present during such trial, it may not be possible for the Court to perform certain procedural acts during the trial which can only be done in the presence of, and with the participation of, the accused, like reading and explaining of the charge to the accused and his examination under Section 351 of the BNSS (old Section 313 of CrPC). These are, undoubtedly, valuable rights of the accused in a criminal trial, but because of the 'deemed waiver' of the right to be present and tried in person, the proclaimed offender, in a trial in absentia, is deemed to have waived his right to be present and be tried in person, which right includes the reading and explaining of the charge to him and his examination under Section 351. Further, the expression "with like effect" appearing in sub-section (1) of Section 356 connotes that the trial in absentia will have the same effect as a normal/regular trial, no matter the proclaimed offender is not present during such trial. After the completion of such trial, the Court shall pronounce judgment, and shall sentence him also, if he is convicted.

Sub-section (2) of Section 356 of the BNSS enjoins the Court to ensure that the following procedure has been complied with before proceeding under sub-section (1), namely: -

(i) issuance of two consecutive warrants of arrest within the interval of at least 30 days;

(ii) published in a national or local daily newspaper circulating in the place of his last known address of residence, requiring the proclaimed offender to appear before the Court for trial and informing him that in case he fails to appear within 30 days from the date of such publication, the trial shall commence in his absence;

(iii) inform his relative or friend, if any, about the commencement of the trial; and

(iv) affix information about the commencement of the trial on some conspicuous part of the house or homestead in which such person ordinarily resides and display in the police station of the district of his last known address of residence.

As I have already observed, the procedure prescribed in sub-section (2) of Section 356, the compliance of which the Court is enjoined to ensure before proceeding with a trial in absentia, is a procedural safeguard for the proclaimed offender, which is primarily meant to give him the notice of the proposed commencement of trial against him, warning him that the trial shall commence in his absence if he fails to appear. After the aforesaid procedure is complied with, the Court proceeding with the trial in absentia of proclaimed offender is enjoined by the Proviso to sub-section (1) of Section 356 to not commence the trial unless a period of ninety days has lapsed from the date of framing of the charge. This is another significant safeguard for the proclaimed offender. The 90-day waiting period balances the need for timely justice with the rights of the accused, offering a buffer time for the proclaimed offender to surrender before the Court to be tried in person.

Once the procedure prescribed in sub-section (2) of Section 356 has been complied with, the Court proceeding with the trial in absentia will first have to frame the charge against the proclaimed offender, and then wait for at least 90 days before commencing with the trial. But it is not correct to say that the Court will invariably frame the charge against the proclaimed offender. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the prosecution and the advocate provided to the proclaimed offender [under sub-section (3) of Section 356], the Judge considers that there is not sufficient ground for proceeding against the proclaimed offender, he will have to discharged the proclaimed offender by recording his reasons, as provided under sub-section (2) of Section 250. The expression "proceed with the trial" appearing in sub-section (1) of Section 356 does not necessarily mean that charge will invariably be framed. Discharge, provided under sub-section (1) of Section 250, is also a part of Trial before a Court of Session. Charge will be framed against the proclaimed offender only if, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the proclaimed offender has committed the offence. Question may arise here, that if the Judge is of opinion that there is ground for presuming that the proclaimed offender has committed an offence other than the offence referred to sub-section (4) of Section 84, i.e., which is not made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyata Sanhita, 2023 or under any other law for the time being in force, whether the trial in absentia of such proclaimed offender can be proceeded with. To my opinion, in such a situation also, the trial in absentia of the proclaimed offender will have to be proceeded with, because Section 356 only relates to proclaimed offender, and there is nothing in the BNSS to the effect that a proclaimed offender will cease to be a proclaimed offender once charge is framed against him for any offence other than the offence referred to sub-section (4) of Section 84.

Another pertinent question one may pose is, as to how the charge would be framed in a trial in absentia of a proclaimed offender where he is not present before the Court. Before trying to answer this question, let me deal with the argument, often made at the first blush, that charge cannot be framed in the absence of the accused, as well-settled by the Hon'ble Supreme Court in a plethora of decisions. It is correct to say that charge in a trial before a Court of Session or in a trial of warrant-case cannot be framed in the absence of the accused, but that proposition only holds good for a regular criminal trial where the accused is present. But so far as trial in absentia under Section 356 is concerned, there is the non-obstante clause in the beginning of sub-section (1) of Section 356, by virtue of which the enacted part of sub-section (1) of Section 356 takes precedence over anything contained in the BNSS or in any other law for the time being in force that conflicts with it. Therefore, in a trial in absentia of proclaimed offender, charge can very well be framed in the absence of such proclaimed offender. Moving ahead, there are precisely three procedural requirements relating to the charge. First, the consideration of the charge, secondly, the framing of the charge in writing, and lastly, the reading and explaining of the charge to the

accused and asking of him whether he pleads guilty of the offence charged or claims to be tried. The first procedural requirement can be observed by the Judge by considering the record of the case and the documents submitted therewith and hearing the submissions of the prosecution and the advocate provided to the proclaimed offender [under sub-section (3) of Section 356]. The second procedural requirement can also be observed by the Judge by framing the charge in writing. Difficulty would only arise in observing the third procedural requirement, as the proclaimed offender is not present before the Court to whom the charge is to be read and explained. As the proclaimed offender is not present during a trial in absentia, it will be genuinely impossible for the Judge to read and explain the charge to him and to ask him whether he pleads guilty of the offence charged or claims to be tried. The law cannot compel the Judge to do something, the doing of which is genuinely impossible. There is a Latin maxim "lex non cogit ad impossibilia" that translates to "the law does not compel the impossible". In the said context, the Court will have to proceed without fulfilling that specific procedural requirement. More than the "impossibility doctrine", it is because of the principle of "deemed waiver" provided in sub-section (1) of Section 356, that the Court will have to skip the procedural requirement of reading and explaining of the charge. Because of the deemed waiver of the right to be present and tried in person, the proclaimed offender, in a trial in absentia, is deemed to have waived the right to be present and tried in person, which obviously includes the right of the charge being read and explained to him. It is pertinent to mention here that framing of charge is a part of the trial, as it would appear from Chapter XIX of the BNSS that deals with Trial before a Court of Session, and as the trial is taking place against the proclaimed offender in absentia, the framing of charge will also, obviously, be in absentia.

Similar is the case with the procedural requirement of examination of the accused under Section 351 of the BNSS (old Section 313 of CrPC). As the trial of the proclaimed offender takes place in absentia, it is by no means possible for the Court to examine the proclaimed offender under Section 351 of the BNSS, and as such, the Court would have no option but to skip that procedural requirement and move ahead.

Before discussing the remaining sub-sections of Section 356, it is important to discuss some other critical aspects concerning a trial in absentia. As it is already clear from the above discussion, a trial in absentia under sub-section (1) of Section 356 can only be held of proclaimed offender, who is essentially a person accused of an offence which is made punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 or under any other law for the time being in force. Offences punishable with imprisonment of ten years or more, or imprisonment for life or with death under the Bharatiya Nyaya Sanhita, 2023 are grave offences and exclusively triable by the Court of Session. So, the trial in absentia of proclaimed offender for such offences under the Bharatiya Nyaya Sanhita, 2023 must be held before the Court of Session, requiring commitment of the case to the Court of Session by the Magistrate. Trial in absentia of proclaimed offender for offences under any other law for the time being in

force may be held in Special Courts/Tribunals specified thereunder, but in this write-up, I am only covering the trial in absentia held before a Court of Session. So, question readily arises, as to whether a Magistrate can commit a case involving a proclaimed offender to the Court of Session. My outright opinion is that the Magistrate can and, in fact, must do so. Presence of the accused during the commitment of a case is obligatory, as Section 232 of the BNSS contains the expression "the accused appears or is brought". Additionally, before committing the case, the Magistrate must supply a copy of the police report and other documents to the accused, as mandated by Section 230 of the BNSS. However, the requirements of Section 230 and of the presence of the accused during the commitment of the case are only for a normal situation where the accused is present in the dock, either upon appearance or upon production, not in relation to a person declared as a proclaimed offender, because in respect of a proclaimed offender who has absconded to evade trial and there is no immediate prospect of arresting him, the Court is mandated by the word "shall", appearing in sub-section (1) of Section 356, to proceed with the trial in absentia of such proclaimed offender. If the Magistrate does not commit the case involving a person declared as a proclaimed offender, the very purpose of incorporation of Section 356 in the BNSS would get frustrated. The Sessions Court would never request the Magistrate to commit such a case to it; rather, the Magistrate must commit such a case to the Sessions Court to enable the Sessions Court to act in accordance with the mandate of sub-section (1) of Section 356. So far as the requirement of supplying of copy of police report and other documents to the accused under Section 230 is concerned, compliance of the said requirement in relation to a proclaimed offender is not possible. Therefore, the Magistrate must skip this requirement and proceed to commit the case. However, the Magistrate must ensure that a copy of the police report and other documents is available in the record so that later the same can be provided to the advocate assigned to the proclaimed offender under sub-section (3) of Section 356. I may reiterate here that by virtue of the non-obstante clause in sub-section (1) of Section 356, the enacted part of sub-section (1) of Section 356 overrides anything contained in the BNSS or in any other law for the time being in force that conflicts with it.

How will the trial in absentia of proclaimed offender proceed? The expression "in the like manner and with like effect as if he was present" in sub-section (1) of Section 356 indicates that the trial of a proclaimed offender in absentia will be conducted in the same manner as a regular trial as if the proclaimed offender was present. However, sub-section (5) of Section 356 specifies that in a trial in absentia of proclaimed offender, the deposition and examination of the witness may, as far as practicable, be recorded by audio-video electronic means, preferably mobile phone, and such recording shall be kept in such manner as the Court may direct. What I can decipher from this provision is that as the proclaimed offender is not himself present in the Court to witness the progression of the trial, including the examination of witnesses, the provision directs recording the deposition and examination of the witness by audio-video electronic means, preferably mobile phone, and

further to preserve such recording, apparently with a view to ensuring that the trial is conducted fairly and the recordings are available for future references and appeals. It may so happen that during the trial the proclaimed offender may surrender, or he may be arrested and produced, and subsequently such recordings may have to be made available to him in the interest of natural justice, enabling him to get the exact picture of the trial that was conducted in absentia. By utilizing audio-video electronic means, particularly mobile phones, the provision aims to maintain the integrity, transparency, and accountability of the judicial process, as the proclaimed offender is not himself present in the Court during the examination of witnesses. Audio-video recordings capture not only the words spoken by witnesses but also their tone, demeanour, and body language. Ensuring one more safeguard to the proclaimed offender who is tried in absentia, sub-section (3) of Section 356 provides that where the proclaimed offender is not represented by any advocate, he shall be provided with an advocate for his defence at the expense of the State. Though the trial proceeds in absentia against the proclaimed offender, this provision ensures that even if the proclaimed offender is absent from the trial, the trial remains fair and just. When an accused is not present at his trial, there is a significant risk that his defence might be compromised. By providing an advocate, the State ensures that the rights of the proclaimed offender in a trial in absentia are protected, and that the fairness of the trial is maintained.

Section 356, under sub-section (4), gives added significance to the depositions of prosecution witnesses recorded by the Court, competent to try the case or commit it for trial, under the provision of Section 335 of the BNSS (old Section 299 of CrPC) in regard to their use in a trial in absentia of proclaimed offender. Though it is not specifically mentioned in sub-section (4) that the provision contained therein flows from sub-section (1) of Section 335, the language used therein makes it apparent that it, in fact, does so. Sub-section (4) provides that where the Court, competent to try the case or commit for trial, has examined any witnesses for prosecution and recorded their depositions, such depositions shall be given in evidence against such proclaimed offender on the inquiry into, or in trial for, the offence with which he is charged. The Proviso to the sub-section states that if the proclaimed offender is arrested and produced or appears before the Court during such trial, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence. It must be borne in mind that the depositions of witnesses referred to in sub-section (4) had not been recorded during the trial in absentia but had been recorded under the provision of sub-section (1) of Section 335.

A scrutiny of sub-section (1) of Section 335 of the BNSS would reveal that it spells out four pre-requisites for its application, which are culled out herein below:

(1) It is proved that an accused person in a given crime has absconded, and there is no immediate prospect of arresting him;

(2) Upon satisfaction of clause Sl. No. (1) above, the Court competent to try, or commit for trial, such absconding person for the offence complained of, may examine the witnesses produced on

behalf of the prosecution and record their depositions, in the absence of the absconding accused;

(3) The absconding accused is subsequently arrested and is called upon to face the inquiry/trial for the offence charged;

(4) The witness, whose deposition was recorded vide Sl. No. (2) above, is either dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

If all the above factual requirements are satisfied, then Section 335 enables giving in evidence the depositions, mentioned in Sl. No. (2) above, against the accused, in the inquiry/trial for which such accused is charged with.

Sub-section (4) of Section 356 can be regarded as an exception to the general provision contained in sub-section (1) of Section 335. Under sub-section (1) of Section 335, upon the arrest of the absconding accused, the depositions referred to in Sl. No. (2) above may be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, but only if any of the conditions mentioned in Sl. No. (4) is fulfilled. But, under sub-section (4) of Section 356, such depositions shall be given in evidence against the proclaimed offender [referred to sub-section (1) of Section 356] on the inquiry into, or trial for, the offence with which he is charged. Notably, "shall" is used in sub-section (4) of Section 356, which signifies that the depositions referred to in Sl. No. (2) above are mandatorily to be given in evidence against the proclaimed offender in the trial in absentia. Once the proclaimed offender is arrested and produced or appears before the Court during the trial in absentia, the trial will thereupon cease to be a trial in absentia and proceed as a regular trial, and as per the Proviso to sub-section (4) of Section 356, the Court may, in the interest of justice, allow him to examine any evidence which may have been taken in his absence. To my opinion, the phrase "allow him to examine any evidence" may connote that the proclaimed offender (who has ceased to be a proclaimed offender after his surrender or arrest) may be allowed to examine/cross-examine any of the witnesses whose depositions had been recorded under Sl. No. (2) above. The Proviso only relates to the witnesses whose depositions were recorded under sub-section (1) of Section 335, and not to the witnesses examined during the trial in absentia.

So far as sub-section (6) of Section 356 is concerned, seemingly a drafting error is found therein, to my opinion, subject to correction. The sub-section provides: "In prosecution for offences under this Sanhita, voluntary absence of accused after the trial has commenced under sub-section (1) shall not prevent continuing the trial including the pronouncement of the judgment even if he is arrested and produced or appears at the conclusion of such trial." Why I opine so is this: If a trial has commenced under sub-section (1), the trial is in absentia of the proclaimed offender. So, if he is already a proclaimed offender, i.e., he is absent from the trial, then how come the question would arise of voluntary absence of accused after such trial has commenced. How can a person who is already a proclaimed offender from the very commencement of the trial in absentia be voluntarily absent after the commencement of

such trial? Therefore, according to me, there is an apparent drafting error in this sub-section.

Notably, unlike in the other sub-sections of Section 356 wherein the expression "proclaimed offender" is used, in sub-section (6) the word "accused" is used. Then, notably, in sub-section (6), the expression "in prosecution for offences under this Sanhita" is used, which appears to be contrary to the non-obstante clause appearing in sub-section (1). From this, what I can make out is that this sub-section is, rather, speaking about the prosecution of offences under the BNSS against the accused who is present in the dock, not about the prosecution against the proclaimed offender. To my opinion, the words "under sub-section (1)" have wrongly found place in sub-section (6) which ought not have been there. If we omit the words "under sub-section (1)" from sub-section (6), then the sub-section will provide that after the trial has commenced against the accused, be it in a Sessions-trial or a warrant-trial or even a summons-trial under the BNSS, voluntary absence of the accused after such trial has commenced shall not prevent continuing the trial; the trial shall continue notwithstanding such voluntary absence and judgment will also be pronounced. Even if the accused is arrested and produced or appears at the conclusion of such trial, he will not be allowed to turn the clock back so far as the trial is concerned. Understood from that perspective, sub-section (6) of Section 356 would be a Code in itself, dealing with trial in absentia of accused persons voluntary absenting themselves midway during the trial. But with the words "under sub-section (1)" sub-section (6) of Section 356 appears to be illogical.

Regarding voluntary absence of accused after the commencement of the trial, there is a leading U.K. decision, **R. v. Jones (Robert) (No. 2)**, (1972) 1 WLR 887 (CA) [Para 945, p. 803, Halsbury's Law of England, 4th Edn., Reissue 11(2)] wherein it was held: If the accused during the trial absents himself from court voluntarily, however, as, for example, by escaping from custody or failing to surrender to custody whilst on bail, the Judge, in his discretion may allow the trial to continue; and, if the accused is convicted, the Judge may sentence him in his absence. So far as the criminal law in the United States is concerned, Rule 43 of Federal Rules of Criminal Procedure provides, inter alia, that a defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present when he is voluntarily absent after the trial has begun, regardless of whether the court informed him of an obligation to remain during trial, and if the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence. Similarly, Section 475 of Canadian Criminal Code provides that where an accused absconds during the course of his trial, he shall be deemed to have waived his right to be present at the trial, and the Court may continue the trial and proceed to a judgment or verdict and, if it finds the accused guilty, impose a sentence on him in his absence. Then, if we see the law in Bangladesh, sub-section (2) of Section 339B of the Code of Criminal Procedure, 1898 provides that where in a case after the production or appearance of an accused before the Court or his release on bail, the procedure as laid down in sub-section (1) [i.e., proclamation, attachment and newspaper publication] shall not apply and the

Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence. Thus, we can find that while the specifics vary, the underlying principle in many legal systems is that an accused who voluntarily absconds after his trial has commenced is considered to have waived his right to be present.

Sub-section (7) of Section 356 imposes specific restrictions on the right to appeal against a judgment under this section. It stipulates that an appeal against such a judgment is not permissible unless the proclaimed offender personally appears before the Court of Appeal. This means that for an appeal to be considered, the proclaimed offender must physically surrender before the appellate Court. Additionally, the Proviso to this sub-section introduces a time constraint on appeals against convictions. It asserts that no appeal against a conviction will be entertained if it is filed after three years from the date of the judgment.

Lastly, sub-section (8) of Section 356 of the BNSS lays down that the State may, by notification, extend the provisions of this section to any absconder mentioned in sub-section (1) of Section 84. Currently, the trial in absentia provided for in sub-section (1) of Section 356 is only in respect of proclaimed offender, but by sub-section (8), power has been conferred on the State to extend, by notification, the provisions of this section to any absconder mentioned in sub-section (1) of Section 84, thereby broadening its ambit and applicability.

In conclusion, Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023 represents a significant step in addressing the complexities of administering justice when an accused, by his wilful abscondence, puts the criminal trial to a halt. While Section 356 seeks to balance the need for fairness with the necessity of preventing misuse, it also reflects the broader legal principles observed in various jurisdictions worldwide. The provision aims to maintain the integrity of the judicial process, protect the rights of victims, and foster public confidence in the legal system.

***Disclaimer**: The views and interpretations expressed in this write-up are my personal opinions and understanding of the provisions outlined in Section 356 of the Bharatiya Nagarik Suraksha Sanhita, 2023.*

THE SUBSTITUTION OF SECTION 156 (3), CRPC WITH SECTION 175 (3), BNSS- IS IT AN EROSION OF THE MAGISTERIAL *"BRAMHASTRA"* VIS-À-VIS SHODDY INVESTIGATIONS?

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Section 156 (3) of the CrPC , in its sublime brevity and entrenched scope for interpretation, had offered the Honourable Supreme Court many opportunities to interpret the provision in a manner that addresses the need for Judicial Magistrates to have a wide gamut of powers to ensure just and fair investigations. The mandate of Article 21 of the Indian Constitution demands that investigations are conducted in a just and fair manner. A just and fair trial, indubitably, hinges on a prior just and fair investigation and, it is in this realm, that powers implicit in Section 156 (3) of CrPC bore a pivotal role. With the dawning of the new criminal procedural law in the form of Bharatiya Nagarik Suraksha Sanhita (hereinafter BNSS), 2023, Section 156(3) CrPC has been rechristened in the form of Section 175 (3) BNSS. Now, before going into the nitty gritty of the issue at hand, it is important to read both the provisions in juxtaposition.

Section 156 (3) reads as under :

"Any Magistrate empowered under section 190 may order such an investigation as above mentioned."

Section 175 (3) reads as under :

"Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned."

For better context, let me also reproduce the linked section 173(4) of BNSS :

"(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate."

From a conjoint reading of both sections, it becomes clear that the Legislature has put a sturdy fence around the sea of wide-ranging powers implicit in Section 156 (3) CrPC. From a bare reading of both the provisions and the changes brought in the equivalent of Section 156 (3) CrPC, one can surmise the following:

A. The only precondition for exercising the powers under Section 156 (3) was that the Magistrate must be empowered under Section 190 CrPC (the provision dealing with the power of Magistrate taking cognizance of offenses revealed from complaint or charge

sheet or any person other than a police officer or own information) to proceed.

B. Per contra, Section 175 (3) envisages a situation where the power can be exercised on a specific set of conditions :

I. There must be an application stating that the informant approached the Officer in Charge (hereinafter OC) of the concerned police station with the allegation of a cognizable offense and the OC refused to record the information. Thereafter, the aggrieved informant may write to the concerned Superintendent of Police and send it by post.

II. Upon refusal to act on the same on both occasions, the informant may make an application to the Magistrate for directing an investigation.

III. The informant must file the application stating all the above and support his statement in the form of an affidavit.

IV. The Magistrate, once again, is strapped with another two set of obligations before ordering any investigation: a) He must conduct an inquiry as he thinks necessary and b) He must hear the OC.

Therefore, the following becomes clear :

A. We can visualize the oasis of powers in Section 156 (3) CrPC sapped out of its vigor by a web of preconditions in Section 175 (3) R/W Section 173(4) BNSS.

B. And more importantly, the power to order investigation has been limited to and circumscribed by the specific situation of an informant aggrieved with non-registration of FIR. Section 156 (3) read with Priyanka Srivastava guidelines (See : Priyanka Srivastava and Anr vs State of UP and Ors , 2015 (6) SCC 287) already included the means and pre-conditions to direct investigation in such a situation . The problem lies in limiting the provision only to one specific situation oblivious to the kaleidoscope of other powers it held.

Now, before we go any further, it is important to spare a thought as to why Section 156 (3) CrPC was indeed a repository of wide-ranging powers to cure many a wounds.

In **Sakiri Vasu v. State of U.P. and Ors. (2008) 2 SCC 409,** the Honourable Supreme Court held, at para 17,

"17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. **Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation**." (emphasis supplied)

Let us care to note from the above :

A. The power under Section 156 (3) included ordering registration of FIR, and consequent investigation, but it was not limited to only this situation.

B. Over and above the order for registration of FIR, it also included "ordering a **proper**

investigation if the Magistrate is satisfied that a proper investigation **has not been done, or is not being done** by the police". I will attempt to briefly touch upon how the Honourable Supreme Court further fortified the wide-ranging powers of the Magistrate flowing from Section 156 (3).

In para 18 of Sakiri Vasu (supra), the Apex court laid the foundational jurisprudence of Section 156 (3) in the following words :

"**18**. It is well settled that when a power is given to an authority to do something **it includes such incidental or implied powers which would ensure the proper doing of that thing**. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, **every power and every control the denial of which would render the grant itself ineffective.** Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution." (emphasis supplied)

Now, what Section 175 (3) attempts to do is to address the situation when complainants come to Courts with applications for registration of FIR and subsequent investigation. These preconditions of Section 175 (3) BNSS, more or less, were already the set guidelines which every Magistrate had to follow any way (**See : Priyanka Srivastava and Anr vs State of UP and Ors , 2015 (6) SCC 287).** The problem lies in the interlinking of Section 156 (3) of CrPC with the Priyanka Srivastava (supra) guidelines alone oblivious to the fact that Priyanka Srivastava guidelines were only one and, if I may venture to say, a minor aspect of Section 156 (3). Now, let me address some of the issues that may prop with the tinkering of Section 156 (3) CrPC.

1. Can we still order "further investigation" upon receiving a chargesheet/ closure report suo motu?

It is important to remember that our power to order further investigation,*suo motu* ,upon receiving a charge sheet/ closure report flows from the plenary provision of Section 156 (3) itself . In **State of Bihar v. J.A.C. Saldhana and Ors. (1980) 1 SCC 554**, the Honourable Supreme Court held:

"**19**. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. **The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation**. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8)." (emphasis supplied)

Now, when a chargesheet gets filed and we are of the opinion that the case merits a "further investigation", can we still order for the same? The current Section 175 (3) BNSS provision limits our capacity to order any investigation only when a person is aggrieved by nonregistration of FIR. If,

indeed, there is only one situation where we can order for investigation, then the well established legal position of ordering further investigation upon receiving a charge sheet which isn't complete or proper, gets unsettled entirely. The same problem assumes even greater concern when closure reports are filed. In **Bhagwant Singh v. Commissioner of Police and Anr. (1985) 2 SCC 357,** in which the Honourable Suprme Court stated that a Magistrate, in dealing with a report from the police under Section 173, can adopt one of three courses - (1) he may accept the report and drop the proceedings; or (2) he may disagree with the report, take cognizance of the offence and issue process; or **(3) he may direct further investigation to be made by the police under Section 156(3).**

It is with the interpretation of the Section 156 (3) that the power to order further investigation was carved out. Now, when the plenary powers have been limited to a power in one specific situation, it remains to be seen, **whether we still wield the power to provide a course correction and order for further investigation when shoddy investigations result in filing of jerry-built chargesheets or duplicitous closure reports**.

2. Can we call for "progress reports "?

The practice of calling for "progress reports "from the Investigating officer in an ongoing investigation has been in practice in the Magisterial Courts. This power, once again, flows from the plenary powers implicit in Section 156 (3). In **Dilwar singh v/s State of Delhi JT 2007(10) SC 585 at para 17**, the Honourable Supreme Court held,

"We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such as person can approach the Magistrate u/s 156(3) of Cr.P.C and if the magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such other orders as he thinks necessary for ensuring a proper investigation. All these powers a magistrate enjoys under section 156(3) of CrPC Sec 156(3) CrPC provides for a check by the Magistrate on the police performing its duties under chapter 12 of CrPC. In cases where the magistrate finds that the police has not done its duty of investigating the case at all, or as not done it satisfactorily, he can issue a direction to the police to do the investigation properly and can monitor the same and sec 156(3) of CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done Or is not being done by the police. "

It is important to point out that the power of monitoring an investigation isn't limited to calling for "progress reports ". What the Honourable Supreme Court, in a number of judgements, interpreted is the power of "Monitoring an investigation "without participating in it directly. The role of the Magistrate was envisaged to be that of a nonpartisan umpire without being a player himself. This, in my humble opinion, reflects a definitive shift in the perception of a Magistrate and recognition of his function in the investigation stage. The fact that he ought not to remain a mute

spectator to the inadequacies of investigations, but to make meaningful interventions. At the same time, the Magistrate ought to desist from investigating himself for it will amount to intruding into the sphere of the investigative agencies. However, the magistrate is, as is clear from the above discussion, empowered to monitor the investigation, to ensure that it is free and fair.Therefore, the dictum in Dilwar Singh (supra) of **"order a proper investigation and take other suitable steps and pass such other orders as he thinks necessary for ensuring a proper investigation"** is wide enough to empower the Magistrates to keep the IO in check throughout the investigation when the need be. In my view, given the realities, we have to deal with daily and given the mandate of Article 21 of the Indian Constitution, Section 156(3) CrPC was indeed a panacea to many issues entrenched in how the investigations are often done. The question, once again is, when the provision itself has been tailored to meet one specific situation and the plenary powers have been emasculated altogether, do we still enjoy these powers in the absence of the very root of these powers?

3. Can we order "further investigation "after cognizance as well?

Since our law school days, it was embedded in our minds that the power to direct investigation under Section 156 (3) is pre-cognisance and the power to direct investigation under Section 202 is always post-cognisance. But the settled position, with regards to the power to order investigation /further investigation at the post-cognisance stage was changed in the landmark case of **Vinubhai Haribhai Malviya vs State of Gujrat (AIR 2019 SUPREME COURT 5233).** In this case, Hon'ble Justice Rohintan Fali Nariman writing for a Three Judge Bench, endeavoured to answer the following questions:

- Whether investigation under Section 2(h) includes further investigation?
- Whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173, and if so, up to what stage of a criminal proceeding?
- Whether the Magistrate has jurisdiction under Section 156 (3) to to direct further investigation under Section 173(8)?

In Vinubhai (supra), the Honourable Supreme Court, after referring to all the key judgments on this issue, held that : ***a)*** **The definition of "investigation " under Section 2(h) includes further investigation and therefore , drawing from the powers in Section 156 (3) , the Magistrate can order further investigation suo motu under Section 173 (8) and *b)* The power to order further investigation continues post cognizance as well till framing of charge**. Let me reproduce paragraph 38 of the judgement:

"**There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences**. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra),

Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. **There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law**. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

CONCLUSION

Let's take a simple illustration: A tells B that he can go to Delhi. C interprets the same and tells B that he can go to Delhi by road, flight, and train and that he can take the necessary steps to ensure that the journey is smooth and comfortable. Now, if later, A tells B that he can go to Delhi by a specific train and on a specific date and with a specific luggage in a specific attire at a specific time, does it leave C with any room for interpretation? This is exactly the problem with Section 175(3) of BNSS. By tying Section 156 (3) with Priyanka Srivastava guidelines alone, the Legislature seems to have overlooked the fact that it has, perhaps inadvertently, choked Section 156(3) of all its vigour. Section 156 (3) was about the power to direct initial investigation and way much more. Section 156 (3) is a horizon to an endless sky, Section 175(3) is a canvass in a closed room. The repository of powers, to my mind, has been sapped off into a lifeless ruin. *In Memorium*, Section 156 (3)?

GROWING DIVORCE TRENDS IN INDIA: UNDERSTANDING THE UNDERLYING REASONS

• Smt. Sadhana Kumari Mandal, Civil Judge (Junior Division), Charaideo, Assam

Marriage in India is considered not only as a tie between two individuals but as a tie between two families. It is a pious institution whereby two persons enter into a lifelong commitment. A marriage ceremony in India is an affair involving emotional and social sentiments. The 'big fat Indian wedding' is a widely popular phrase highlighting how much families in India spent on marriages and how much it means to them. However, the growing divorce rates and breaking up of families indicates that marriage as a social institution is losing its value leading to people losing faith in it.

India being a multi-cultural society, the people perform marriage ceremony in accordance with rituals and customs of their own religion and community. While among the Hindus marriage is considered as a social institution whereas it is more of a contractual nature among the Mohhamedans. The Sikhs, the Buddhists and the Christians consider it to be a sacramental ceremony. However, divorce rates are stepping a rise among all these societies. If taken into consideration the data from the Global Index, India has the lowest rate of divorce amounting only to 1% in comparison to the other nations in the world. But, the question is whether topping the list signifies that the institution of marriage is well preserved in India and is it an indicator of a happier society. The steep rise in filing of divorce cases in India is deposing that marriages are not lasting and the life-long union is losing its life. As per a report of the United nations, the rate of divorce in India has increased by two-fold. But, it is important to understand why has this development started to happen. The reasons are numerous and has to be thoroughly understood in order to reach to the conclusion that whether this rising trend is a good development or otherwise.

There was a time in India when the women feared to step out of their homes. They confined themselves to the household chores and considered serving their husbands and family as their sacred duty. Women themselves did not wanted to break the marriage or step out of their abusive relationship with the fear in mind that the society would not accept her. The low literacy rate and minimal role in the workforce added with the fear of 'what society would think' made women stick to unhappy marriages. Domestic violence, demand for dowry and the associated abuse and harassment has been another major reasons behind the agony of the Indian women. The National Crime Report Bureau (NCRB) report, 2019 illustrated nearly 1 lakh cases of domestic violence in that year. But it is not only the men who are to be blamed for such miserable condition of their equal halves. The mothers prepare their daughters from the very childhood of what she

should do when she becomes a wife; to be submissive, to learn all the household chores, to always listen to their husbands, and take care of the family. In many cases when a daughter complains of their husbands being abusive, she is told to adjust or accept it as her fate. Many a times the women consider taking their lives rather than getting separated from their husband and facing the repercussions. As per National Crime Report Bureau (NCRB) Data of 2018, the housewives were the second largest segments of suicidal deaths in India. The saving of money for daughter's marriage rather than investing on her studies is another prevalent social issue. The bizarre social stigma of being addressed as a 'divorcee' or in the worst scenarios as 'used and damaged' adds to her agony.

With the advent of education, awareness and self-realization of one's value, the women in India have gathered the strength to raise their voice against the ill treatments meted out to them specially in marriages. The growing participation of women in the workforce has provided her with better economical means to sustain her living on her own. The women in abusive relationship have started to move out of it by means of separation at least, if not divorce in all cases. But it would not be prudent to say that it is only the men folk out of whose atrocities women have started to come out of marriages and apply for divorce. The problem of marital abuse is not only faced by the women but also the men. In a study upon 1000 men of different age groups in Haryana, it was found that 52.4% of the males has experienced had faced some sort of violence at the hands of their wives. The form of violence was more emotional than physical. However, such cases go unreported because of the general stereotypes against the males. Also, men feel ashamed in opening up against the violence against them due to the fear of being made fun of by his peers and family members. A report of the NRCB data highlights that an average of 20 Indians kills themselves daily as a result of their toxic marital issues. In that way, will it not be better to see rise in divorce cases rather than rise in deaths due to unhappy marital relations.

In the contemporary world where relations are made and broken within days and months, the value of the institution of marriage has also lessened as a result. In the earlier times marriage meant an invisible thread binding two individuals to grow a family with love and care. There was mutual respect, understanding and a will to adjust to make the marriage work which seems to be losing now. However, in the post internet era, adjustment and compromise has started to become obsolete and the individuals place their personal interest on the top. A major reason behind the rise in divorce trend is the lack of understanding and unwillingness to adjust with the other for the sake of keeping the marriage. In the recent times, couples have started to prefer more on replacing their partners instead of working on themselves and their relationships. As a result, divorce on the ground of adultery have started to upsurge more.

Recently, a bench of Justices B.V. Nagarathna and Augustine George Masih, in the case of Dolly Rani v. Manish Kumar Chanchal (2024 SCC OnLine SC 754) focused on how sacred is the character of marriage in an Indian society. Hon'ble Justices opined that marriage is

not a commercial transaction and neither an occasion only for singing, dancing and dining or demanding dowry and gifts by undue pressure which might lead to the initiation of criminal proceedings in future. The Hon'ble judges urged the younger generations to think deeply before entering into this institution and to understand how sacred this institution is for the Indian society. The bench further added that marriage is sacred for it provides a lifelong, dignity-affirming, equal and consensual healthy union of two individuals. If the commitment which the couple makes to each other during the ceremony of marriage is adhered to, there would be very few cases of breakdown of marriages.

It cannot be denied that divorce is a helpful way of getting over a marital relationship in which the partners are not happy. It is also a tool to terminate abusive relationships. But, it is equally important to understand that marriage is a lifelong commitment and has a sacred character. Therefore, the individuals must be ready to listen to the other partner, care for their needs and try to adjust with them before entering into this pious institution. The breaking of marriages not only affect the lives of two individuals but also their families and children. It erodes the fiber of the basic unit of the society.

"It is the spirit and not the form of law that keeps justice alive"

Earl Warren

Glance at some of the Judgments reported in the last six months

• JUDGMENTS OF SUPREME COURT OF INDIA (Criminal)

1. Sharif Ahmed v. State of U.P., 2024 SCC OnLine SC 726

Issue: Form and contents of a charge sheet/police report to take cognizance of an offence

Decision:

"The issue in the first part relates to chargesheets being filed without stating sufficient details of the facts constituting the offense or putting the relevant evidence on record. In some states, the chargesheets merely carry a reproduction of the details mentioned by the complainant in the First Information Report, and then proceed to state whether an offence is made out, or not made out, without any elucidation on the evidence and material relied upon. On this issue, the recent judgment of this Court in *Dablu Kujur* v. *State of Jharkhand* aptly crystallises the legal position in the following words:

"**17.** Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following: —

(i) A report in the form prescribed by the State Government stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Penal Code, 1860"

(ii) If upon…""

[Para 3]

"It is, therefore, apparent from the language of the legislation, that under the Code, that is, the Criminal Procedure Code, 1973, the requirement and the manner of providing details in the chargesheet, stand verified."

[Para 12]

"The question of the required details being complete must be understood in a way which gives effect to the true intent of the chargesheet under Section 173(2) of the Code. The requirement of "further evidence" or a "supplementary chargesheet" as referred to under Section 173(8) of the Code, is to make additions to a complete chargesheet, and not to make up or reparate for a chargesheet which does not fulfil requirements of Section 173(2) of the Code. The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should *prima facie* show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges."

[Para 13]

"It is the police report which would enable the Magistrate to decide a course of action from the options available to him. The details of the offence and investigation are not supposed to be a comprehensive thesis of the prosecution case, but at the same time, must reflect a thorough investigation into the alleged offence. It is on the basis of this record that the court can take effective cognisance of the offence and proceed to issue process in terms of Section 190(1)(b) and Section 204 of the Code. In case of doubt or debate, or if no offence is made out, it is open to the Magistrate to exercise other options which are available to him."

[Para 24]

"In *H.N. Rishbud and Inder Singh* v. *State of Delhi*, this Court notes that the process of investigation generally consists of: 1) proceeding to the concerned spot, 2) ascertainment of facts and circumstances, 3) discovery and arrest, 4) collection of evidence which includes examination of various persons, search of places and seizure of things, and 5) formation of an opinion on whether an offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the culmination of several stages that an investigation goes through. This Court in its decision in *Abhinandan Jha* v. *Dinesh Mishra* states that the submission of the chargesheet or the final report is dependent on the nature of opinion formed, which is the final step in the investigation."

[Para 27]

"Therefore, the investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons."

[Para 31]

2. Child in Conflict with Law v. State of Karnataka, 2024 SCC OnLine SC 798

Issue-1:	Time period for completion of preliminary inquiry.
Decision:	"We approve the views expressed by the High Court of Madhya Pradesh in *Bhola* v. *State of Madhya Pradesh* and the High Court in Delhi in *CCL* v. *State (NCT) of Delhi* who while dealing with the provisions of section 14 of the Act have held that the time period prescribed for completion of the preliminary assessment is not mandatory but merely directory in nature. We also approve the views expressed by the High Court of the Punjab and Haryana in *Neeraj* v. *State of Haryana* and by the High Court of Delhi in *X (Through his Elder Brother)* v. *State* who also expressed similar views while dealing with the *pari materia* provisions of the repealed Juvenile Justice (Care and Protection of Children) Act, 2000." ***[Para 9.28]***
Issue-2:	Anomaly in S. 101 of JJ Act regarding "Children's Court" and "Court of Sessions".
Decision:	"From a conjoint reading of the aforesaid provisions of the Act and the 2016 Rules, in our opinion, wherever words 'Children's Court' or the 'Sessions Court' are mentioned both should be read in alternative. In the sense where Children's Court is available, even if the appeal is said to be maintainable before the Sessions Court, it has to be considered by the Children's Court. Whereas where no Children's Court is available, the power is to be exercised by the Sessions Court." ***[Para 12.2]***
Issue-3:	Time limit for preferring appeal against the JJB's preliminary assessment u/s 15 of JJ Act.
Decision:	"Though, the right of appeal has been provided in Section 15(2) and Section 101(2) of the Act against an order passed under Section 18(3) after preliminary assessment under Section 15 of the Act, however, neither any time has been fixed for filing the appeal nor any provision is provided for condonation of delay in case need be." ***[Para 13]*** "In our opinion, the same being an omission. In order to make the Act workable and putting timelines for exercise of statutory right of appeal which always is there, we deem it appropriate to fill up this gap, which otherwise does not go against the scheme of the Act. Hence, for the period for filing of appeal in Section 101(2), we take guidance from Section 101(1) of the Act. The period provided for filing the appeal therein is **30 days** and in case sufficient cause is shown the power to condone the delay has also been conferred on the appellate authority. Timeline has also been provided for decision of appeal." ***[Para 13.1]***

Issue-4:	Non-mentioning of name of P.O., members in Court, Tribunals.
Decision:	"Before parting with the judgment, we quote with approval para 25 of the impugned order passed by the High Court. The same is extracted below: "25. One more point observed by this Court is that while signing the order sheet and also orders, the names of the Judicial Member as well as Non-judicial Members are not noted below their signatures. This is coming in the way of anyone knowing the names of the members who were present and who were absent. Therefore, only on the basis of signatures, this Court was able to distinguish as to who was the Non-Judicial Member present on 05.04.2022 and who was the third member who joined in expressing dissenting opinion on 12.04.2022. This Court is of the considered opinion that it would be appropriate to mention the names of the members below their signatures, which would also help the transparency in conduct of the said proceedings and put the members on guard about their roles played in the said proceedings."" ***[Para 17]*** "The High Court has noticed an important issue which arises in judicial and quasi-judicial proceedings throughout the country. The Presiding Officers or Members of the Board, as the case in hand, or Tribunals do not mention their names when the order is passed. As a result of which it becomes difficult to find out later on, as to who was presiding the Court or Board or Tribunal or was the member at the relevant point of time. There may be many officers with the same name. Insofar as the judicial officers are concerned, unique I.D. numbers have been issued to them." ***[Para 17.1]*** "We expect that wherever lacking, in all orders passed by the Courts, Tribunals, Boards and the quasi-judicial authorities, the names of the Presiding Officers or the Members be specifically mentioned in the orders when signed, including the interim orders. If there is any identification number given to the officers, the same can also be added." ***[Para 17.2]*** "The matter does not rest here. In many of the orders the presence of the parties and/or their counsels is not properly recorded. Further, it is not evident as to on whose behalf adjournment has been sought and granted. It is very relevant fact to be considered at different stages of the case and also to find out as to who was the party delaying the matter. At the time of grant of adjournment, it should specifically be mentioned as to the purpose therefor. This may be helpful in imposition of costs also, finally once we shift to the real terms costs." ***[Para 17.3]***

SUMMARY OF THE JUDGMENT	
	"In view of our aforesaid discussions, the present appeal is disposed of with the following directions: (i) The provision of Section 14(3) of the Act, providing for the period of three months for completion of a preliminary assessment under Section 15 of the Act, is not mandatory. The same is held to be directory. The period can be extended, for the reasons to be recorded in writing, by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate. (ii) The words 'Children's Court' and 'Court of Sessions' in Juvenile Justice (Care and Protection of Children) Act, 2015 and the 2016 Rules shall be read interchangeably. Primarily jurisdiction vests in the Children's Court. However, in the absence of constitution of such Children's Court in the district, the power to be exercised under the Act is vested with the Court of Sessions. (iii) Appeal, under Section 101(2) of the Act against an order of the Board passed under Section 15 of the Act, can be filed within a period of 30 days. The appellate court can entertain the appeal after the expiry of the aforesaid period, provided sufficient cause is shown. Endeavour has to be made to decide any such appeal filed within a period of 30 days. ... (vii) In all the orders passed by the Courts, Tribunals, Boards and the Quasi-Judicial Authorities the names of the Presiding Officer and/or the Members who sign the orders shall be mentioned. In case any identification number has been given, the same can also be added. (viii) The Presiding Officers and/or Members while passing the order shall properly record presence of the parties and/or their counsels, the purpose for which the matter is being adjourned and the party on whose behalf the adjournment has been sought and granted. ***[Para 18]*** "A copy of the judgment be sent to all the Registrar Generals of High Courts for further circulation amongst the Judicial Officers and the Members of the Juvenile Justice Boards, the Directors of the National Judicial Academy and the State Judicial Academies." ***[Para 19]***

3. Yash Tuteja v. Union of India, 2024 SCC OnLine SC 533	
Issue:	Necessity for an offence to qualify as a "scheduled offence" under the PMLA for the allegations of proceeds of crime to hold.
Decision:	"Hence, the offence punishable under Section 120B of the IPC could become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule to the PMLA. In this case, admittedly, the offences alleged in the complaint except Section 120-B of IPC are not the scheduled offences. Conspiracy to commit any of the offences included in the Schedule has not been alleged in the complaint. ECIR/RPZO/11/2022, which is the subject matter of the complaint, is based on the offences relied upon in the complaint. As the conspiracy alleged is of the commission of offences which are not the scheduled offences, the offences mentioned in the complaint are not scheduled offences within the meaning of clause (y) of sub-Section (1) of Section 2 of the PMLA." ***[Para 3]***

"In paragraph 15 of the decision in the case of *Pavana Dibbur*, this Court held that:

> "The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence."

Therefore, in the absence of the scheduled offence, as held in the decision mentioned above of this Court, there cannot be any proceeds of crime within the meaning of clause (u) of sub-Section (1) of Section 2 of the PMLA. If there are no proceeds of crime, the offence under Section 3 of the PMLA is not made out. The reason is that existence of the proceeds of crime is a condition precedent for the applicability of Section 3 of the PMLA."

[Para 4]

"The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf. Section 46 of PMLA provides that the provisions of the Cr. P.C. (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr. P.C. provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Criminal Procedure Code, 1973 (for short, Cr. P.C.) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr. P.C. will apply to the Complaint. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr. P.C. Hence, the Special Court will have to apply its mind to the question of whether a *prima facie* case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA. If the Special Court is of the view that no *prima facie* case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr. P.C. to dismiss the complaint. If a *prima facie* case is made out, the Special Court can take recourse to Section 204 of the Cr. P.C."

[Para 6]

"In this case, no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime. Hence, there cannot be an offence under Section 3 of the PMLA. Therefore, no purpose will be served by directing the Special Court to apply its mind in accordance with Section 203 read with Section 204 of the Cr. P.C. That will only be an empty formality."

[Para 7]

"At this stage, the learned ASG stated that, based on another First Information Report, which, according to him, involves a scheduled offence, criminal proceedings under the PMLA are likely to be initiated against the petitioners. It is not necessary for us to go into the issue of the legality and validity of the proceedings that are likely to be initiated at this stage. Therefore, all the contentions in that regard are left open to be decided in appropriate proceedings."

[Para 10]

4. Perumal Raja v. State, 2024 SCC OnLine SC 12

Issue-1:	Discovery of fact - Conditions to invoke Section 27 of Indian Evidence Act reiterated.
Decision:	"However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In *Mohmed Inayatullah* v. *State of Maharashtra*, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible." ***[Para 22]*** "The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case." ***[Para 23]***
Issue-2:	Meaning of the expression "custody" under Section 27 of the Indian Evidence Act.
Decision:	"The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically...The expression "custody" under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police." ***[Para 25]*** "Reference is made to a recent decision of this Court in *Rajesh* v. *State of Madhya Pradesh*, which held that formal accusation and formal police custody are essential pre-requisites under Section 27 of the Evidence Act. In our opinion, we need not dilate on the legal proposition as we are bound by the law and ratio as laid down by the decision of a

Constitution Bench of this Court in *State of U.P.* v. *Deoman Upadhyaya*. The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. This Court in *Deoman Upadhyay* (supra) observed that the bar under Section 25 of the Evidence Act applies equally whether or not the person against whom evidence is sought to be led in a criminal trial was in custody at the time of making the confession. Further, for the ban to be effective the person need not have been accused of an offence when he made the confession. The reason is that the expression "accused person" in Section 24 and the expression "a person accused of any offence" in Sections 26 and 27 have the same connotation, and describe the person against whom evidence is sought to be led in a criminal proceeding. The adjectival clause "accused of any offence" is, therefore, descriptive of the person against whom a confessional statement made by him is declared not provable, and does not predicate a condition of that person at the time of making the statement."

[Para 26]

"The words "person accused of an offence" and the words "in the custody of a police officer" in Section 27 of the Evidence Act are separated by a comma. Thus, they have to be read distinctively. The wide and pragmatic interpretation of the term "police custody" is supported by the fact that if a narrow or technical view is taken, it will be very easy for the police to delay the time of filing the FIR and arrest, and thereby evade the contours of Sections 25 to 27 of the Evidence Act. Thus, in our considered view the correct interpretation would be that as soon as an accused or suspected person comes into the hands of a police officer, he is no longer at liberty and is under a check, and is, therefore, in "custody" within the meaning of Sections 25 to 27 of the Evidence Act. It is for this reason that the expression "custody" has been held, as earlier observed, to include surveillance, restriction or restraint by the police."

[Para 28]

"This Court in *Deoman Upadhyay* (supra), while rejecting the argument that the distinction between persons in custody and persons not in custody violates Article 14 of the Constitution of India, observed that the distinction is a mere theoretical possibility. Sections 25 and 26 were enacted not because the law presumed the statements to be untrue, but having regard to the tainted nature of the source of the evidence, prohibited them from being received in evidence. A person giving word of mouth information to police, which may be used as evidence against him, may be deemed to have submitted himself to the "custody" of the police officer. Reference can also be made to decision of this Court in *Vikram Singh* v. *State of Punjab*, which discusses and applies *Deoman Upadhyay* (supra), to hold that formal arrest is not a necessity for operation of Section 27 of the Evidence Act. This Court in *Dharam Deo Yadav* v. *State of Uttar Pradesh*, has held that the expression "custody" in Section 27 of the Evidence Act does not mean formal custody, but includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time of giving information, the accused is, for all practical purposes, in the custody of the police and the bar *vide* Sections 25 and 26 of the Evidence Act, and accordingly exception under Section 27 of the Evidence Act, apply. Reliance was placed on the decisions in *State of A.P.* v. *Gangula Satya Murthy* and *A.N. Vekatesh* v. *State of Karnataka*."

[Para 29]

5. Prabir Purkayastha v. State (NCT of Delhi), 2024 SCC OnLine SC 934

Issue:	Interpretation of S. 19(1) of PMLA and S. 43B(1) of UAPA - Arrest of accused without informing him of the grounds of arrest, whether violative of Article 22(1) of the Constitution?
Decision:	"Upon a careful perusal of the statutory provisions (reproduced supra), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of *Pankaj Bansal* (supra) should not be applied to an accused arrested under the provisions of the UAPA." ***[Para 17]*** "We find that the provision regarding the communication of the grounds of arrest to a person arrested contained in Section 43B(1) of the UAPA is verbatim the same as that in Section 19(1) of the PMLA. The contention advanced by learned ASG that there are some variations in the overall provisions contained in Section 19 of the PMLA and Section 43A and 43B of the UAPA would not have any impact on the statutory mandate requiring the arresting officer to inform the grounds of arrest to the person arrested under Section 43B(1) of the UAPA at the earliest because as stated above, the requirement to communicate the grounds of arrest is the same in both the statutes. As a matter of fact, both the provisions find their source in the constitutional safeguard provided under Article 22(1) of the Constitution of India. Hence, applying the golden rules of interpretation, the provisions which lay down a very important constitutional safeguard to a person arrested on charges of committing an offence either under the PMLA or under the UAPA, have to be uniformly construed and applied." ***[Para 18]*** "We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of *Pankaj Bansal* (supra) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA." ***[Para 19]*** "Resultantly, there is no doubt in the mind of the Court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as, this information would be the only effective means for the arrested person to consult his Advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India." ***[Para 20]***

"The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused."

[Para 22]

"A Constitution Bench of this Court examined in detail the scheme of Article 22(5) of the Constitution of India in the case of *Harikisan* v. *State of Maharashtra* and held that the communication of the grounds of detention to the detenue in writing and in a language which he understands is imperative and essential to provide an opportunity to detenue of making an effective representation against the detention and in case, such communication is not made, the order of detention would stand vitiated as the guarantee under Article 22(5) of the Constitution was violated. The relevant para is extracted hereinbelow:

> "**7. ... In order that the detenue should have that opportunity, it is not sufficient that he has been physically delivered the means of knowledge with which to make his representation. In order that the detenue should be in a position effectively to make his representation against the Order, he should have knowledge of the grounds of detention, which are in the nature of the charge against him setting out the kinds of prejudicial acts which the authorities attribute to him. Communication, in this context, must, therefore, mean imparting to the detenue sufficient knowledge of all the grounds on which the Order of Detention is based. In this case the grounds are several, and are based on numerous speeches said to have been made by the appellant himself on different occasions and different dates. Naturally, therefore, any oral translation or explanation given by the police officer serving those on the detenue would not amount to communication, in this context, must mean bringing home to the detenue effective knowledge of the facts and circumstances on which the Order of Detention is based."**"
>
> (emphasis supplied)

[Para 25]

"The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the 'grounds' of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar the requirement to communicate the grounds of arrest is concerned."

[Para 29]

"Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."

[Para 30]

	"It may be reiterated at the cost of repetition that there is a significant difference in the phrase 'reasons for arrest' and 'grounds of arrest'. The 'reasons for arrest' as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the 'grounds of arrest' would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the 'grounds of arrest' would invariably be personal to the accused and cannot be equated with the 'reasons of arrest' which are general in nature." ***[Para 49]*** "From the detailed analysis made above, there is no hesitation in the mind of the Court to reach to a conclusion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the accused appellant or his counsel before passing of the order of remand dated 4th October, 2023 which vitiates the arrest and subsequent remand of the appellant." ***[Para 50]***

6. Sunita Devi v. State of Bihar, 2024 SCC OnLine SC 984

Issue-1:	Existence of wide judge-centric disparities in sentencing of convicts.
Decision:	"Before passing the sentence on a convict, after rendering conviction, the Judge shall consider the feasibility of proceeding in accordance with the provisions of Section 360 of the CrPC, 1973 which speaks of releasing a convict on probation of good conduct or after admonition. Being a beneficial provision dealing with a reformative aspect, it is the bounden duty of the Judge to consider the application of this provision before proceeding to hear the accused on sentence. While doing so, the Judge has to hear the accused and the prosecution. Similarly, the Court has to apply the salient provisions contained under Sections 3, 4 and 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as "**Act, 1958**"). If an offence is considered as an act against the society, the resultant action cannot be retributive alone, as equal importance is required, if not more, to be given to the reformative part. The ultimate goal is to bring the accused back on the rails, to once again be a part of society. Any attempt to ignore either Section 360 of the CrPC, 1973 or the provisions as mandated in the Act, 1958 would make their purpose redundant. It looks as if these laudable provisions have been lost sight of while rendering a sentence. The ultimate objective is to prevent the commission of such offences in future. It can never be done by a retributive measure alone, as a change of heart at the behest of the accused is the best way to prevent an act of crime. Therefore, we have absolute clarity in our mind, that a trial court is duty bound to comply with the mandate of Section 360 of the CrPC, 1973 read with Sections 3, 4 and 6 of the Act, 1958 before embarking into the question of sentence. In this connection, we may note that sub-section (10) of Section 360 of the CrPC, 1973 makes a conscious effort to remind the Judge of the rigour of the beneficial provisions contained in

the Act, 1958."

[Para 28]

"Hearing the accused on sentence is a valuable right conferred on the accused. The real importance lies only with the sentence, as against the conviction. Unfortunately, we do not have a clear policy or legislation when it comes to sentencing. Over the years, it has become judge-centric and there are admitted disparities in awarding a sentence."

[Para 29]

"A decision of a Judge in sentencing, would vary from person to person. This will also vary from stage to stage. It is controlled by the mind. The environment and the upbringing of a Judge would become the ultimate arbiter in deciding the sentence. A Judge from an affluent background might have a different mindset as against a Judge from a humble one. A female Judge might look at it differently, when compared to her male counterpart. An Appellate Court might tinker with the sentence due to its experience, and the external factors like institutional constraints might come into play. Certainly, there is a crying need for a clear sentencing policy, which should never be judge-centric as the society has to know the basis of a sentence."

[Para 32]

"Sentencing shall not be a mere lottery. It shall also not be an outcome of a knee-jerk reaction. This is a very important part of the Fundamental Rights conferred under Articles 14 and 21 of the Constitution of India, 1950. Any unwarranted disparity would be against the very concept of a fair trial and, therefore, against justice."

[Para 33]

"Various elements such as deterrence, incapacitation and reformation should form part of sentencing. There is a compelling need for a studied scrutiny of sentencing, to address in particular the reformative aspect, while maintaining equality between different groups. Perhaps, much study is also required on the occurrence of repeat offences, which could be attributable to certain groups. The nexus between particular types of offences and the offenders forming their own groups has to be taken note of and addressed."

[Para 34]

"The concept of intuitive sentencing is against the rule of law. A Judge can never have unrestrictive and unbridled discretion, based upon his conscience formed through his understanding of the society, without there being any guidelines in awarding a sentence. The need for adequate guidelines for exercising sentencing discretion, avoiding unwanted disparity, is of utmost importance."

[Para 35]

"Courts do take into consideration the mitigating and aggravating circumstances. As we have dealt with illustratively, no research has been undertaken for constituting what are aggravating and mitigating circumstances. While it would be appropriate to follow '*beyond reasonable doubt*' standard in adjudicating aggravating circumstances, the '*balance of probability*' standard is required while construing mitigating circumstances. Courts may also be guided by the conduct of the convict during pre-trial stage, either under incarceration or otherwise. A report may well be called for from the designated authority. The ultimate idea is to eliminate discretion on the part of the Court, which obviously leads to disparity."

	[Para 36] "...There has to be a conscious discussion and debate over this issue which might require constituting an appropriate Commission on Sentencing consisting of various experts and stakeholders. We illustratively suggest "the members from the legal fraternity, psychologists, sociologists, criminologists, executives and legislators". Societal experience would come handy in coming to a correct conclusion. What we have at present is an imposition of a sentence by way of a legislation. There are obvious errors and lacunae, which have been pointed out in the preceding discussion. It may also be imperative for a court to have an assessment to be made by an independent authority on the conduct and behaviour of the accused for the purpose of deciding the sentence. The guidelines which have been proposed by this Court may also be considered. This would include the creation of a competent authority tasked to give a report and its composition." ***[Para 37]*** "...As it is an important aspect which has escaped the attention of the Government of India, we recommend the Department of Justice, Ministry of Law and Justice, Government of India, to consider introducing a comprehensive policy, possibly by way of getting an appropriate report from a duly constituted Sentencing Commission consisting of experts in different fields for the purpose of having a distinct sentencing policy. We request the Union of India to respond to our suggestion by way of an affidavit within a period of six months from today." ***[Para 40]***
Issue-2:	Extreme haste in trial of an accused in a case under POCSO Act - Denial of the right of the accused to defend himself at every stage of trial.
Decision:	"*Per contra*, Mr. C. U. Singh, learned senior counsel appearing for the High Court and the accused submitted that admittedly there are serious procedural violations. Prejudice was sufficiently demonstrated before the court. It would be impossible for a Judge to deliver the judgment within such a short span of time. No opportunity was given at every stage of the trial to the accused. It is a clear case of "*justice hurried is justice buried*". There is no question of giving an opportunity to the appellant, the judicial officer, as no action is pending against him. In any case, the accused is still under incarceration." ***[Para 54]*** "On perusal, we find that the High Court, while passing both the impugned judgments, has not only called for the records and rendered findings of fact, but has also considered them in detail. At every stage, the accused was denied due opportunity to defend himself. The appellant judicial officer was obviously acting in utmost haste. Every trial is a journey towards the truth and a Presiding Officer is expected to create a balanced atmosphere in the mind of the prosecution and the defence. It seems to us that the decision was rendered in utmost haste. It would be humanly impossible to deliver the judgment within half an hour's time running into 27 pages consisting of 59 paragraphs in the first case and similarly in the other. The lawyer for the defence cannot fight against the court. It is the court which has to follow a balanced approach. At every stage, including framing of charges, there was a constant denial of due opportunity and hearing. The accused was not able to consult his lawyer. He was not even served with the copies, though his lawyer received the same before framing of the charges. Receiving of documents by his lawyer would not be sufficient compliance, unless there was sufficient time given for him to peruse them and thereafter

	have a consultation. Admittedly, neither the provisions of the Witness Protection Scheme, 2018 have been invoked nor the Rules for Video Conferencing for Courts, 2020 were followed. The accused was merely shown the court's proceedings and the writing was on the wall for him. We are not willing to say anything on the merits of the case. On facts, even in Criminal Appeal No. 3925 of 2023, the trial had commenced and concluded in a single day. Additionally, no lawyer could be engaged by the accused and, therefore, as per the recommendations of the prosecutor, another one was engaged. Otherwise, the facts are more or less similar in both the cases and, therefore, we are not inclined to go into it in detail. When the charges are very serious, Courts should be more circumspect in discharging their solemn duty." ***[Para 55]***

7. Tarsem Lal v. Directorate of Enforcement Jalandhar Zonal Office

Issue:	Can power under Section 19 of the Prevention of Money Laundering Act (PMLA) be exercised after cognizance is taken of the complaint of money laundering?
Decision:	"If the Special Court concludes that a prima facie case of commission of an offence under the PMLA is made out in the complaint, it can order the issue of process in accordance with Section 204 (1) of the CrPC. Section 204 of the CrPC reads thus…" ***[Para 6]*** "…As noted earlier, a complaint under Section 44(1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. Hence, the law laid down by this Court in the above decision will apply to a complaint under Section 44(1)(b)." ***[Para 7]*** "While taking cognizance on a complaint under Section 44(1)(b), if the Court finds that till the filing of the complaint, the accused was not arrested, generally at the first instance, as a rule, the Court must issue a summons on the complaint. If the accused was not arrested till the filing of the complaint but has not cooperated with the investigation by defying summons issued under Section 50 of the PMLA, the Special Court may issue a bailable warrant at the first instance while issuing the process. But even in such a case, it is not mandatory to issue a warrant while issuing process; instead issuance of a summons would suffice. When an accused is on bail, while issuing the process, the Special Court will have to issue only a summons. When the accused is granted bail in the same case, it is not necessary to arrest him after taking cognizance. If such an accused does not remain present after service of summons without seeking an exemption, the Special Court can always issue a warrant to secure his presence." ***[Para 8]*** "…Section 44 (1)(d) provides that while trying a scheduled offence or offence under the PMLA, a Special Court shall hold the trial in accordance with the provisions of the CrPC as they apply to trial before a Court of Session. A Special Court is a Court of Session. Therefore, Section 437 will not apply when an accused appears before the Special Court after a summons is issued on a complaint under Section 44 (1)(b) of the PMLA." ***[Para 10]*** "…We will examine whether Section 205 of the CrPC will apply to a complaint under Section 44(1)(b) of the PMLA. Sections 65 and 71 of the PMLA read thus:

"**65. Criminal Procedure Code, 1973 to apply**.—The provisions of the Criminal Procedure Code, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."

"**71. Act to have overriding effect**.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

After carefully perusing the provisions of the PMLA, we find that there is no provision therein which is in any manner inconsistent with Section 205 of the CrPC. Hence, it will apply to a complaint under the PMLA. A summons is issued on a complaint to ensure attendance of the accused before the Criminal Court. If an accused is in custody, no occasion arises for a Court to dispense with the personal attendance of the accused. We may note here that Section 205 empowers the Court to grant exemption only when a summons is issued. Sub-section (2) of Section 205 provides for enforcing the attendance of the accused before the Court at the time of the trial. If the accused who appears pursuant to the summons issued on a complaint were deemed to be in custody, the lawmakers would not have provided for Section 205. Hence, we reject the argument of the learned ASG that once an accused appears before the Special Court on a summons being served to him, he shall be deemed to be in custody."

[Para 11]

"Now, we come to Section 88 of the CrPC. Section 88 reads thus:

> "**88. Power to take bond for appearance**. —When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial."

If a summons on a complaint is issued and the accused appears on the returnable date, it is not necessary in every case to direct the accused to furnish bonds as required by Section 88. It is an enabling provision that permits the Court to direct the accused to furnish bonds considering the facts of each case. Based on the submissions made across the Bar, there are three issues concerning Section 88, which are as under:

(i) Whether Section 88 applies to an accused who has been served with a summons or applies to an accused who appears before the Court before the summons is issued or served?

(ii) Will Section 88 apply to a complaint under the PMLA?

(iii) Whether an order issued by a Criminal Court to the accused to furnish bonds in accordance with Section 88 amounts to a grant of bail?"

[Para 12]

"Firstly, after examining the provisions of the PMLA, it is apparent that Section 88 is in no manner inconsistent with the provisions of the PMLA. Therefore, Section 88 will apply after filing of a complaint under Section 44(1)(b) of the PMLA. If Section 88 is to apply even before a summons is issued or served upon a complaint, there is no reason why it should not apply after the service of summons. A discretionary power has been conferred by Section 88 on

the Court to call upon the accused to furnish bonds for his appearance before the Court. It does not depend on the willingness of the accused. The object of Section 88 is to ensure that the accused regularly appears before the Court. Section 88 is a part of Chapter VI of the CrPC under the heading "Processes to Compel Appearance". Section 61, which deals with the form of summons and mode of service of summons, is a part of the same Chapter. When a summons is issued after taking cognizance of a complaint to an accused, he is obliged to appear before the Criminal Court on the date fixed in the case unless his presence is exempted by an express order passed in the exercise of powers under Section 205 of the CrPC. Therefore, when an accused appears pursuant to a summons issued on the complaint, the Court will be well within its powers to take bonds under Section 88 from the accused to ensure his appearance before the Court. Therefore, when an accused appears before the Special Court under a summons issued on the complaint, if he offers to submit bonds in terms of Section 88, there is no reason for the Special Court to refuse or decline to accept the bonds. Executing a bond will aid the Special Court in procuring the accused's presence during the trial."

[Para 13]

"...Therefore, if a warrant of arrest has been issued and proceedings under Section 82 and/or 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88. Section 88 is indeed discretionary. But this proposition will not apply to a case where an accused in a case under the PMLA is not arrested by the ED till the filing of the complaint. The reason is that, in such cases, as a rule, a summons must be issued while taking cognizance of a complaint. In such a case, the Special Court may direct the accused to furnish bonds in accordance with Section 88 of the CrPC."

[Para 14]

"Now, we come to the issue of whether an order of the Court accepting bonds under Section 88 amounts to grant of bail. If an accused appears pursuant to a summons issued on the complaint, he is not in custody. Therefore, there is no question of granting him bail. Moreover, even if the accused who appears before the Court does not offer to submit bonds under Section 88 of the CrPC, the Court can always direct him to do so. A bond furnished according to Section 88 is an undertaking to appear before the Court on the date fixed. The question of filing bail bonds arises only when the Court grants bail. When an accused furnishes a bond in accordance with Section 88 of the CrPC for appearance before a Criminal Court, he agrees and undertakes to appear before the Criminal Court regularly and punctually and on his default, he agrees to pay the amount mentioned in the bond. Section 441 of the CrPC deals with a bond to be furnished by an accused when released on bail. Therefore, in our considered view, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail."

[Para 15]

"Now, we deal with a contingency where after service of summons issued on a complaint under the PMLA, the accused does not appear. One category of such cases can be where the accused appears on the returnable date of the summons and subsequently does not appear, notwithstanding the furnishing of bonds under Section 88. The other category of cases is where, after the service of summons is made on the complaint, the accused does not appear. This category will also include a case where the accused appears on returnable date, but on

a subsequent date fails to appear. In the first contingency, where the accused does not appear in breach of the bond furnished under Section 88, Section 89 of the CrPC confers sufficient powers on the Court to take care of the situation. Section 89 reads thus:

> **"89. Arrest on breach of bond for appearance.**—When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

The warrant contemplated by Section 89 can be a bailable or non-bailable warrant."

[Para 16]

"Even if a bond is not furnished under Section 88 by an accused and if the accused remains absent after that, the Court can always issue a warrant under Section 70 (1) of the CrPC for procuring the presence of the accused before the Court. In both contingencies, when the Court issues a warrant, it is only for securing the accused's presence before the Court. When a warrant is issued in such a contingency, it is not necessary for the accused to apply for bail. Section 70, which confers power on the Court to issue a warrant, indicates that the Court which issues the warrant has the power to cancel it. Section 70 reads thus:

> **"70. Form of warrant of arrest and duration**.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.
>
> (2) **Every such warrant shall remain in force until it is cancelled by the Court which issued it**, or until it is executed."
>
> (emphasis added)

Thus, sub-section (2) of Section 70 confers power on the Court to cancel the warrant. When a bailable warrant is issued to an accused on the grounds of his non-appearance, he is entitled to be enlarged on bail as a matter of right when he appears before the Court. Therefore, he need not apply for cancellation of the warrant."

[Para 17]

"When a warrant is issued in the cases mentioned in paragraph 16 above, the Special Court can always entertain an application for cancellation of the warrant and can cancel the warrant depending upon the conduct of the accused. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application."

[Para 18]

"Once cognizance is taken of the offence punishable under Section 4 of the PMLA, the Special Court is seized of the matter. After the cognizance is taken, the ED and other authorities named in Section 19 cannot exercise the power of arrest of the accused shown in the complaint. The reason is that the accused shown in the Complaint are under the jurisdiction of the Special Court dealing with the complaint. Therefore, after cognizance of the complaint under 44(1)(b) of the PMLA is taken by the Court, the ED and other authorities named in Section 19 are powerless to arrest an accused named in the complaint. Hence, in such a case,

an apprehension that the ED will arrest such an accused by exercising powers under Section 19 can never exist.

[Para 20]

"...However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."

[Para 21]

"Now, we summarise our conclusions as under:

a) Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;

b) If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;

c) After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;

d) In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;

e) If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;

f) A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;

g) In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly

before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and

j) If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."

[Para 23]

8. Ajwar v. Waseem, 2024 SCC OnLine SC 974

Issue: Can the same Court which granted bail to an accused cancel the bail?

Decision:

Yes, the same Court which granted bail to an accused can cancel the bail if there are serious allegations against him although the accused has not misused the bail.

"While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail."

[Para 26]

"It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts

	below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order…" ***[Para 27]*** "The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a *prima facie* case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused." ***[Para 28]*** "…In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail…" ***[Para 29]*** **Also Refer:** *Chaman Lal* v. *State of U.P.*; *Kalyan Chandra Sarkar* v. *Rajesh Ranjan alias Pappu Yadav* (supra); *Masroor* v. *State of Uttar Pradesh*; *Prasanta Kumar Sarkar* v. *Ashis Chatterjee*; *Neeru Yadav* v. *State of Uttar Pradesh*; *Anil Kumar Yadav* v. *State (NCT of Delhi)*; *Mahipal* v. *Rajesh Kumar @ Polia* (supra), *P* v. *State of Madhya Pradesh, Jagjeet Singh v. Ashish Mishra, Puran* v. *Ram Bilas*; *Narendra K. Amin (Dr.)* v. *State of Gujarat*

9. Dablu Kujur v. State of Jharkhand, 2024 SCC OnLine SC 269	
Issue:	Significance of compliance with Section 173 (2) of the Cr.P.C. and importance of a comprehensive and detailed Police Report/Chargesheet on the completion of the investigation.
Decision:	"The issues with regard to the compliance of Section 173(2) Cr. P.C., may also arise, when the investigating officer submits Police Report only *qua* some of the persons-accused named in the FIR, keeping open the investigation *qua* the other persons-accused, or when all the documents as required under Section 173(5) are not submitted. In such a situation, the question that is often posed before the court is whether such a Police Report could be said to have been submitted in compliance with sub-section (2) of Section 173 Cr. P.C. In this regard, it may be noted that in *Satya Narain Musadi* v. *State of Bihar*, this Court has observed that statutory requirement of the report under Section 173(2) would be complied with if various details prescribed therein are included in the report. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). In *Dinesh Dalmia* v. *CBI*, however, it has been held that even if all the documents are not filed, by reason thereof the submission of the chargesheet itself would not be vitiated in law. Such issues often arise when the accused would make his claim for default bail under

Section 167(2) of Cr. P.C. and contend that all the documents having not been submitted as required under Section 173(5), or the investigation *qua* some of the persons having been kept open while submitting Police Report under Section 173(2), the requirements under Section 173(2) could not be said to have been complied with. In this regard, this Court recently held in case of *CBI* v. *Kapil Wadhwan* that:—

> "Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr. P.C.""

[Para 15]

"Ergo, having regard to the provisions contained in Section 173 it is hereby directed that the Report of police officer on the completion of investigation shall contain the following:—

(i) A report in the form prescribed by the State Government stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) Whether the report of medical examination of the woman has been attached where investigation relates to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or section 376E of the Penal Code, 1860"

(ii) If upon the completion of investigation, there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the Police officer in charge shall clearly state in the Report about the compliance of Section 169 Cr. P.C.

(iii) When the report in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report, all the documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; and the statements recorded under Section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

	(iv) In case of further investigation, the Police officer in charge shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and shall also comply with the details mentioned in the above sub para (i) to (iii)." ***[Para 17]*** "It is further directed that the officer in charge of the police stations in every State shall strictly comply with the afore-stated directions, and the non-compliance thereof shall be strictly viewed by the concerned courts in which the Police Reports are submitted." ***[Para 18]*** Relevant Paragraphs: Para 7, 8, 9, 12, 14 & 15

10. Shento Varghese v. Julfikar Husen, 2024 SCC OnLine SC 895	
Issue:	What is the implication of non-reporting of the seizure forthwith to the jurisdictional Magistrate as provided under Section 102(3) Cr. P.C.? Does delayed reporting of the seizure to the Magistrate vitiate the seizure order altogether?
Decision:	"Both, Section 457 Cr. P.C. and Section 459 Cr. P.C. contemplates the act of seizure by police to be reported to the Magistrate so that necessary steps could be taken for its custody and disposal…" ***[Para 11]*** "This requires us to consider whether validity of the seizure order is contingent on compliance with the reporting obligation? In our view, the validity of the power exercised under Section 102(1) Cr. P.C. is not dependent on the compliance with the duty prescribed on the police officer under Section 102(3) Cr. P.C. The validity of the exercise of power under Section 102(1) Cr. P.C. can be questioned either on jurisdictional grounds or on the merits of the matter. That is to say, the order of seizure can be challenged on the ground that the seizing officer lacked jurisdiction to act under Section 102(1) Cr. P.C. or that the seized item does not satisfy the definition of '*property*' or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime, in order for the authorities to justify the seizure. The pre-requisite for exercising powers under Section 102(1) is the existence of a direct link between the tainted property and the alleged offence. It is essential that the properties sought to be seized under Section 102(1) of the Cr. P.C. must have a direct or close link with the commission of offence in question." ***[Para 13]*** "As stated hereinbefore, the obligation to report the seizure to the Magistrate is neither a jurisdictional pre-requisite for exercising the power to seize nor is the exercise of such power made subject to compliance with the reporting obligation. Contrast this with Section 105E Cr. P.C., 1973 which provides for similar power of seizure and attachment of property. While Section 105E(1) confers the substantive power to make seizure under circumstances provided in that section, sub-section (2) of Section 105E declares that the order passed under Section 105E(1) '*shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made*'. In that sense, the order of seizure, for it to take effect and have legal force, is subjected to a further statutory requirement of the seizure order being confirmed by an order of Court. It is only upon

	passing of the confirmation order within the stipulated period does the order of seizure take effect. Until then, it remains an order in form but without having any legal force." ***[Para 14]*** "We find that there are certain other provisions in the 1973 Code which place similar obligation(s) on the police officer to report their actions to the jurisdictional Magistrate. For example, Section 157 Cr. P.C. provides that '*if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence……he shall forthwith send a report of the same to a Magistrate*'. As in the case of Section 102(3) Cr. P.C., Section 157 Cr. P.C. does not provide for any consequence in the event there is failure to promptly comply with the reporting obligation. It would be helpful to understand how this Court has elucidated on the effect of such non-compliance in the context of Section 157 Cr. P.C. since the provision is nearly *pari materia* with Section 102(3)." ***[Para 15]*** "Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) Cr. P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, '*forthwith*' as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above." ***[Para 24]***

11. State of U.P. v. Assn. of Retired Supreme Court & High Court Judges, (2024) 3 SCC 1	
Issue:	Standard Operating Procedure (SOP) on summoning of government officials.
Decision:	"Enriched by the valuable insights shared in discussions with my esteemed colleagues Justice J.B. Pardiwala and Justice Manoj Misra, we have framed a Standard Operating Procedure (SOP) specifically addressing the appearance of government officials before the courts. At its core, this SOP emphasises the critical need for courts to exercise consistency and restraint. It aims to serve as a guiding framework, steering courts away from the arbitrary and frequent summoning of government officials and promoting maturity in their functioning. The SOP is set out below: ***Standard Operating Procedure (SOP) on Personal Appearance of Government Officials in Court Proceedings*** This Standard Operating Procedure is applicable to all court proceedings involving the Government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court. **1. Personal presence pending adjudication of a dispute** 1.1. Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

(*a*) **Evidence-based adjudication:** These proceedings involve evidence such as documents or oral statements. In these proceedings, a Government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.

(*b*) **Summary proceedings:** These proceedings, often called summary proceedings, rely on affidavits, documents, or reports. They are typically governed by the Rules of the Court set by the High Court and principles of natural justice.

(*c*) **Non-adversarial proceedings:** While hearing non-adversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the Government may not be able to address.

1.2. Other than in cases falling under Para 1.1(*a*) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3. The presence of a Government official may be directed, inter alia, in cases where the court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4. The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1. In exceptional cases wherein the in-person appearance of a Government official is called for by the court, the **court should allow as a first option, the officer to appear before it through videoconferencing**.

2.2. The invitation link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s) by SMS/email/WhatsApp of the official concerned at least one day before the scheduled hearing.

2.3. When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4. Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3.Procedure during the personal presence of government officials: In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1. **Scheduled time slot:** The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is

mandated.

3.2. **The conduct of officials:** government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3. During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4. The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5. Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time period for compliance with judicial orders by the Government

4.1. Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decision-making by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable time-frame, as per the specifics of the case.

4.2. If an order has already been passed, and the Government seeks a revision of the specified time-frame, the court may entertain such requests and permit a revised, reasonable time-frame for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1. The court should exercise caution and restraint when initiating contempt proceedings, ensuring a judicious and fair process.

5.2. **Preliminary determination of contempt:** In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3. **Notice and subsequent actions:** Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action. Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4. **Procedure when personal presence is directed:** In cases requiring the physical presence of a Government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through videoconferencing.

5.5. **Addressing non-compliance:** The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance time-frame, it should consider granting an

	appropriate extension to facilitate compliance. 5.6. When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court." ***[Para 44]***

12.	High Court Bar Assn. v. State of U.P., 2024 SCC OnLine SC 207
Issue:	Whether the Supreme Court, in the exercise of its jurisdiction under Article 142 of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period?
Decision:	"In the subsequent clarification in the case of *Asian Resurfacing*, a direction has been issued to the Trial Courts to immediately fix a date for hearing after the expiry of the period of six months without waiting for any formal order of vacating stay passed by the High Court. This gives an unfair advantage to the respondent in the case before the High Court. Moreover, it adversely affects a litigant's right to the remedies under Articles 226 and 227 of the Constitution of India. Such orders virtually defeat the right of a litigant to seek and avail of statutory remedies such as revisions, appeals, and applications under Section 482 of the Criminal Procedure Code, 1973 (for short, 'Cr. PC') as well as the remedies under the Civil Procedure Code, 1908 (for short, 'CPC'). All interim orders of stay passed by all High Courts cannot be set at naught by a stroke of pen only on the ground of lapse of time." ***[Para 20]*** "The power of the High Court under Article 227 of the Constitution to have judicial superintendence over all the Courts within its jurisdiction will include the power to stay the proceedings before such Courts. By a blanket direction in the exercise of power under Article 142 of the Constitution of India, this Court cannot interfere with the jurisdiction conferred on the High Court of granting interim relief by limiting its jurisdiction to pass interim orders valid only for six months at a time. Putting such constraints on the power of the High Court will also amount to making a dent on the jurisdiction of the High Courts under Article 226 of the Constitution, which is an essential feature that forms part of the basic structure of the Constitution." ***[Para 29]*** **CONCLUSION:** "Hence, with greatest respect to the Bench which decided the case, we are unable to concur with the directions issued in paragraphs 36 and 37 of the decision in the case of *Asian Resurfacing*. We hold that there cannot be automatic vacation of stay granted by the High Court. We do not approve the direction issued to decide all the cases in which an interim stay has been granted on a day-to-day basis within a time frame. We hold that such blanket directions cannot be issued in the exercise of the jurisdiction under Article 142 of the Constitution of India. We answer both the questions framed in paragraph 5 above in the negative." ***[Para 45]*** "Subject to what we have held earlier, we summarise our main conclusions as follows:

a. A direction that all the interim orders of stay of proceedings passed by every High Court automatically expire only by reason of lapse of time cannot be issued in the exercise of the jurisdiction of this Court under Article 142 of the Constitution of India;

b. Important parameters for the exercise of the jurisdiction under Article 142 of the Constitution of India which are relevant for deciding the reference are as follows:

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants;

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right; and

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.

c. Constitutional Courts, in the ordinary course, should refrain from fixing a time-bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the time-bound disposal of cases only in exceptional circumstances. The issue of prioritising the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending; and

d. While dealing with the prayers for the grant of interim relief, the High Courts should take into consideration the guidelines incorporated in paragraphs 34 and 35 above."

[Para 46]

"We clarify that in the cases in which trials have been concluded as a result of the automatic vacation of stay based only on the decision in the case of *Asian Resurfacing*, the orders of automatic vacation of stay shall remain valid."

[Para 47]

"The reference is answered accordingly. We direct the Registry to place the pending petitions before the appropriate Benches for expeditious disposal."

[Para 48]

[Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299 overruled]

• JUDGMENTS OF SUPREME COURT OF INDIA (Civil)

1. Bhikchand v. Shamabai Dhanraj Gugale, 2024 SCC OnLine SC 929

Issue-1:	Restitution of a judgment debtor as per S. 144 CPC in the event of variation, modification, setting aside of a decree
Decision:	"...The principle of restitution has been statutorily recognized in Section 144 of the Civil Procedure Code, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed..." ***[Para 11]*** "The principle explained by this Court in *South Eastern Coal Fields* (supra) as extracted above is to the effect that Section 144 CPC statutorily recognises a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties as held by Privy Council in *Jai Berham* v. *Kedar Nath Marwari*. It is also explained that the factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned." ***[Para 12]***
Issue-2:	Execution of civil decree and the right of the decree holder - Whether sale of judgment debtor's whole property permissible when sale of part property can satisfy decree?
Decision:	**No** "The above quoted provisions contained in sub-rule (2) of Rule 66 of Order XXI CPC clearly mandates that the sale proclamation should mention the estimated value of the property and such estimated value can also be given under Rule 54 Order XXI CPC. The fact that the Court is also entitled to enter in the proclamation of sale its own estimate of the value of the property clearly demonstrates that whenever the attached immovable property is to be sold in public auction the value thereof is required to be estimated. In between Rule 54 to Rule 66 of Order XXI CPC, there is no other provision requiring assessment of value of the property to be sold in auction." ***[Para 21]***

"It is also important to bear in mind the provisions contained in Rule 54(1) Order XXI read with Rule 66 of Order XXI CPC wherein it is provided that either whole of the attached property or such portion thereof as may seem necessary to satisfy the decree shall be sold in auction. If there is no valuation of the property in the attachment Panchanama and there being no separate provision for valuation of the property put to auction, it is to be understood that the valuation of the property mentioned in attachment Panchanama prepared under Rule 54 can always provide the estimated value of the property otherwise the provisions enabling the court to auction only a part of the property which would be sufficient to satisfy the decree would be unworkable or redundant. In the case in hand, the assessed value of all the attached properties is Rs. 1,05,700/- whereas the original decretal sum was Rs. 27,694/- which is about 26.2% of the total value of the property. Therefore, when only one of the attached properties was sufficient to satisfy the decree there was no requirement for effecting the sale of the entire attached properties."

[Para 22]

"It is, thus, settled principle of law that court's power to auction any property or part thereof is not just a discretion but an obligation imposed on the Court and the sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. In the case at hand, the Executing Court did not discharge its duty to ascertain whether the sale of a part of the attached property would be sufficient to satisfy the decree. When the valuation of three attached properties is mentioned in the attachment Panchanama, it was the duty of the Court to have satisfied itself on this aspect and having failed to do so the Court has caused great injustice to the judgment debtor by auctioning his entire attached properties causing huge loss to the judgment debtor and undue benefit to the auction purchaser…"

[Para 25]

"In view of the above discussion, we are satisfied that the present is a case where the decree is subsequently modified/varied, and the decretal amount was reduced from Rs. 27,694/- to Rs. 17,120/-, the sale of all the three attached properties was not at all required and further in the facts and circumstances of the case variation of the decree read together with the sale of the properties at a low price has caused huge loss to the judgment debtor where restitution by setting aside the execution sale is the only remedy available. It is not a case where the restitution can be ordered appropriately or suitably by directing the decree holder to make payment of some additional amount to the judgment debtor to compensate him for the loss caused due to sale of his properties. Doing so would perpetuate the injustice suffered by the judgment debtor."

[Para 26]

"It has been argued that the execution sale cannot be set aside at this stage when the judgment debtor has not paid any amount to satisfy the original decree or the modified decree nor he has challenged the legality of the auction sale on any permissible ground as contemplated in Order XXI CPC. However, we are not convinced with this submission made on behalf of the learned counsel for the respondents for the reason that we are not *per se* setting aside the execution sale as if the present is the proceedings challenging the execution of the decree by way of sale of the attached immovable properties of the judgment debtor…The execution of a decree by sale of the entire immovable property of the judgment debtor is not to penalise him but the same is provided to grant relief to the decree holder and to confer him the fruits of litigation. However, the right of a decree holder should never be construed to have bestowed upon him a bonanza only because he had obtained a decree for realisation of a certain amount. A decree for realisation of a sum in favour of the plaintiff should not amount to exploitation of the judgment debtor by selling his entire property."

[Para 27]

2. Asma Lateef v. Shabbir Ahmad, (2024) 4 SCC 696	
Issue-1:	Permissibility as well as scope and extent of power of the court under Order VIII Rules 10 CPC. Whether Order VIII Rules 10 is mandatory in the sense that the court has to pronounce a judgment in favour of the plaintiff on failure of the dependent to submit written statement?
Decision:	**No, the failure on the part of the defendant to file the written statement within the time permitted by the court would not tantamount to pronouncement of judgment against the defendant, when it is incumbent upon the plaintiff to prove the case by adducing evidence.** [Relied on *Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396*] "We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb "shall" in Rule 10 (although substituted for the verb "may" by the Amendment Act, 1976) does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which "shall" equally applies would be rendered otiose." ***[Para 26]*** "If indeed, in a given case, the defendant defaults in filing written statement and the first alternative were the only course to be adopted, it would tantamount to a plaintiff being altogether relieved of its obligation to prove his case to the satisfaction of the court. Generally, in order to be entitled to a judgment in his favour, what is required of a plaintiff is to prove his pleaded case by adducing evidence. Rule 10, in fact, has to be read together with Order 8 Rule 5 and the position seems to be clear that a trial court, at its discretion, may require any fact, treated as admitted, to be so proved otherwise than by such admission. Similar is the position with Section 58 of the Evidence Act, 1872. It must be remembered that a plaint in a suit is not akin to a writ petition where not only the facts are to be pleaded but also the evidence in support of the pleaded facts is to be annexed, whereafter, upon exchange of affidavits, such petition can be decided on affidavit evidence. Since facts are required to be pleaded in a plaint and not the evidence, which can be adduced in course of examination of witnesses, mere failure or neglect of a defendant to file a written statement controverting the pleaded facts in the plaint, in all cases, may not entitle him to a judgment in his favour unless by adducing evidence he proves his case/claim." ***[Para 29]*** "...it is to avoid such a situation of contradictory/inconsistent decrees that power under Order 8 Rule 10 ought to be invoked with care, caution, and circumspection, only when none of several defendants file their written statements and upon the taking of evidence from the side of the plaintiff, if deemed necessary, the entire suit could be decided. As in the present case, where even one of several defendants had filed a written statement, it would be a judicious exercise of discretion for the court to opt for the second alternative in Order 8 Rule 10CPC unless, of course, extraordinary circumstances exist warranting recourse to the first alternative..." ***[Para 33]***

Issue-2:	Necessity of determining the question of jurisdiction and maintainability of the suit as being barred by law
Decision:	"What follows from a conspectus of all the aforesaid decisions is that jurisdiction is the entitlement of the civil court to embark upon an enquiry as to whether the cause has been brought before it by the plaintiff in a manner prescribed by law and also whether a good case for grant of relief claimed has been set up by him. As and when such entitlement is established, any subsequent error till delivery of judgment could be regarded as an error within the jurisdiction. The enquiry as to whether the civil court is entitled to entertain and try a suit has to be made by it keeping in mind the provision in Section 9CPC and the relevant enactment which, according to the objector, bars a suit. Needless to observe, the question of jurisdiction has to be determined at the commencement and not at the conclusion of the enquiry." ***[Para 49]*** "...If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court." ***[Para 50]***
Issue-3:	Scope of Section 47 CPC in respect of a decree passed under Order VIII Rule 10 CPC.
Decision:	"We, therefore, hold that a decree that follows a judgment or an order (of the present nature) would be inexecutable in the eye of the law and execution thereof, if sought for, would be open to objection in an application under Section 47 CPC." ***[Para 62]***

3. Mrugendra Indravadan Mehta v. Ahmedabad Municipal Corpn., 2024 SCC OnLine SC 849

Issue:	Order 41 Rule 31 CPC – Whether omission to separately frame points for determination by the first appellate court is fatal?
Decision:	**No** "This being the legal position *vis-à-vis* the Act of 1976, it was contended before us by the plaintiffs that the impugned judgment of the High Court is liable to be set aside on the short ground that no points for determination were framed therein, as required by Order 41 Rule 31 CPC. Reliance was placed on *Malluru Mallappa (Dead) through Lrs.* v. *Kuruvathappa*, wherein this Court observed that the first appellate Court is required to set out the points for determination, record the decision thereon and give its own reasoning. It was further observed that, even when the said Court affirms the judgment of the Trial Court, it has to comply with the requirements of Order 41 Rule 31 CPC as non-observance thereof would

lead to an infirmity in its judgment. However, it may be noted that no absolute proposition was laid down therein to the effect that failure to frame points for determination, in itself, would render the first appellate Court's judgment invalid on that ground."

[Para 27]

"Reference was also made to *Santosh Hazari* v. *Purushottam Tiwari (Deceased) by LRs*, wherein this Court held that a first appeal is a valuable right and unless restricted by law, the whole case would be open for rehearing before it, both on questions of fact and law, and, therefore, the judgment of the first appellate Court must reflect conscious application of mind and it must record findings supported by reasons on all the issues arising, along with the contentions put forth and pressed by the parties for decision of the said Court. It was further observed that, while reversing a finding of fact, the first appellate Court must come into close quarters with the reasoning of the Trial Court and then assign its own reasons for arriving at a different finding. This, *per* this Court, would satisfy the requirement of Order 41 Rule 31 CPC."

[Para 28]

"However, in *Laliteshwar Prasad Singh* v. *S.P. Srivastava (Dead) thru. Lrs.*, this Court, while affirming the afore stated principles, observed that it is well settled that the mere omission to frame the points for determination would not vitiate the judgment of the first appellate Court, provided that the first appellate Court recorded its reasons based on the evidence adduced by both parties."

[Para 29]

"Thus, even if the first appellate Court does not separately frame the points for determination arising in the first appeal, it would not prove fatal as long as that Court deals with all the issues that actually arise for deliberation in the said appeal. Substantial compliance with the mandate of Order 41 Rule 31 CPC in that regard is sufficient…"

[Para 30]

"As already noted hereinabove, the High Court did set out all the issues framed by the Trial Court in the body of the judgment and was, therefore, fully conscious of all the points that it had to consider in the appeal. Further, we do not find that any particular issue that was considered by the Trial Court was left out by the High Court while adjudicating the appeal. In effect, we do not find merit in the contention that the impugned judgment is liable to be set aside on this preliminary ground, warranting reconsideration of the first appeal by the High Court afresh."

[Para 31]

4. Jyoti Devi v. Suket Hospital, 2024 SCC OnLine SC 581

Issue: What are the conditions to apply "Eggshell Skull Rule" for reducing compensation in case of medical negligence?

Decision:

"This rule (applied by the NCDRC) holds the injurer liable for damages that exceed the amount that would normally be expected to occur. It is a common law doctrine that makes a defendant liable for the plaintiff's unforeseeable and uncommon reactions to the defendant's negligent or intentional tort..."

[Para 12.4.1]

"The jurisprudence of the application of this rule, as has developed, (*needless to add, in countries other than India*) has fit into four categories- ***first***, when a latent condition of the plaintiff has been unearthed; ***second***, when the negligence on the part of the wrongdoer re-activates a plaintiff's pre-existing condition that had subsided due to treatment; ***third***, wrongdoer's actions aggravate known, pre-existing conditions, that have not yet received medical attention; and ***fourth***, when the wrongdoer's actions accelerate an inevitable disability or loss of life due to a condition possessed by the plaintiff, even when the eventuality would have occurred with time, in the absence of the wrongdoer's actions...**Therefore, for this rule to be appropriately invoked and applied, the person in whose case an adjudicatory authority applies must have a pre-existing condition falling into either of the four categories described above**."

[Para 12.4.3]

"How could such compensation be justified, after observations having been made regarding the service rendered by the Hospital, being deficient, and the continuous pain and suffering on the part of the claimant-appellant, is something we fail to comprehend. Compensation by its very nature, has to be just. For suffering, no part of which was the claimant-appellant's own fault, she has been awarded a sum which can, at best, be described as '*paltry*'."

[Para 16]

"In regard to the application of the Eggshell-Skull Rule, we may observe that the impugned judgment is silent as to how this rule applies to the present case. Nowhere is it mentioned, as to what criteria had been examined, and then, upon analysis, found to be met by the claimant-appellant for it to be termed that she had an eggshell skull, or for that matter, what sort of pre-existing condition was she afflicted by, making her more susceptible to such a reaction brought on because of surgery for appendicitis. All that has been stated is,

> *"9. Therefore, OP cannot take a plea that; patient took treatment from few other hospitals which might have caused the retention of needle in the abdominal wall. In this context we apply the "Egg Skull Rule" in this case, wherein liability exists for damages stemming from aggravation of prior injuries or conditions. It holds an individual liable for all consequences resulting from their activities leading to an injury, even if the victim suffers unusual damage due to pre-existing vulnerability or medical condition"*

If we take the rule as exposited by the NCDRC, even then it stands to reason that the record ought to have been speaking of a pre-existing vulnerability or medical condition, because of which the victim may have suffered '*unusual damage*'. However, none of the orders - be it District, State Commission or the NCDRC refer to any such condition."

[Para 17]

5. S. Shivraj Reddy v. S. Raghuraj Reddy, 2024 SCC OnLine SC 963

Issue:	Can court dismiss the suit if even if Plea of limitation is not set up as a defence?
Decision:	**Yes, the Supreme Court reiterated that even if the plea of limitation is not set up as a defence, the court has to dismiss the suit if it is barred by limitation.** "In the facts and circumstances of the case, we find that the reasoning given by the learned Division Bench while dismissing LPA No. 47 of 2002, that the learned Single Judge ought not to have considered the question of limitation as the defendants did not choose to raise the plea of limitation in the trial Court is *exfacie* erroneous. Law in this regard has been settled by this Court through a catena of decisions. We may refer to the judgment in the case of *V.M. Salgaocar and Bros.* v. *Board of Trustees of Port of Mormugao*, wherein this Court held as follows: "**20. <u>The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence</u>**. If a suit is ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation…" ***[Para 15]*** "Thus, it is a settled law that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation." ***[Para 16]*** "The fact that the firm-defendant No. 1 namely "M/s Shivraj Reddy & Brothers", was a partnership at will, is not in dispute. It is also not disputed that one of the partners of the firm, namely, Shri M. Balraj Reddy expired in the year 1984. This event leaves no room for doubt that the partnership would stand dissolved automatically on the death of the partner as per Section 42(c) of the Act…" ***[Para 17]*** "A fervent plea was raised by learned counsel for the respondents that the firm continued to exist even after the death of Shri M. Balraj Reddy, and the business activities were continued by the firm. Even if it is assumed for the sake of argument that the partners were carrying on the business activities after the death of Shri M. Balraj Reddy, there cannot be any doubt that the firm stood dissolved automatically in the year 1984 as mandated under Section 42(c) of the Act unless and until there was a contract between the remaining partners of the firm to the contrary. There is of course, no such averment by the respondents. The business activities even if carried on by the remaining partners of the firm after the death of Shri M. Balraj Reddy, would be deemed to be carried in their individual capacity in the circumstances noted above." ***[Para 19]*** "The period of limitation for filing a suit for rendition of account is three years from the date of dissolution. In the present case, the firm dissolved in year 1984 by virtue of death of Shri M. Balraj Reddy and thus, the suit could only have been instituted within a period of three years from that event. Indisputably, the suit came to be filed in the year 1996 and was clearly time-barred, therefore, learned Single Judge was justified in accepting the C.C.C. Appeal No. 35 of 1999 and rejecting the suit as being hopelessly barred by limitation." ***[Para 20]***

6. Rajesh Kumar v. Anand Kumar, 2024 SCC OnLine SC 981

Issue: Can a Power of Attorney Holder give evidence about readiness & willingness of plaintiff in specific performance suit?

Decision:

No, the Supreme Court held that in a suit for specific performance in which the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal).

"Undisputedly, in the present case, the plaintiff failed to appear in the witness box. Instead, his Power of Attorney Holder - Parmod Khare has got himself examined as PW-1. This witness was examined on 05.09.2002 and the power of attorney was executed on 26.08.2002. It is not a case where the suit itself was filed by a Power of Attorney Holder. He appeared subsequently only for recording his evidence as the Special Power of Attorney Holder of the plaintiff. The legal position as to when the deposition of a Power of Attorney Holder can be read in evidence has been dealt with by this Court in several decisions."

[Para 8]

"In *Janki Vashdeo Bhojwani* v. *Indusind Bank Ltd.*, it is held that a Power of Attorney Holder cannot depose for principal in respect of matters of which only principal can have personal knowledge and in respect of which the principal is liable to be cross-examined. It is also held that if the principal to the suit does not appear in the witness box, a presumption would arise that the case set up by him is not correct...

> *"13. Order 3 Rules 1 and 2 CPC empower the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order 3 Rules 1 and 2 CPC confines only to in respect of "acts" done by the power-of-attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has rendered some "acts" in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined..."*

[Para 9]

"Having noticed the three judgments of this Court in *Janki Vashdeo Bhojwani* (supra), *Man Kaur* (supra) & *A.C. Narayanan* (supra), we are of the view that in view of Section 12 of the Specific Relief Act, 1963, in a suit for specific performance wherein the plaintiff is required to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract, a Power of Attorney Holder is not entitled to depose in place and instead of the plaintiff (principal). In other words, if the Power of Attorney Holder has rendered some 'acts' in pursuance of power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the act done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter of which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined. If a plaintiff, in a suit for specific performance is required to prove that he was always ready and willing to perform his part of the contract, it is necessary for him to step into the witness box and depose the said fact and subject himself to cross-examination on that issue. A plaintiff cannot examine in his place, his attorney holder who did not have personal knowledge either of the transaction or of his readiness and willingness. The term 'readiness and willingness' refers to the state of

	mind and conduct of the purchaser, as also his capacity and preparedness, one without the other being not sufficient. Therefore, a third party having no personal knowledge about the transaction cannot give evidence about the readiness and willingness." ***[Para 12]***

7. Maya Gopinathan v. Anoop S.B., 2024 SCC OnLine SC 609

Issue-1:	"Stridhan" – Husband's control and custody over stridhan and non-return of the same, whether amounts to misappropriation?
Decision:	**Yes** Reiterated the legal principle laid down in *Rashmi Kumar v. Mahesh Kumar Bhada,* (1997) 2 SCC 397 holding that the properties gifted to a woman before marriage, at the time of marriage or at the time of bidding of farewell or thereafter were considered as stridhan properties. It was further explained that a husband had no control over such stridhan property. The Apex Court called the High Court's decision "legally unsustainable," attributing it to an erroneous approach that demanded a standard of proof "as if it were seized of a criminal trial" for demonstrating the husband's misappropriation of his wife's jewellery. The Apex Court also noted that the High Court's findings were founded on "assumptions and suppositions." ***[Para 16 & 21]*** "...He may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhan property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof..." ***[Para 21]*** "...The High Court, thus, failed to draw the right inference from facts which appear to have been fairly established. That apart, we have neither been shown nor do we know of any binding precedent that for a claim of return of stridhan articles or money equivalent thereof to succeed, the wife has to prove the mode and manner of such acquisition. It was not a criminal trial where the chain of circumstances had to be complete and conclusively proved, without any missing link..." ***[Para 25]***
Issue-2:	Standard of proof in matrimonial cases
Decision:	"We find an elucidation of 'Standard of Proof' in the seminal decision by a bench of three Hon'ble Judges of this Court in *Dr. N.G. Dastane* v. *Mrs. S. Dastane*. This Court eloquently settled the law in the following words: "24. <u>The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities</u>. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the

wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. ...

25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vascillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.

26. Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is 'satisfied' on matters mentioned in Clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word 'satisfied' must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. Section 23 does not alter the standard of proof in civil cases.""

(underlining ours, for emphasis)

[Para 18]

"A bench of two Hon'ble Judges of this Court [of which one of us (Hon'ble Sanjiv Khanna, J.) was a member] in a decision of recent origin in *Roopa Soni* v. *Kamalnarayan Soni* applied the ratio of the decision in *Dr. N.G. Dastane* (supra) while reiterating that the standard of proof for disputes in the matrimonial sphere would be preponderance of probabilities and not beyond reasonable doubt."

[Para 19]

"Law is well-settled that inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. Since the mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole, there must be evidence - direct or circumstantial - to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial, from which to infer the other fact which it is sought to establish. In some cases, the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases, the inferences do not go beyond reasonable probability. If there are no positive proved facts - oral, documentary, or circumstantial - from which the inferences can be drawn, the method of inference would fail and what would remain is mere speculation or conjecture. Therefore, when drawing an inference of proof that a fact in dispute is held to be established, there must be some material facts or circumstances on record from which such an inference could be drawn. In civil cases including matrimonial disputes of a civil nature, the standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable."

[Para 20]

• JUDGMENTS OF THE GAUHATI HIGH COURT (Criminal)

1. Th. Thoiba Singh v. State of Assam

Issue:	Non-Compliance of 52(A) and 55 of the NDPS Act
Decision:	"But, having examined the Material Exhibit-1 and the Photographs - Exhibits-13 to 17, I find that the sample was drawn on 31.05.2015, and the witness and the I.O., who had drawn the sample, had signed it on 31.05.2015. And the learned Magistrate-P.W.5 had signed it on 03.06.2015. Further, Exhibits-13 to 17 indicates that it was signed by the learned Magistrate on 04.06.2015. These discrepancies in the evidence of P.W.5 and Material Exhibit-1 and Exhibits 13 to 17 raises serious doubt about the veracity of the prosecution version about drawing sample from the seized contraband substances in presence of Magistrate on 03.06.2015. In fact, it was drawn in presence of witnesses on 31.05.2015, itself and later on, certificate of the Magistrate on the sample so drawn, was taken on 03.06.2015, and the signatures on the photographs were taken on 04.06.2015." ***[Para 22]*** "Now, the question is, in view of the discrepancies discussed herein above, can it be said that the provision of section 52(A) of the NDPS Act is complied with in letter and spirit though the same appears to be complied with at first instance." ***[Para 23]*** "That, as regards the delay in sending the sample to FSL by the I.O. and absence of evidence of keeping the same in safe custody, I find from the record of the learned court below that the I.O. had seized the contraband substances on 31/5/15 and send the sample to FSL on 03.06.2015. It appears from the Exhibit-8 that having sent the sample No.1 to the FSL he had kept the sample No.2 in the safe custody of the office. But, there is no evidence as to how and where the samples, which were drawn on 31.05.2015, were kept till sending of the sample No.1 to FSL. Mr. Mazumder, the learned counsel for the appellant has rightly pointed this out and I find substance in the same and the case law, i.e. **State of Gujarat vs. Ismail U Haji Patel and Another**, reported in **(2003) 12 SCC 291** and **State of Rajasthan vs. Tara Singh** reported in **(2011) 11 SCC 559**, where emphasis was laid on proper storage and custody of the seized Narcotic Drugs and Psychotropic Substances and dispatching the same to FSL. It is to be noted here that there is no evidence herein this case to establish that seized articles were kept in safe custody in proper form. Therefore, it cannot be said that the provision of section 55 of the NDPS has been complied with." ***[Para 30]*** "What is transpired from the discussion made herein above is that the learned court below has failed to consider the aspect of non-compliance of the provision of section 52-A NDPS Act and also section 55 of the said Act and on such count a serious doubt arises about the veracity of the prosecution version. Thus, it cannot be said that the impugned judgment and order, so passed by the learned court below, has been able to withstand the legal scrutiny, and on such count it requires interference of this court and the accused/appellant is entitled to be acquitted of both the charges on benefit of doubt." ***[Para 35]***

2. Puthimon @ Jahiran Nessa and Ors. v. Abdul Malek, (2024) 4 Gau LR 370

Issue:	Proof of thumb impression
Decision:	"From the aforesaid, it can safely be concluded that a court can exercise its power under Section 73 read with section 45 of the Evidence Act and compare a signature or handwriting impression etc., when same is proved or admitted. The Court has also power to seek scientific opinion from expert specifically skilled for that purpose, which includes comparisons of hand writing and figure impression. The object of having such expert opinion is for ends of justice and in a situation the court without such opinion can not determine the fact in dispute. It is also settled that the Trial Court may or may not rely on such scientific evidence and such reliance shall depend upon facts of each case." ***[Para 15]*** "Having considered the aforesaid settled proposition of law, now let this court look into the issues which are before the learned trial court." ***[Para 16]*** "The plaintiffs sought for declaration of right, title and interest and recovery of possession based on the title stated to be acquired by virtue of sale deed No. 2195/84 dated 8.4.1984, the vendor of the said sale deed was one Amzad Ali, the brother of the predecessor in interest of the plaintiffs. On the other hand, the claim of the defendant is that the predecessor in interest of the plaintiffs not only executed a sale deed being the sale deed No. 547/1987, dated 13.3.1987 but also entered into an unregistered deed dated 17.4.1989. The plaintiffs on the other hand have specifically denied the execution of the subsequent sale deed dated 13.3.1987 and agreement dated 17.4.1989 by their predecessor in interest. However, the defendants have raised a counter claim relying on these two documents." ***[Para 17]*** "In that view of the matter, certainly, there shall be an issue whether the predecessor in interest of the plaintiffs had in fact executed the sale deed. Since the purported vendor, the predecessor in interest of the plaintiffs is no more alive, he cannot own or disown such thumb impression. Therefore, in the considered opinion of this court that it has become necessary to compare the thumb impression of the predecessor in interest of the plaintiffs as discussed herein above to come into a just conclusion." ***[Para 18]*** "However, the issue remains whether the thumb impression of the predecessor-in-interest of plaintiffs can be said to be proved one as required under Section 73 of the Evidence Act, 1872." ***[Para 19]*** "Now coming into the case in hand, it is correct to say that PW 6 was brought to the witness box for the proof of title deed by which the Vendor of the predecessor in interest of the plaintiffs, acquired title. In the process of examination, the PW-6 has deposed that along with him (PW6), the predecessor in interest of the plaintiffs (namely Mokshed Ali) was also a witness to a sale deed No.547/1987 dated 13.3.1987 and 2174/83 dated 16.12.1983. The PW 6 deposed that he saw the predecessor in interest of plaintiffs putting his thumb in the aforesaid two sale deeds." ***[Para 20]*** "The plaintiffs in their Petition No. 193/2022 specifically relied on such deposition to show that the thumb impression has been proved." ***[Para 21]*** "However, the learned Trial Court has not gone into this aspect of the matter and dismissed the petition on the ground that the thumb impression of the predecessor in interest is not

	an admitted one. Thus, the learned trial court ignored the settled proposition of law that even proved signature/thumb impression can be compared under section 73 of the Evidence Act." ***[Para 22]*** "Therefore, in the aforesaid backdrop, this court is of the view that learned trial court has failed to exercise its jurisdiction and passed the impugned order by holding that only admitted signature or thumb impression can be compared under section 73 of the Evidence Act. Such finding is in total ignorance of settled proposition of law, which resulted in miscarriage of justice. Accordingly, the impugned order is set aside and quashed." ***[Para 23]***

3. Chittaranjan Patowary v. The State of Assam and Ors., (2024) 5 Gau LR 274	
Issue:	Criminal Law - Decision of the civil court, shall be relevant, if conditions of any of sections 40 to 43 of the Evidence Act, are satisfied-If the judgment, order or decree of civil court, is relevant, as provided, under sections 40 and 42, then Court has to decide, as to what extent, it is binding, with regard to matters decided therein.
Decision:	"Coming to the factum where the judgments of the civil court are binding on the criminal court, it was held in the case of *K.G. Premshanker vs Inspector of Police & Anr.* reported in *(2002) vol. 8 SCC 87*, that the decision of the Civil Court, shall be relevant, if conditions of any of Sections 40 to 43 of the Evidence Act, are satisfied, but it cannot be said, that the same would be conclusive, except as provided in Section 41. If the judgement, order or decree of Civil Court, is relevant, as provided, under Sections 40 and 42, then Court has to decide, as to what extent, it is binding, with regard to matters decided therein. Therefore, in each case, it has to be ascertained, whether judgement, decree or order, is relevant, and, if so, its effect." ***[Para 36]*** "In the instant case, the prosecution was required to prove beyond reasonable doubt, by leading cogent and convincing independent evidence, that the tenancy agreement executed between the parties were the result of fraud and forgery. On the other hand, the civil case was required to be decided on preponderance of evidence. Merely, on the basis of the Civil Court judgments, it could not be conclusively held in the criminal trial that the loan agreement were the result of fraud and forgery. Under these circumstances, the judgment of the Civil Court, cannot be said to be binding, on the Criminal Court, for the purpose of deciding the guilt of the accused, in a criminal case." ***[Para 37]*** "*K.G. Premshanker's case (supra)*, did not lay down the invariable principle of law, that the judgment of a Civil Court, would be binding on a criminal court, in the subsequent criminal trial, relating to the same subject matter. No principle of law, was laid, in the aforesaid case, that the judgments of the Civil Courts, would be a conclusive proof of the facts involved in the criminal trial, relating to the same issue. In this case, the judgments of the Civil Courts do not fall within the purview of Section 41 of the Evidence Act. At the most, the judgments of the Civil Courts, in this case, could be said to be relevant, and not conclusive proof of the factum of forgery or fraud of the loan agreement..." ***[Para 41]***

• JUDGMENTS OF THE GAUHATI HIGH COURT (Civil)

1. Prafulla Govinda Baruah v. State of Assam, 2024 SCC OnLine Gau 524

Issue: Constitutional validity of Article 11 of Schedule I of Court Fees Act, 1870 (Assam Amendment) brought into effect by the Assam Court Fees (Amendment) Act, 1950.

Decision:

Held as unconstitutional and violative of Article 14 of the Constitution of India.

"Now, it is well settled that the Court fees taken in the Courts are not the taxes. In the various pronouncements of the Hon'ble Supreme Court, it is clearly held that before any levy can be upheld as a fee it must be shown that the levy has reasonable correlation with the services rendered by the Government. It must be provided to have a "quid pro quo" for the services rendered. It is held that fee must have relation to the administration of civil rights while levying fees the appropriate Legislature is required to take into account all relevant factors.

It also held that the legislature cannot compel the litigants to contribute in increasing the Government coffers to be used for roads, building, education and other schemes launched for general benefit."

[Para 13]

"The Hon'ble Supreme Court in ***Zenith Lamp and Electrical Ltd.*** (supra), has held as under:

> *"29. It seems to us that the separate mention of 'fees taken in court' in the Entries referred to above has no other significance than that they logically come under Entries dealing with administration of justice and courts. The draftsman has followed the scheme designed in the Court Fees Act, 1870 of dealing with fees taken in court at one place. If it was the intention to distinguish them from fees in List II, Entry 66, surely some indication would have been given by the language employed. If these words had not been separately mentioned in List I, Entry 77 and List II, Entry 3, the court-fees would still have been levied under List I, Entry 96 and List II, Entry 66.*
>
> *30. It seems plain that 'fees taken in court' are not taxes, for if it were so, the word 'taxes' would have been used or some other indication given. It seems to us that this conclusion is strengthened by two considerations. First, taxes that cart be levied by the Union are mentioned in List I from Entry 82; in List II taxes that can be imposed start from Entry 45. Secondly, the very use of the words 'not including fees taken in any court' in Entry 96, List I, and Entry 66, List II' shows that they would otherwise have fallen within these Entries. It follows that 'fees taken in Court' cannot be equated to 'Taxes'. If this is so, is their any essential difference between fees taken in Court and other fees.? We are unable to appreciate why the word 'fees' bears a different meaning in Entries 77, List I and Entry 96, List I or Entry 3 List II and Entry 66, List II. All these relevant cases of the nature of 'fees' were reviewed in* ***The Indian Mica and Micanite Indus tries Ltd. v. The State of Bihar and others, (1971) 2 SCC 236,*** *by Hegde, J. and he observed :*
>
> > *"From the above discussion, it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable correlationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact*

correlationship. The correlationship expected is one of a general character and not as of arithmetical exactitude".

31. But even if the meaning is the same, what is 'fees' in a particular case depends on the subject-matter in relation to which fee are imposed. In this case we are concerned with the administration of civil justice in a State. The fees must have relation to the administration of civil justice. While levying fees the appropriate Legislature is competent to take into account all relevant factors, the value of the subject- matter of the dispute, the various steps necessary in the prosecution of a suit or matter, the entire cost of the upkeep of courts and officers administering civil justice, the vexatious nature of a certain type of litigation and other relevant matters. It is free to levy a small fee in some cases, a large fee in others, subject of course to the provisions of Art. 14 . But one thing the Legislature is not competent to do, and that is to make litigants contribute to the increase of general public revenue In other words, it cannot tax litigation, and make litigations (sic litigants) pay, say for road, building or education or other beneficial schemes that a State may have. There must be a broad correlationship with the fees collected and the cost of administration of civil justice."

(**Emphasis Supplied**)

[Para 14]

"The said decision rendered by the Hon'ble Supreme Court in ***Zenith Lamp and Electrical Ltd.*** (supra) has also been taken into consideration in the later decisions of the Hon'ble Supreme Court rendered in ***P.M. Ashwathanarayan Setty*** (supra) and ***P.R. Sriramulu*** (supra)."

[Para 15]

"In view of the above settled position of law, if we examine, it is clear that Article 11 of Schedule 1 of Court Fees Act, 1870 (Assam Amendment) brought into effect by the Assam Court Fees (Amendment) Act, 1950 provides levy of Court fees for grant of probate or letter of administration at the rate of 7% ad valorem where the value of the properties exceeds Rs. 5,00,000/- without there being any upper limit, whereas a person, who approaches the Civil Court claiming decrees, is required to pay Court fees not excess of Rs. 11,000/- in the State of Assam.

It cannot be denied that the proceedings for grant of probate and letters of administration are also registered as suits and proceeded with accordingly but in respect of other suits an upper limit of Rs. 11,000/- on the Court fee is fixed in the State of Assam, whereas in the case of grant of probate, where the value of properties exceeds Rs. 5,00,000/- , no upper limit Court fees is fixed. In our view, it cannot be justified to single out the proceedings for grant of probate or letter of administration for an ad valorem without the benefit of any upper limit though it is prescribed in the very same statute for all other litigants.

In such circumstances, we have no hesitation in holding that Article 11 of Schedule I of Court Fees Act, 1870 (Assam Amendment) brought into effect by the Assam Court Fees (Amendment) Act, 1950 in respect of levy of Court fee for grant of probate or letter of administration at the rate of 7% ad valorem where the value of properties exceeds Rs. 5,00,000/- without there being any upper limit fixed is ultra vires to the Article 14 of the Constitution of India and the same is held as such."

[Para 19]

2. Debabrata Saha v. Nibedita Das and Ors., (2024) 5 Gau LR 472	
Issue:	CPC, 1908, O. 21, Rr. 97, 99 and 101- Executing court empowered to determine the dispute between the decree holder and a third party who resist such execution of decree - Executing court is also within its competence and jurisdiction to determine the title of the third party whether it is derived from the judgment debtor or on its own.
Decision:	"The Hon'ble Apex Court in the case ***Usha Sinha (supra)*** inter alia held that a *pendente lite* purchaser had no right to offer resistance or cause obstruction as the purchaser's right had not been crystallised in a decree. Rule 102 of Order XXI clarifies that Rules 98 and 100 would not apply in cases where resistance or obstruction in execution was offered by a transferee *pendente lite*, where the property was transferred by a judgment debtor to such a person after the institution of a suit in whose decree sought to be executed was passed." ***[Para 17]*** "The Order 21 Rule 97, 98 and 101 empowers an executing court to determine the dispute between the decree holder and a third party who resist such execution of decree. The executing court is also within its competence and jurisdiction to determine the title of the third party whether it is derived from the judgment debtor or on its own." ***[Para 18]*** "Law is well settled that in view of mandate of Rule 102 of Order 21, the Rules 98 and 100 is no applicable to resistance or obstruction in execution of a decree for possession of immovable property by a person whom the judgment debtor has transferred the property after institution of the suit in which decree was passed. It is true that in the case in hand the agreement for sale was not executed by the judgment debtor but by another person to whom the judgment debtor had purportedly handed over possession. As discussed herein above the action of judgement Debtor handing over the possession to the Malay Kar was rejected and also the obstruction raised by Malay Kar to the execution of decree. Therefore, for all meaning and purport, the possession got transferred from the Judgement Debtor to the Appellant during the pendency of the Execution proceeding. The fact also remains that Malay Kar was well aware of rejection of his right and despite that he had handed over the possession to the Appellant." ***[Para 22]***

A glimpse of the concluded training programmes during the months from January, 2024 to June, 2024

JANUARY - 2024

SL.NO.	PARTICULARS	NOMINATED PARTICIPANTS	DATE
1	Pre-Appointment Orientation and Capacity Building Training Programme	Chief and Deputy Legal Aid Defence Counsel	06.01.2024
2	Pre-Appointment Orientation and Capacity Building Training Programme	Assistant Legal Aid Defence Counsel	07.01.2024
3	eCourts Phase III Regional Cluster Workshop - North Eastern Region	CPC, NIC coordinator & Technical Officials of Assam, Arunachal Pradesh, Mizoram, Nagaland, Manipur, Meghalaya, Sikkim, and Tripura	19.01.2024 & 20.01.2024
4	One Day In-Service Training/ Workshop (Cluster-5)	Judicial Officers of Cachar, Karimganj, Hailakandi & Dima Hasao	21.01.2024
5	One Day In-Service Training/ Workshop (Cluster-6)	Judicial Officers of Barpeta, Nalbari, Bajali & Baksa	21.01.2024
6	One Day In-Service Training/ Workshop (Cluster-7)	Judicial Officers of Jorhat, Golaghat & Majuli	21.01.2024
7	One Day In-Service Training/ Workshop (Cluster-8)	Judicial Officers of Dibrugarh, Tinsukia, Sivasagar & Charaideo	21.01.2024
8	Refresher Programme for Court Staff & N-Step Training (ECT_8_2024)	Chief Administrative Officer, Head Assistant, Nazir & Process Server of the District Court of Assam	29.01.2024
9	Ecourts Programme (ECT_4_2024 & ECT_7_2024)	Advocate/Advocate Clerk of the district Courts of Assam	30.01.2024

FEBRUARY - 2024

SL. NO.	PARTICULARS	NOMINATED PARTICIPANTS	DATE
1	Capacity Building Training Programme on Prevention of Corruption Act, 1988	Officers of Vigilance Department, Arunachal Pradesh	10.02.2024 to 12.02.2024
2	Refresher Programme on Cyber laws & Appreciation & Handling of Digital Evidence (ECT_14_2024)	Judicial Officers of Assam	13.02.2024
3	Ecourts Programme (ECT_16_2024)	Grade I, II & III Judicial Officers of Assam, Nagaland, Mizoram and Arunachal Pradesh	16.02.2024 (*Online*)
4	Sensitization Programme on "Local Act and Rules (Civil & Criminal)" of Mizoram	Grade-III Judicial Officers of Mizoram	17.02.2024 (*Blended*)
5	Refresher Programmeon Cyber laws & Appreciation & Handling of Digital Evidence (ECT_14_2024)	Judicial Officers of Assam	23.02.2024
6	Knowledge Enhancement Programme	Grade-III Judicial Officers of Assam	24.02.2024 *(Blended)*

MARCH - 2024

SL. NO.	PARTICULARS	NOMINATED PARTICIPANTS	DATE
1	Knowledge Enhancement Programme	Judicial Officers of Assam, Nagaland, Mizoram and Arunachal Pradesh	03.03.2024 (*Blended*)
2	Refresher Programme for Technical Staff of District Court (ECT_11_2024)	Systems Officers & Systems Assistants of the District Courts of Assam	11.03.2024
3	Refresher Programme for ECT Master Trainers	Master trainer Judicial Officers, Advocates & Systems Officers/Systems Assistants	15.03.2024 (*Online*)
4	Refresher Programme (ECT_15_2024)	Staff of the registry of the Gauhati High Court	16.03.2024
5	Sensitization Programme on "Local Act and Rules (Civil & Criminal)" of Arunachal Pradesh	Grade-III Judicial Officers of Arunachal Pradesh	23.03.2024
6	Sensitization Programme on "Local Act and Rules (Civil & Criminal)" of Nagaland	Grade-II & Grade-III Judicial Officers of Nagaland	23.03.2024
7	Awareness Programme on ICT	LADCs and Panel Lawyers of Assam	23.03.2024 (*Blended*)
8	Refresher Programme on eCourt Services (ECT_9_2024)	Staff of the District Courts of Nagaland, Mizoram & Arunachal Pradesh	27.03.2024
9	Awareness Programme on eCourt Services	Computer Typist of the District Courts of Kamrup(M) & Kamrup	27.03.2024
10	Awareness Programme on eCourt Services	Stenographer of the District Courts of Kamrup(M) & Kamrup	28.03.2024

MAY - 2024

SL. NO.	PARTICULARS	NOMINATED PARTICIPANTS	DATE
1	Orientation Programme On New Criminal Laws (Group-A)	For the Judicial Officers of Assam, Nagaland and Arunachal Pradesh	13.05.2024 to 15.05.2024
2	Orientation Programme On New Criminal Laws (Group-B)	For the Judicial Officers of Assam	21.05.2024 to 23.05.2024
3	Orientation Programme On New Criminal Laws (Group-C)	For the Judicial Officers of Assam and Arunachal Pradesh	28.05.2024 to 30.05.2024

JUNE - 2024

SL. NO.	PARTICULARS	NOMINATED PARTICIPANTS	DATE
1	Orientation Programme On New Criminal Laws (Group-D)	For the Judicial Officers of Assam Arunachal Pradesh	06.06.2024 to 08.06.2024
2	Orientation Programme On New Criminal Laws (Group-E)	For the Judicial Officers of Assam Arunachal Pradesh	13.06.2024 to 15.06.2024
3	Orientation Programme On New Criminal Laws (Group-F)	For the Judicial Officers of Assam Arunachal Pradesh	20.06.2024 to 22.06.2024
4	Orientation Programme On New Criminal Laws (Group-G)	For the Judicial Officers of Assam	24.06.2024 to 26.06.2024
5	Orientation Programme On New Criminal Laws	For the Judicial Officers of Mizoram	24.06.2024 to 26.06.2024
6	Orientation Programme On New Criminal Laws (Group-H)	For the Judicial Officers of Assam and Arunachal Pradesh	27.06.2024 to 29.06.2024
7	Orientation Programme On New Criminal Laws	For the Judicial Officers of Mizoram	27.06.2024 to 29.06.2024

LOOKBOOK

One-day pre-appointment Orientation and Capacity Building Training Programme for Chief and Deputy Legal Aid Defence Counsel held on 06.01.2024 and Assistant Legal Aid Defence Counsel held on 07.01.2024.

One Day cluster wise In-Service Training/ Workshop
(Cluster-5)
for the Judicial Officers of the districts of Cachar, Karimganj, Hailakandi & Dima Hasao held on 21.01.2024. The workshop was chaired by ***Hon'ble Mr. Justice Kalyan Rai Surana***, Gauhati High Court.

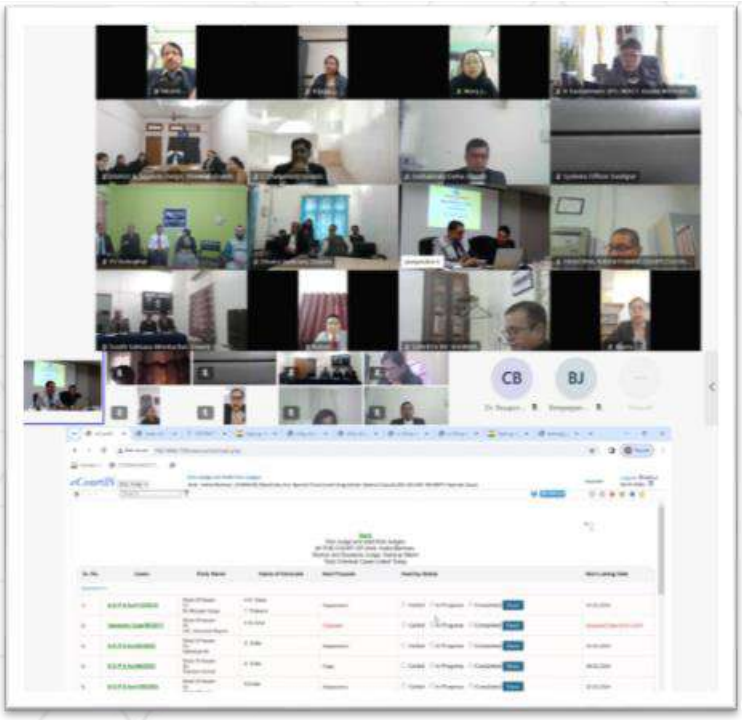
One Day cluster wise In-Service Training/ Workshop
(Cluster-6)
for the Judicial Officers of the districts of Barpeta, Nalbari, Bajali & Baksa held on 21.01.2024. The workshop was chaired by ***Hon'ble Mr. Justice Soumitra Saikia***, Gauhati High Court.

One Day cluster wise In-Service Training/ Workshop
(Cluster-7)
for the Judicial Officers of the districts of Jorhat, Golaghat & Majuli held on 21.01.2024. The workshop was chaired by ***Hon'ble Mr. Justice N. Unni Krishnan Nair***, Gauhati High Court.

One Day cluster wise In-Service Training/ Workshop
(Cluster-8)
for the Judicial Officers of the districts of Dibrugarh, Tinsukia, Sivasagar & Charaideo held on 21.01.2024. The workshop was chaired by ***Hon'ble Mr. Justice (Retd.) Mir Alfaz Ali***, Director, Judicial Academy, Assam

CAPACITY BUILDING TRAINING PROGRAMME
for Officers of Vigilance Department, Arunachal Pradesh on Prevention of Corruption Act, 1988 held w.e.f. 10.02.2024 to 12.02.2024

One day Refresher Programme for the Judicial Officers of Assam on **Cyber Laws, Appreciation & Handling of Digital Evidence (ECT_14_2024)** held on 13.02.2024



eCourts Programme (ECT_16_2024) for Judicial Officers of Assam, Nagaland, Mizoram and Arunachal Pradesh held on **16.02.2024**

Sensitization Programme on "Local Act and Rules (Civil & Criminal)" of Mizoram conducted by Shri Laldinpuia Tlau, Joint Registrar (Judicial), Gauhati High Court, Aizawl Bench on 17.02.2024

One-day Refresher Programme for the Judicial Officers of Assam on **Cyber Laws, Appreciation & Handling of Digital Evidence (ECT_14_2024)** held on 23.02.2024

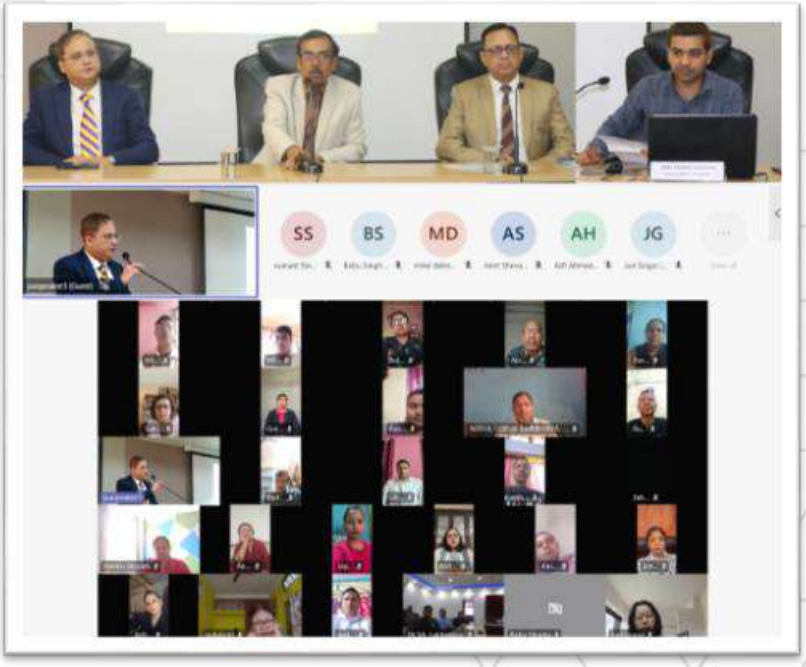
Hon'ble Mr. Justice Sandeep Mehta, Judge, Supreme Court of India interacting with the Judicial Officers of Assam, Nagaland, Mizoram and Arunachal Pradesh in the august presence of **Hon'ble Mr. Justice Vijay Bishnoi**, Chief Justice, Gauhati High Court and other Honble Judges of the Gauhati High Court during the **Knowledge Enhancement Programme** held on 03.03.2024.

Refresher Programme for ECT Master Trainer (Judicial Officers, Advocates & Systems Officers/Systems Assistants) held on 15.03.24. The introductory remarks were delivered by **Smti. R. Arulmozhiselvi**, Member-Human Resources, e-Committee, Supreme Court of India.

Refresher Programme (ECT_15_2024) for the staff of the registry of the Gauhati High Court held on 16.03.2024. The sessions were conducted by Shri Mukul Bhattacharjya, Systems Analyst, Gauhati High Court & Shri Diganta Barman, Sr. IT Consultant, Gauhati High Court

Sensitization Programme on "Local Act and Rules (Civil & Criminal) of Nagaland" conducted by Shri Imti Longekumar, Advocate held on 23.03.2024 at Dimapur

Sensitization Programme for the Grade-II & Grade-III Judicial Officers of Arunachal Pradesh on "Local Act and Rules (Civil & Criminal) of Arunachal Pradesh" and "eCourts" conducted by Shri S.P. Moitra, Faculty, Judicial Academy Assam, Shri Nasim Akhtar, Faculty, Judicial Academy Assam & Shri Dicky Panging, Advocate on 23.03.2024



Awareness Programme on ICT for the LADCs and Panel Lawyers of Assam held on 23.03.2024

Refresher Programme on eCourt Services (ECT_9_2024) for the Staff of the District Courts of Nagaland, Mizoram & Arunachal Pradesh held on 27.03.24.

Three-day Orientation Programme on New Criminal Laws (Group-A) for the Judicial Officers of Assam, Nagaland and Arunachal Pradesh held w.e.f. 13.05.2024 to 15.05.2024

1strow (L-R): Hon'ble Mr. Justice Dinesh Maheshwari, Former Judge, Supreme Court of India; Shri S.P. Moitra, Faculty, Judicial Academy, Assam; Dr. Nandini C P, Associate Professor, DSNLU, Andhra Pradesh; Ms. Divya Salim, Assistant Professor, NLIU, Bhopal; Dr. Amol Deo Chavhan, Associate Professor, NLUJAA

Three-day Orientation Programme on New Criminal Laws (Group-B) for the Judicial Officers of Assam held w.e.f. 21.05.2024 to 23.05.2024

Three-day Orientation Programme on New Criminal Laws (Group-C) for the Judicial Officers of Assam, Nagaland and Arunachal Pradesh held w.e.f. 28.05.2024 to 30.05.2024

Three-day Orientation Programme on New Criminal Laws (Group-D) for the Judicial Officers of Assam, Nagaland and Arunachal Pradesh held w.e.f. 06.06.2024 to 08.06.2024

Three-day Orientation Programme on New Criminal Laws (Group-E) for the Judicial Officers of Assam held w.e.f. 13.06.2024 to 15.06.2024

Three-day Orientation Programme on New Criminal Laws (Group-F) for the Judicial Officers of Assam, Nagaland and Arunachal Pradesh held w.e.f. 20.06.2024 to 21.06.2024

Three-day Orientation Programme on New Criminal Laws (Group-G) for the Judicial Officers of Assam held w.e.f. 24.06.2024 to 26.06.2024

Three-day Orientation Programme on New Criminal Laws (Group-H) for the Judicial Officers of Assam, Nagaland and Arunachal Pradesh held w.e.f. 27.06.2024 to 29.06.2024

Three-day Orientation Programme on New Criminal Laws

for the Judicial Officers and Public Prosecutors of Mizoram (in two batches) organized in collaboration with Gauhati High Court, Aizawl Bench w.e.f. 24.06.2024 to 26.06.2024 (Batch-I) and 27.06.2024 to 29.03.2024 (Batch-II)

Inauguration of Orientation Programme on New Criminal Laws for the Judicial Officers of Assam, Nagaland, Mizoram & Arunachal Pradesh held on 13.05.2024

2nd row (L-R): Hon'ble Mr. Justice Manash Ranjan Pathak, Judge, Gauhati High Court; Hon'ble Mr. Justice Vijay Bishnoi, Chief Justice, Gauhati High Court; Hon'ble Mr. Justice Dinesh Maheshwari, Former Judge, Supreme Court of India; Hon'ble Mr. Justice L. S. Jamir, Judge, Gauhati High Court and Hon'ble Mr. Justice (Retd.) Mir Alfaz Ali, Director, Judicial Academy, Assam

eCourts Phase III Regional Cluster Workshop - North Eastern Region

Organized by e-Committee, Supreme Court of India in collaboration with Judicial Academy, Assam held on 19.01.2024 & 20.01.2024

1st row (L-R): Hon'ble Mr. Justice Suman Shyam, Judge, Gauhati High Court; Hon'ble Mr. Justice (Retd.) Mir Alfaz Ali, Director, Judicial Academy, Assam; Shri Kuntal Sharma Pathak, Member Process, e-Committee, Supreme Court of India; Ms. R. Arulmozhiselvi, Member Human Resources, e-Committee, , Supreme Court of India; Sri Subhrangsu Dhar, Registrar (Judicial & IT), Gauhati High Court.

2nd row (L-R): Shri Pravash Prashun Pandey, Joint Secretary, Department of Justice, Govt. of India; Dr Parvinder Singh Arora, Member Project Management, e-Committee, , Supreme Court of India; Shri Ashok Kumar, Director, Department of Justice, Ministry of Law and Justice; Mr. Ashish J. Shiradhonkar, Member Systems, e-Committee, , Supreme Court of India; Shri Amol Avinashe, Scientist 'F', NIC, HOD eCourts.

Some snapshots of the programme

EDITORIAL Board

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Designed by: Bikash Das